

27.04.2023

Appellant in person present.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 27.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Rozina Rehman)
Member (J)


Mutazem Shah

27.06.2023


1. Counsel for the appellant present. Mr. Asad Ali Khan, learned Assistant Advocate General for the respondents present.

2. Former requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 24.10.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

Kaleemullah

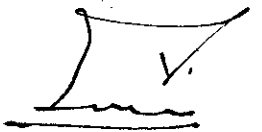
03.03.2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, District Attorney for the respondents present.

Learned counsel for the appellant stated that connected appeals are fixed for arguments before D.B-I, therefore, the appeal in hand may also be sent to the said D.B.

In view of the above, the appeal in hand is sent to Worthy Chairman for further appropriate order. Learned counsel for the parties shall appear before Worthy Chairman today.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

3rd Mar, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

2. Arguments in nineteen other service appeals were heard wherein the learned counsel for the appellant had said that this appeal is also similar but when the file was being perused it transpired that this appeal is a bit on different footing and regarding a bit different proceedings, therefore, it is adjourned to 27.04.2023 for arguments before D.B.


(Rozina Rehman)
Member (Judicial)


(Kalim Arshad Khan)
Chairman

SCANNED
KEPST
Peshawar

16th Feb, 2023

Learned counsel for the present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Muhammad Yousaf, Section Officer for the respondents present.

After arguing the matter, the need of assistance was felt for which Mr. Yousaf Khan Section Officer Home & Tribal Affairs Department put appearance and sought some time to produce the relevant rules to ascertain as to who is/was authority of the appellant. To come up tomorrow i.e 17.02.2023 for further proceedings before the D.B.




(Salah-ud-Din)
Member (J)

(Kalim Arshad Khan)
Chairman

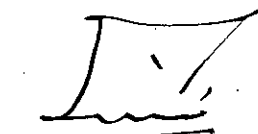
17.02.2023

Learned counsel for the appellant present. Mr. Muhammad Yousaf, Section Officer alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant submitted copy of Chapter-2, which is regarding terms and conditions of service of an employee. The appeal in hand was partially heard by a bench comprising of worthy Chairman and one of us (Salah-ud-Din) Member Judicial, therefore, the same may be placed for arguments before the concerned bench on 03.03.2023.



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

SCANNED
KPST
Peshawar

08.11.2022


Counsel for the appellant present.

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

SCANNED
KPST
Peshawar

Learned counsel requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 21.11.2022 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

21st Nov, 2022

Lawyers on general strike today.

To come up for arguments on 5.1.2023 before D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

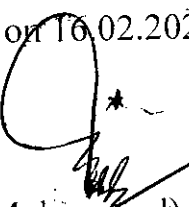

(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

05.01.2023 Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Last opportunity is granted to argue the case on the next date, failing which the case will be decided on available record without arguments. Adjourned. To come up for arguments on 16.02.2023 before D.B.

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KPST
Peshawar

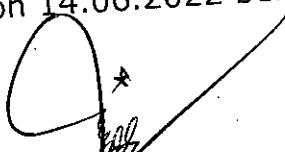

(Mian Muhammad)
Member (E)

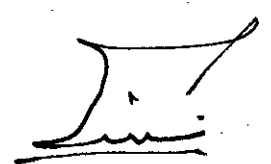

(Kalim Arshad Khan)
Chairman

09.05.2022

Appellant in person present. Mr. Riaz Ahmed Paindakhel,
Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that
his counsel is out of station today. Adjourned. To come up for
arguments on 14.06.2022 before the D.B.

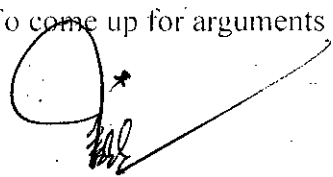

(Mian Muhammad)
Member (E)

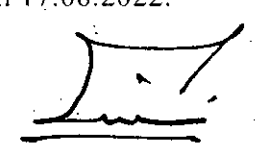

(Salah-ud-Din)
Member (J)

14.06.2022

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

Clerk of counsel for the appellant stated that learned counsel for the
appellant is unable to attend the Tribunal today due to strike of Lawyers.
Adjourned. To come up for arguments before the D.B on 17.08.2022.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

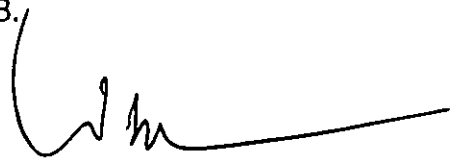
17.8.22

*Due to Summer vacation the case
is adjourned to 8.11.22 for the hearing.*



02.02.2022 Counsel for the appellant present. Mr. Muhammad Adeel Butt, Add: AG for respondents present.

Written reply on behalf of respondents not submitted. Learned AAG seeks time for submission of written reply/comments. Adjourned. To come up for written reply of respondents on 07.04.2022 before S.B.



(Attiq Ur Rehman Wazir)
Member(E)

07.04.2022

Counsel for the appellant. Mr. Kabirullah Khattak Adl. AG for respondents present. Written reply on behalf of respondents No. 2 have already been submitted. No one is present on behalf of respondent No. 3 for submission of written reply, therefore right of submission of written reply of respondent No. 3 is struck of. To come up for arguments before D.B on 09.05.2022.



Chairman

Stipulated period passed reply not submitted.

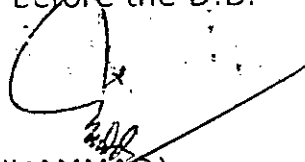
15.09.2021

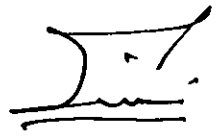
Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

22.10.2021

Appellant alongwith clerk of his counsel present. Mr. Shah Waliullah Khan, Section Officer (Litigation) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for submission of reply/comments. Last opportunity given. To come up for reply/comments of respondents as well as arguments on 17.12.2021 before the D.B.

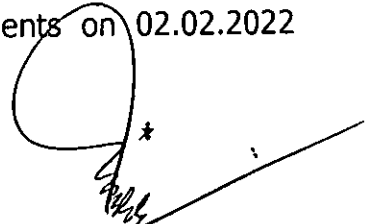

(MIAN MUHAMMAD)
MEMBER (E)


(SALAH-UD-DIN)
MEMBER (J)

17.12.2021

Appellant in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. M. Riaz, Supdt for respondents present.

Written reply/comments not submitted. Learned AAG requested for a short adjournment to contact the respondent-department for submission of written reply/comments on the next date. To come up for written reply/comments on 02.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

05.08.2021

Counsel for the appellant present. Preliminary arguments heard.

SCANNED
KPST
Peshawar

Points raised need consideration. The appeal is admitted for hearing subject to all legal objections including that of limitation to be determined during full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 22.10.2021 before the D.B.

Ad
Secy
deposited
Process Fee
MSA



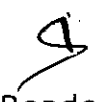

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2567 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/02/2021	<p>The appeal of Mr. Naveed-ur-Rehman presented today by Mr. Zartaj Anwar Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	19.04.2021	<p>Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 05.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2021

Naveed Ur Rehman Afridi S/O Muhammad Shah Afridi R/O
F.R, MettaKhel P.O Sam Badaber Peshawar

.....(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar & Others.

(Respondents)

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S. NO	Description of documents	Annexure	Page No.
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2	Copy of the advertisement	A	6
3	Copy of the appointment order	B	7
4	Copy of the Experience Certificate <i>C Show Case No</i>	C - C2	8-12
5	Copy of the reply - <i>Show Case No</i>	D	12-13
6	Copy of the age relaxation rule	E	14- 17
7	Copy of NOC is attached as annexure F	F	18
8	Copy of the impugned order dated 11.11.2020	G	19
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Naveed Ur Rehman Afridi
Appellant

Through

Zartaj Anwar
ZARTAJ ANWAR

Advocate High Court
Office FR , 3 Forth
Floor Bilour Plaza
Peshawar Cantt.

Cell: 0331-9399185

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWARKhyber Pakhtunkhwa
Service TribunalAppeal No. 2567 /2021Diary No. 2602Dated 10/2/2021

Naveed Ur Rehman Afridi S/O Muhammad Shah Afridi R/O F.R,
Metta Khel P.O Sam Badaber Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 11.11.2020 whereby the appellant has been awarded the major penalty of removal from service, and against which the departmental appeal dated 16.11.2020 was filed before the competent authority which was rejected on 20.01.2021

Prayer in Appeal: -

Filed to-day

Registrar

10/2/2021

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 11.11.2020 & ORDER DATED 20.01.2021, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

Respectfully Submitted:

1. That the appellant was initially appointed and serving the department in a capacity of Daily Wage, in the meanwhile various posts were advertised including the post of the appellant i.e. Junior Clerk, (Copy of the advertisement is attached as annexure A).

2. That the appellant having the requites qualification and fulfilling the eligibility criteria duly applied for the post of junior clerk by fulfilling all the legal and codal formalities in the prescribed manner.
3. That the competent authority/Departmental Selection Committee duly constituted for the purpose of recruitment considered the appellant for the post of junior clerk and when found eligible for the post recommended for appointment along with other 23 candidates.
4. That the competent authority on the recommendation of selection committee issued the appointment orders of 23 candidates for the post junior clerk in which the appellant was also appointed. *(Copy of the appointment order is attached as annexure B).*
5. That the appellant takeover the charge of the post by submitting his arrival report along with medical fitness certificate and start performing his duties to the entire satisfactions of his superiors without any complaint whatsoever regarding his performance.
6. That the appellant prior to the appointment to the post of junior clerk in the respondent department serving in erstwhile FATA secretariat in Law & Order Department in a Project Titled Levy Training Center at Shakas, since 15.12.2011 till the appointment on the post of Junior Clerk and applied for the post through proper channel. *(Copy of the Experience Certificate is attached as annexure C).*
7. That while serving in the said capacity the appellant was served with a Show Cause Notice dated 02.09.2020, containing certain false and baseless allegations.

"That being member of shortlisting committee has selected and appointed the person at the age of 34-37 at the time of applying for the post having age criterion of 18-32 years. Both of them were over aged but still got selected even in the absence of relaxation of upper age limit by the competent authority"

(Copy of Show Cause Notice is attached as annexure C-1)

8. That the appellant has submitted the reply to show cause within time and denied all the allegation leveled against the appellant. *(Copy of the reply is attached as annexure D)*
9. That the petitioner has also worked in the project Titled Levy Training Center at Shakas of Erstwhile FATA Secretariat Law & Order Department since 15.12.2011 till his appointment and under the rules/law those who has worked in project of the government, his

upper age can be relax equal to the period served in the project subject of the maximum limit of the 10 years. *(Copy of the age relaxation rule is attached as annexure E).*

10. That despite of the fact the appellant as applied through proper channel by submitting the NOC along with the certificate of experience which was considered by the competent authority and accordingly relaxed the upper age for appointment against the post of junior clerk. *(Copy of NOC is attached as annexure F)*
11. That astonishingly the appellant was awarded major penalty of "Removal from Service" vide office order dated 11.11.2020, without taking into consideration the reply of the show cause in which the appellant denied all the allegations leveled against the appellant. *(Copy of the impugned order dated 11.11.2020 is attached as annexure G).*
12. That the feeling aggrieved from the order dated 11.11.2020, the appellant filed a departmental appeal before the competent authority on 16.11.2020, which was rejected on 20.01.2020. *(Copy of the departmental appeal & rejection are attached as annexure H & I).*
13. That being aggrieved from the illegal order dated 10.09.2020 the appellant has filed this appeal on the inter alia on following grounds

GROUND OF SERVICE APPEAL

- A. That the appellant has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before awarding the major penalty of Removal from service, the whole proceedings are thus nullity in the eyes of law.
- C. That the appellant has not done any act or omission which can be termed as mis-conduct, thus the appellant cannot be punished for the irregularities if so occurred in the recruitment process.
- D. That no proper procedure has been followed before awarding the major penalty of Removal from service to the appellant. No charge sheet, no statement of allegation and without proper

inquiry, the appellant was awarded major penalty, thus the whole proceedings are defective in the eyes of law.

- E. That the appellant was candidate along with other candidates who applied for the post in question but astonishingly with ulterior motive the appellant was in the alleged show cause made as member of the scrutiny committee.
- F. That the appellant has not been given proper opportunity of personal hearing before awarding the penalty, hence the appellant have been condemned unheard.
- G. That despite of the fact the appellant as applied through proper channel by submitting the NOC along with the certificate of experience which was considered by the competent authority and accordingly relaxed the upper age for appointment against the post of junior clerk.
- H. That under the Rules/law, those who has worked in project of the government, his upper age can be relax equal to the period served in the project subject of maximum limit of the 10 years, the appellant has also worked in the project titled Levy Training Center at Shakas of Erstwhile FATA Secretariat Law & Order Department since 15.12.2011.
- I. That the appellant was neither involved in corruption, nor embezzlement nor immoral turpitude. Therefore, such harsh and extreme penalty of Removal from service of appellant was not commensurate with the nature of his co-called misconduct to deprive his family from livelihood.
- J. That the competent authority has passed the impugned order against the law and proper procedure provided under the law was not followed by the respondents before awarding the major penalty of Removal from service.
- K. That the charges were denied by the appellant had never admitted, nor there sufficient evidence available to held the appellant guilty of the charges.
- L. That the superior courts have a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry

cannot be dispensed with that too when the charges are denied by the employee.

- M. That the appellant has never committed any act or omission which could be termed as misconduct the charges leveled against the appellant are false and baseless besides the same are neither proved nor proved albeit the appellant has illegally been removed from service.
- N. That the appellant at his credit a long unblemished and spotless service career, the penalty imposed upon the appellant is too harsh and is liable to be set aside.
- O. That the appellant is jobless since his Removal from service.
- P. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 11.11.2020 & 20.01.2021 may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

N. Rehman
Appellant

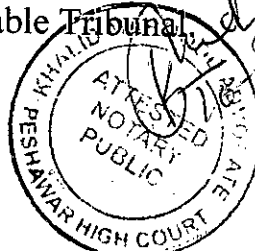
Through

Zartaj Anwar
ZARTAJ ANWAR
Advocate Peshawar

Imran Khan
IMRAN KHAN
Advocate Peshawar

AFFIDAVIT

I, Naveed Ur Rehman Afridi S/O Muhammad Shah Afridi R/O F.R, MettaKhel P.O Sam Badaber Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



N. Rehman
Deponent

6 Approved A

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پشاور ایبے آئن اور سابقہ آج کے ایک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

روزنامہ آج

پشاور پاکستان

ایڈیٹر عبدالواحد ریوینی

جلد 30 نمبر 9 زمینی 3 مئی 2019ء 1440ھ - 29 مئی 2019ء نمبر 33

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Daily Aeen Peshawar

روزنامہ آئین پشاور

Chief Editor Rahatullah Khan

ABC CERTIFIED

جلد 29 نمبر 09 زمینی 2019ء 03 مئی 2019ء 1440ھ 28 مئی 10 نمبر 355

"JOB OPPORTUNITIES"

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	BPS	No's of Post	Age	Qualification
1	Assistant Moharar	14	04	18-32	BA/BSc/B.Com & Equivalent with 06 years experience.
2	Key Punch Operator	12	03	18-32	BA/BSc/B.Com & Equivalent
3	Stenographer	12	01	18-32	FA/FSc with Shorthand & typing Speed up to 40 WPM
4	Junior Clerk	07	04	18-32	FA/FSc or Equivalent with Typing Speed up to 40 WPM
5	Driver	04	04	18-40	Middle pass having "LTV" Driving License
6	Naib Qasid	01	04	18-40	Middle Pass
7	Chowkidar	01	03	18-40	.

Term & Conditions:-

1. Age relaxation in deserving cases can be considered as per Government rules.
2. Only shortlisted candidates will be called for test/interview.
3. No TA/DA will be admissible for test/interview.
4. Application form alongwith attested copies of Testimonials, Experience Certificates, CNIC, Domicile Certificate and a recent photograph should reach on PO Box No. 131 within 15 days of advertisement.
5. Incomplete or applications received after closing date will not be entertained.
6. Government employee should apply through proper channel.
7. The competent authority reserves the right to change the terms & condition, not to fill, increase/decrease vacancies or cancel recruitment process without any reason.
8. Errors/omissions are subject to rectification.

"JOB OPPORTUNITIES"

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	BPS	No's of Post	Age	Qualification
1	Moharar/ Assistant	14	04	18-32	BA/BSc/B.Com & Equivalent with 06 years experience.
2	Key Punch Operator	12	03	18-32	BA/BSc/B.Com & Equivalent
3	Stenographer	12	01	18-32	FA/FSc with Shorthand & typing Speed up to 40 WPM
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8. Errors/omissions are subject to rectification.

ATTESTED



7
APR 15 2019 B

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/ 1106 dated: 08.03.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Mr. Naveed Ur Rehman S/o Muhammad Shah Afridi against the vacant post of Assistant/Moharar BPS-14 (15180-1170-50280) in FATA Tribunal at Peshawar under rule 10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-14 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt. to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

01. The Accountant General Pakistan Revenues Sub Office, Peshawar.
02. Ps to ACS FATA, Peshawar.
03. PS to Secretary Law & Order FATA, Peshawar.
04. PS to Secretary Finance FATA, Peshawar.
05. Personal File.
06. Official Concerned.

REGISTRAR
FATA TRIBUNAL

~~ATTESTED~~



**MERGED AREAS SECRETARIAT
LAW AND ORDER DEPARTMENT
WARSAK ROAD PESHAWAR**

Attested C
8

Tele phone No. 091-9214017

Fax No. 091-9210578

TO WHOME IT MAY CONCERN

It is certified that Mr. Naveed Rehman Junior Clerk BPS-11 is working in the Project titled "Levy Training Center at Shakas Khyber Agency" Law & Order Department FATA Secretariat with effect from 15-12-2011 to 27/02/2019 (Continue).

During his stay in the office, he is performing his duty very punctually. We found him to be hard working and having a good moral character.

We wish him a bright future and success.

Section Officer

(Budget & Account Section)

Law & Order Department

Section Officer (B&A)
Law & Order Department
FATA Secretariat Peshawar

ATTESTED



Ph: (091) 9212147

Fax # (091) 9210578

9
FATA SECRETARIAT
Law & Order Department
PESHAWAR

No. CS (F)/N/L&O/Gen/46
Dated: 13th August 2014

EXPERIENCE CERTIFICATE

Certified that Mr. Nadir Shah s/o Iqbal Shah r/o Garhi Karigaram Alamgudar, Bara Khyber Agency - has service as Assistant/computer Operator in the project titled "Training and Support of Levy Force at FATA" of FATA Secretariat from January 2010 to July 2014.

During the tenure of his service, he was found energetic, self motivate and hard worker. His character is up to the mark.

Deputy Secretary
Narcotics
Deputy Secretary (Narcotics)
Quarterly Secretariat (FATA)
Peshawar

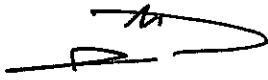
ATTESTED

SHOW CAUSE NOTICE

I, Mr. Ikram Ullah Khan as competent authority, under Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve upon you, Mr. Naveed-ur-Rehman, Assistant/Muharrar (BPS-14) employee of Ex-FATA Tribunal as follows.

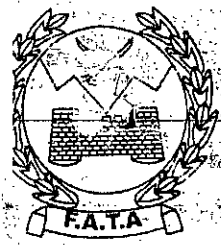
That being member of shortlisting committee has selected and appointed the person at the age of 34-37 at the time of applying for the post having age criterion of 18-32 years. Both of them were overaged but still got selected even in the absence of relaxation of upper age limit by the competent authority.

2. As a result therefore, I, as competent authority, have decided to impose upon you the penalty of removal from Service under rule 4 of the said rules.
3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within fifteen days of the delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.


(IKRAM ULLAH KHAN)
HOME SECRETARY
(Competent Authority)

Mr. Naveed-ur-Rehman,
Assistant /Muharrar (BPS-14)
Ex-FATA Tribunal.

 **ATTESTED**



12

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
PESHAWAR

No. HD/L&O/B&A/55/619-23
Dated: 06-10-2020

To:

✓ Mr. Naveed-Ur-Rehman (Assistant/Muharrar),

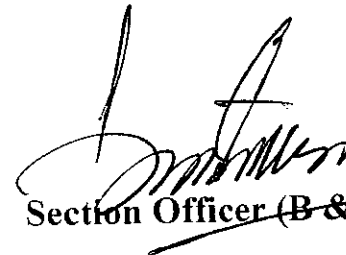
Mr. Nadir Shah (Junior Clerk)

Mr. Arif Jan (Junior Clerk)

SUBJECT: SHOW CAUSE NOTICE.

I am directed to refer to the subject noted above and to state that Competent Authority has been agreed to grant you opportunity of personal hearing before order to be passed against you.

In view of the above, you are hereby directed to appear for personal hearing on **08-10-2020 at 12:30 pm** in the office of the Worthy Secretary Home & Tribal Affairs.


Section Officer (B & A)

Copy to:

1. PS to Secretary Home & TAs Department Khyber Pakhtunkhwa.
2. PS to Special Secretary-II Home & TAs Department Khyber Pakhtunkhwa.

Section Officer (B & A)

ATTESTED



13
ASSTED D

To,

The Secretary
Home and Tribal Affairs Department
Khyber Pakhtunkhwa Peshawar

Subject:- REPLY TO SHOW CAUSE NOTICE

Kindly refer to your letter No. SO (B&A)HD/MAS/F.TRIBUNAL/2019-2020/1461-63 dated 07/09/2020.

With due respect and reverence, before the appointment in the FATA Tribunal, I was working as Junior Clerk in Law & Order (Levies Directorate) FATA Secretariat. (Copy of Pay Slip & NOC attached).

FATA Tribunal had advertised some vacant posts on 09/02/2019 in daily Aaj and Ayeen. I had applied to the post of Assistant/Muharrar fulfilling all the requirements and eligibility criteria prescribed in the advertisement. Then I was selected and issued appointment order vide letter No. R/11/2018-19/1106, dated 08/03/2019 as Assistant/Muharrar. (Copy of letter attached).

Respected sir! My parent Department is Law & Order (Levies Directorate) FATA Secretariat not FATA Tribunal. I was the employee of Law & Order Department and also getting Salary from the said Department and not employee of FATA Tribunal at that time, therefore, I was neither member of Shortlisting Committee nor conducted any documentary exercise regarding Shortlisting.

I hope my reply will suffice your honour and that the Show Cause Notice will be dropped. Sir, I also desire to be heard in person.

ATTESTED
17/9/2020

Yours Obediently

17/09/2020

Naveed Ur Rehman

Assistant/Muharaar

Fata Tribunal Peshawar

17/9/2020

Attested E

GOVERNMENT OF ¹[Khyber Pakhtunkhwa] ESTABLISHMENT &
ADMINISTRATION
DEPARTMENT (Establishment Wing)

NOTIFICATION
Dated 1ST MARCH, 2008

NO.SOE-III(E&AD)2-1/2007, Dated 01-03--2008.---In pursuance of the powers granted under Section 26 of the ²[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (³[Khyber Pakhtunkhwa] Act XVIII of 1973), the competent authority is pleased to make the following rules, namely:

THE ⁴[Khyber Pakhtunkhwa] INITIAL APPOINTMENT TO CIVIL POSTS
(RELAXATION OF UPPER AGE LIMIT RULES, 2008)

PART — I
GENERAL

1. (1) These rules may be called the Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 2008.
- (2) These shall come into force with immediate effect.
- ⁵[2. (1) Nothing in these rules shall apply to the appointment in BS-17 and the posts of Civil Judge-Cum-Judicial Magistrate / Illaqa Qazi, BS-18 to be filled through the competitive examination of the Public Service Commission, in which case two years optimum relaxation shall be allowed to:
 - (a) Government servants with a minimum of 2 years continuous service;
 - (b) Disabled persons; and
 - (c) Candidates from backward areas.
- (2) For appointment to the post of Civil Judge-cum-Judicial Magistrate/Illaqa Qazi, the period which a Barrister or an Advocate of the High Court and /or the Courts subordinate thereto or a Pleader has practiced in the Bar, shall be excluded for the purpose of upper age limit subject to a maximum period of two years from his/her age.]

PART — II
GENERAL RELAXATION

ATTESTED

¹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

⁵ Rule 2 substituted by Notification No. SO-III(E&A)2-1/2007 dated 03-09-2008.

⁶[3. (i) Maximum age limit as prescribed in the recruitment rules shall be relaxed in respect of the candidates mentioned in column 2 to the extent mentioned against each in column 3 of the table below:-

S.No.	Category of candidates	Age relaxation admissible
1	2	3
i.	Government Servants who have completed 2 years continuous service.	Upto ten years Automatic Relaxation.
ii.	Candidates belonging to backward areas as specified in the Appendix attached herewith.	Three years Automatic Relaxation.
iii.	General candidates.	Upto two years by the appointing authority and exceeding two years upto five years by the Establishment Department ⁷ [and beyond five years upto ten years by the Chief Minister of the Khyber Pakhtunkhwa].
iv.	Widow or son or daughter of a deceased civil Servant who died during service and son/brother in case of a shaheed of Police Department; and	Discretion of the appointing authority.
v.	Disabled persons /divorced woman/widow	10 years Automatic Relaxation.
⁸ {vi.	(a) Employees or ex-employees of the development projects of the Government of ⁹ [Khyber Pakhtunkhwa]; (b) Employees of ex-	Equal to the period served in the projects, subject to the maximum limit of the ten years.]

⁶ . Rule 3 substituted by Notification No. SOE-III(E&AD)2-1/2007 dated 09-12-2010

⁷ . Added by Notification No. SOE-III(E&AD)2-1/2007 dated 26-10-2011

⁸ . Added by Notification No. SOE-III(E&AD)2-1/2007 dated 29-01-2011

⁹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

ATTESTED

	employees of the development projects of the Federal Government under the administrative control of the Government of ¹⁰ [Khyber Pakhtunkhwa]	
--	--	--

(ii) in case of divorced woman or widow, the following certificates shall be produced by the applicant at the time of applying for age relaxation

- (a) in case of widow, death certificate of husband;
- (b) in case of divorced woman, divorce certificate from the District Coordination Officer of the District concerned;
- (c) certificate from the District Coordination Officer of the District concerned to the fact that the applicant whether divorced or widow has not remarried at the time of submitting application.]

¹¹[Provided that the age relaxation at serial No. vi above shall not be availed in conjunction with any other provisions of these rules.]

4. A candidate shall only be allowed, relaxation in age in one of the categories specified in rule 3;

Provided that the candidates from backward areas, in addition to automatic relaxation of three years under category (ii) specified in rule 3, shall be entitled to one of the relaxations available to Government servants, general or disabled candidates, whichever is relevant and applicable to them.

¹²[5. The age relaxation specified in column No. 3, against serial No. (iii) of the TABLE of rule 3, shall be subject to cogent reasons and sound justification of the case.]

6. Age relaxation in respect of overage candidates shall be sought prior to their appointment.

7. For the purposes of these rules, age of a candidate shall be calculated from the closing date of submission of application for a particular post.

8. The cases of age relaxation, beyond the competence of Administrative Departments, shall be sent to the Establishment Department through the Administrative Department concerned.

¹⁰ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011

¹¹ . Added by Notification No. SOE-III(E&AD)2-1/2007 dated 29-11-2011

¹² . Added by Notification No. SOE-III(E&AD)2-1/2007 dated 26-10-2011

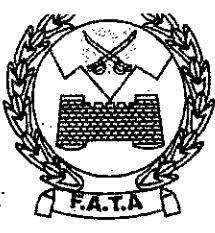
ATTESTED

9. All existing instructions, relating to age relaxation, issued from time to time shall stand superseded.

APPENDIX

[See Rule 3(ii)]

- (i) Khyber Agency
- (ii) Kurram Agency.
- (iii) Mohmand Agency.
- (iv) North Waziristan Agency.
- (v) South Waziristan Agency.
- (vi) Malakand Agency including protected areas (Swat, Ranizai and Sam-Ranizai) and Bajaur.
- (vii) Tribal Areas attached to Peshawar, Kohat and Hazara Division.
- (viii) Shirani Area.
- (ix) Merged Areas of Hazara and Mardan Division and Upper Tanawal.
- (x) Swat District.
- (xi) Upper Dir District.
- (xii) Lower Dir District.
- (xiii) Chitral District.
- (xiv) Buner District.
- (xv) Kala Dhaka Area.
- (xvi) Kohistan District.
- (xvii) Shangla District.
- (xviii) Gadoon Area in Swabi District.
- (xix) Backward areas of Mansehra and District Batagram.
- (xx) Backward areas of Haripur District, i.e. Kalanjar Filed Kanungo Circle of Tehsil Haripur and Amazai Field Kanungo circle of Tehsil Ghazi.



FATA SECRETARIAT
LAW & ORDER DEPARTMENT
PESHAWAR

Approved F
18

FS/L&O/B&A/30/2019
Dated: 28/02/2019

NO OBJECTION CERTIFICATE

I hereby certify that Mr. Naveed Rehman S/o Muhammadi Shah is working as Junior Clerk (BPS-11) in Project titled "Levy Training Center at Shakas Khyber Agency" in this Department. This office has got no objection on his joining the post of Assistant (BPS-16) in the Federal Government Department advertised through P.O Box No. 131.

I wish him all the best for his future endeavor.

[Signature]
Section Officer (Admin & Budget)
Law & Order Department
FATA Secretariat Peshawar.

Section Officer (B&A)
Law & Order Department
FATA Secretariat, Peshawar

ATTESTED



19

AMIN G

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
Near DC Office old DG Health Building Khyber, Road Peshawar

Dated Peshawar 11th November, 2020

ORDER

HD/FATA Tribunal/B&A/55/2020/ 831-38
WHEREAS, Mr. Naveed Ur Rehman, Assistant/Moharrar (BPS-14) Ex-FATA Tribunal was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. AND WHEREAS, the Department was given opportunity of personal hearing to Mr. Naveed Ur Rehman, Assistant/Moharrar (BPS-14), Ex-FATA Tribunal.

3. NOW, THEREFORE, the Competent Authority has been pleased to impose major penalty of "Removal from Service" on Mr. Naveed Ur Rehman, Assistant/Moharrar (BPS-14), FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-11-2020.

-Sd-

Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General, Government of Khyber Pakhtunkhwa.
2. Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa.
3. Secretary Finance, Finance Department, Khyber Pakhtunkhwa.
4. Secretary, Establishment Department, Khyber Pakhtunkhwa.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. PSO to Chief Secretary Khyber Pakhtunkhwa.
7. PS to Chief Minister Khyber Pakhtunkhwa.
8. Official Concerned.

Section Officer (B & A)

ATTESTED

To

The Honourable Chief Secretary
Government of Khyber Pakhtunkhwa
Peshawar

15-11-2020
Attested H
20

Subject: - DEPARTMENTAL APPEAL AGAINST THE ORDER NO. HD/FATA TRIBUNAL/B & A/55/2020 DATED 11/11/2020 PASSED BY THE SECRETARY TO GOVT HOME & TRIBAL AFFAIRS DEPTT WHEREBY THE APPELLANT HAS BEEN AWARDED THE MAJOR PENALTY OF REMOVAL FROM SERVICE.

Respected Sir,

Appellant submits as under :-

- 1- That the appellant belongs to a notable family of Ex-FR Peshawar.
- 2- That being fully qualified, the appellant was appointed as Junior Clerk on 15-12-2011 in the Levies Directorate of Law & Order Department, FATA Secretariat Peshawar.
- 3- That as per Government policies, FATA Tribunal was established which was facing shortage of employees, therefore, the services of the appellant were attached to the said newly created FATA tribunal vide order dated 05-08-2012.
- 4- That since then the appellant performed his duties with full zeal and zest and to the entire satisfaction of his superiors.
- 5- That in the year 2019, the FATA Tribunal advertised some posts of various categories and the appellant being fully qualified applied for the post of Assistant.
- 6- That as the appellant fulfilled all the requirements, therefore, the appellant was appointed against the post of Assistant.
- 7- That the appellant was shocked when a Show Cause Notice was served upon the appellant which was properly replied.

ATTESTED

21

8- That now the Secretary Home & Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa through Section Officer B&A served Order No.HD/FATA TRIBUNAL/B & A/55/2020 DATED 11/11/2020 vide which major penalty of Removal from Service has been imposed upon the appellant.

9- That being aggrieved with the said impugned order dated 11/11/2020, appellant approaches your good self through Departmental Appeal in hand on the following grounds amongst others :-

GROUNDS :-

A. That the impugned removal order dated 11/11/2020 of the Learned Secretary Home & Tribal Affairs Deptt: is Void ab initio, illegal, harsh, without lawful authority and against the norms of natural justice.

B. That *No Charge Sheet* or *statement or allegations* was ever served upon the appellant before issuance of the impugned removal order therefore, the appellant was not afforded proper opportunity of fair trial.

C. That No proper Inquiry is conducted in the matter before issuance of the impugned removal order, therefore, the whole proceedings are unwarranted and nullity in the eyes of law.

D. That if there is any report of Inquiry Committee or Inquiry Officer, same was never communicated to the appellant neither at the time of issuance of the said Show Cause Notice nor before the issuance of the impugned removal order dated 11.11.2020.

E. That the appellant being only Junior Clerk can neither be a part of any Selection Committee nor the appellant remained or acted as member of any selection Committee.

F. That the Secretary Home & Tribal Deptt: is not competent to pass the impugned removal order as the time of alleged selection process, the appellant was not the employee of FATA Tribunal rather services of the appellant were attached to the said Tribunal on exigency of work.

G. That the impugned order dated 11.11.2020 of the Secretary Home & Tribal is totally unjustified as the punishment awarded as "punishment

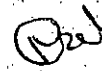
ATTESTED

must be commensurate to the alleged guilt of the accused" but even then the Secretary Home and Tribal imposed the said punishment.

- H. That the impugned order of Removal from service is harsh and bad in law and on facts.
- I. That the appellant be provided a fair chance of personal hearing before your good honour so that the whole facts be brought before your good self.

It is, therefore, humbly prayed that on acceptance of the appeal in hand, the impugned order No. HD/FATA TRIBUNAL/B & A/55/2020 DATED 11/11/2020 may be set a side and the appellant be re-instated in service with all back benefits.

Yours Faithfully.



Naveed Ur Rahman

Ex-Assistant/Moharrir

FATA Tribunal Peshawar

R/O Meetha Khel Sama Badh Bher.

Hassan Khel Sub-Division

Peshawar.

Dated. 16 /11/2020


ATTESTED



23

ADMITTED I

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
Old DG Health Building near DC Office Peshawar

No. HD/L&O/B&A/FATA Tribunal/55/126
Dated 20-01-2021

To:

Mr. Naveed Ur Rehman (Assistant)

Mr. Nadir Shah (Junior Clerk)

Mr. Arif Jan (Junior Clerk)

SUBJECT: DEPARTMENTAL APPEAL SUBMITTED BY MR. NAVEED UR REHMAN ASSISTANT, MR. NADIR SHAH JUNIOR CLERK AND MR. ARIF JAN JUNIOR CLERK REGARDING RE-INSTATEMENT INTO SERVICE.

I am directed to refer to your department appeal regarding re-instatement into service has been processed but the same has been regretted by the Competent Authority (Chief Secretary Khyber Pakhtunkhwa).


Section Officer (B & A)

Copy to:

1. PSO to Chief Secretary Khyber Pakhtunkhwa.
2. PS to Secretary Establishment Khyber Pakhtunkhwa.
3. PS to Secretary Home & TAs Department Khyber Pakhtunkhwa.
4. PS to Special Secretary-II Home & TAs Department Khyber Pakhtunkhwa.


Section Officer (B & A)

ATTESTED

24

Government of Pakistan
AGPR Sub Office Peshawar
Monthly Salary Statement (February-2019)



Personal Information of Mr NAVEED UR REHMAN d/w/s of

Personnel Number: 00653803 CNIC: 2250152892915 NTN:
Date of Birth: 09.06.1982 Entry into Govt. Service: 15.12.2011 Length of Service: 07 Years 02 Months 015 Days

Employment Category: Regular / Contract

Designation: UNKNOWN 00000016-Min. Of K.A & N.A & S.F.R.
DDO Code: PR1124-REGIONAL DEVELOPMENT-ALL FATA PROJECT (FATA)
Payroll Section: 006 GPF Section: 002 Cash Center: 009
GPF A/C No: Interest Applied: No GPF Balance: 0.00
Vendor Number: 30275909 - NAVEED UR REHMAN 0310 01-200-4830-3 ABL
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 05 Pay Stage: 1-

Wage type	Amount	Wage type	Amount
0033 Fixed Basic Pay	33,000.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3609 Income Tax	-125.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 1,000.00 Recovered till FEB-2019: 501.00 Exempted: 0.16- Recoverable: 499.16

Gross Pay (Rs.): 33,000.00 Deductions: (Rs.): -125.00 Net Pay: (Rs.): 32,875.00

Payee Name: NAVEED UR REHMAN

Account Number: 01-200-4830-3

Bank Details: ALLIED BANK LIMITED, 250310 WARSAK ROAD PESHAWAR WARSAK ROAD PESHAWAR, PESHAWAR

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: PESHAWAR

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: naveedhamaadafridi@gmail.com

ATTESTED

System generated document in accordance with APPM 4.6.12.9 (SAPCCSUPPORT/26.02.2019/17:00:11/v1.1)

* All amounts are in Pak Rupees

* Errors & omissions excepted

Government of Pakistan
AGPR Sub Office Peshawar
Monthly Salary Statement (June-2019)

25



Personal Information of Mr NAVEED UR REHMAN d/w/s of MUHAMMAD I SHAH

Personnel Number: 00653803 CNIC: 2250152892915 NTN:
Date of Birth: 09.06.1982 Entry into Govt. Service: 15.12.2011 Length of Service: 07 Years 06 Months 017 Days

Employment Category: Active Permanent

Designation: ASSISTANT 00000016-Min. Of K.A & N.A & S.F.R
DDO Code: PR0867-FCR TRIBUNAL FATA PERSHAWAR
Payroll Section: 002 GPF Section: 002 Cash Center: 009
GPF A/C No: Interest Applied: No **GPF Balance:** 7,860.00
Vendor Number: 30275909 - NAVEED UR REHMAN 0310 01-200-4830-3 ABL

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 14 Pay Stage: 0

Wage type		Amount	Wage type		Amount
0001	Basic Pay	15,180.00	1000	House Rent Allowance	2,214.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	400.00	2199	Adhoc Relief Allow @10%	254.00
2211	Adhoc Relief All 2016 10%	1,272.00	2224	Adhoc Relief All 2017 10%	1,518.00
2247	Adhoc Relief All 2018 10%	1,518.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription - Rs2620	-2,620.00	3501	Benevolent Fund	-600.00
3604	Group Insurance	-115.00	3609	Income Tax	-124.00
4200	Professional Tax	-200.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 1,000.00 Recovered till JUN-2019: 1,000.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 26,712.00 Deductions: (Rs.): -3,659.00 Net Pay: (Rs.): 23,053.00

Payee Name: NAVEED UR REHMAN

Account Number: 0010022974260010

Bank Details: ALLIED BANK LIMITED, 250310 WARSAK ROAD PESHAWAR WARSAK ROAD PESHAWAR, PESHAWAR

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: PESHAWAR

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: naveedhamaadafridi@gmail.com

ATTESTED

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar
Mareed us Rehman

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK and others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

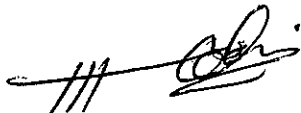
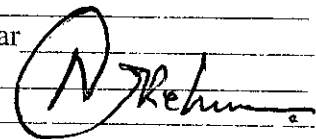
ZARAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-pocna and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

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

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____



IMRAN KHAN
Advocate High Court
Mob: 0345-9090648



ZARAJ ANWAR
Advocate High Courts

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
BC-10-9851
CNIC: 17301-1610454-5

one copies of
Certificate
of Petitioners Received
Naveed ur Rehman Afridi
12/01/2022

BEFORE THE HONOURABLE PESHAWAR HIGH COURT
PESHAWAR

SERVICE APPEAL NO. 2567/2021

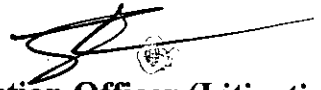
Naveed ur Rehman Afridi and OthersPetitioners.

VERSUS

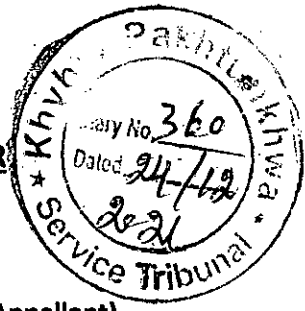
The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa and others.....Respondents.

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Section Officer (Litigation)
Home & TA's Department,

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 2567/2021

Naveed ur Rahman Afridi s/o Muhammad Shah Afridi

..... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar & others

.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2

Respectfully Sheweth,

PRELIMINARY OBJECTION:

1. That the Appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the appeal is barred by law and limitation.
5. That the appellant has suppressed material facts from the Tribunal.
6. That the appellant has not come to the Court with clean hands.
7. That the appellant is estopped to file the instant appeal due to his own conduct.
8. That the appeal is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties.

FACTS:

1. Incorrect, the appellant was appointed as Junior Clerk (BS-11), on contract basis, in the Project title "Levy Training Center at Shahkas Khyber Agency" vide order dated 15.12.2011. However vide PO Box 131 various posts including 04 No Junior Clerks were advertised dated 09.01.20219.
2. Correct to the extent that the appellant applied for the said post but he was not eligible as he himself was a member of the Selection Committee.
3. Incorrect, it is worth to mention here that an inquiry was conducted against Mr. Sajjad-ur-Rahman Ex-Registrar FATA Tribunal under Rule-10 of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2011, wherein the inquiry report held that the said selection committee was constituted without any lawful authority. The said committee comprised of temporary/contract/daily-wage employees of FATA Tribunal who themselves were candidates against these posts. The inquiry proceedings further revealed that there exists no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. The said departmental committee unlawfully increased the number of posts from 23 to 24 and illegally issued 24 appointment orders without any recommendation of legitimate Departmental Selection Committee. That the inquiry committee has termed all the 24 appointments illegal without lawful authority and recommended to be cancelled/withdrawn.

4. Incorrect. The inquiry committee held the selection process of all 24 appointments including the posts of appellant as illegal, without lawful authority and recommended to be cancelled/withdrawn. Furthermore, that there was only 23 advertised posts instead of 24
5. Pertains to record needs no comments.
6. Correct to the extent that appellant was appointed on contract basis in the Project title "Levy Training Center at shahkass" dated 15.12.2011.
7. That after receipt of recommendation of the inquiry report the Competent Authority has issued Show-Cause notice to the appellant dated 02.09.2020 vide which appellant was asked to submit his reply.
8. Correct, pertains to record.
9. Correct to the extent that the appellant was appointed on contract basis on the Project title "Levy Training Center since 15.12.2011. However, the appellant was appointed as Assistant BS-14 in FATA Tribunal without through an illegal process, without approval of Competent Authority including the process/provision of Age relaxation or any NOC granted to him in this regard.
10. As explained above, there is no orders of the Competent Authority regarding age relaxation certificate in respect of appellant.
11. Incorrect. The appellant's reply to the Show Cause provided no proof and evidence in support hence, the Competent Authority has imposed major penalty of "Removal from Service" on the appellant under the rules/law.
12. Correct to the extent that appellant's Departmental Appeal dated 16.11.2020 received which was processed found unsatisfactory and rejected vide order dated 20.01.2020.
13. Incorrect, the appellant has got no cause of action to file appeal against the respondents.

GROUND:

- A. Incorrect. The appellant has been treated in accordance with law & rules hence, no violation to the constitution.
- B. Incorrect. In pursuance of recommendation of inquiry the appellant has properly been served with Show-Cause Notice and opportunity of personal hearing was also granted and all codal formalities fulfilled by the respondent.
- C. Incorrect. The appellant was equally held responsible by the Inquiry Committee in the omission/commission of misconduct as evident that he remained member of the so-called Departmental Selection Committee and also a candidate for the post of Assistant BS-14 in the same appointment process which tantamount to conflict of interest.
- D. Incorrect. Proper procedure has been followed detail has already been given in preceding para.
- E. Incorrect. As per record the appellant was made a member of the Scrutiny Committee as well as candidate for the post of Assistant BS-16.
- F. Incorrect. Opportunity of personal hearing was given to the appellant vide Home Department letter No. HD/L&O/B&A/55/619-23 dated 06.10.2020.
- G. Incorrect. Detail reply given in the preceding paras.
- H. Incorrect. No order regarding relaxation of age limit in respect of appellant issued by Competent Authority.
- I. Incorrect. The penalty has been imposed upon the accused after proving allegations against him.

- J. Incorrect. The appellant has been awarded punishment after fulfilment of all codal formalities in accordance with law/rules.
- K. Incorrect. The appellant has not provided any no evidence in support both in the written statement as well as personal hearing, hence, found guilty of the charge.
- L. No comments.
- M. Incorrect. As explained above.
- N. Incorrect, detail reply as above.
- O. No comments.
- P. No comments.

The respondent requested for permission of the Hon'ble Tribunal for further arguments/points at the time of hearing.

It is therefore, most humbly prayed that on acceptance of the above para-wise comments the instant appeal may graciously be dismissed with cost.

Handwritten signature and date: 21/12/2011

Secretary
Home & Tribal Affairs
Government of Khyber Pakhtunkhwa

Home Secretary,
Khyber Pakhtunkhwa

SERVICE APPEAL NO. 2567/2021

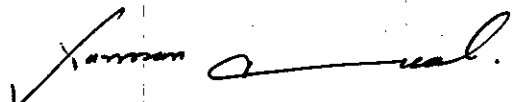
Naveed ur Rehman Afridi and OthersPetitioners.

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa and others.....Respondents.

AUTHORITY

Mr, Shah Wali Khan Section Officer (Litigation)Home & T.As
Department Peshawar do hereby authorized to submit reply in Service appeal No.
2567/2021 titled Naveed ur Rehman Versus Government of Khyber Pakhtunkhwa
through Chief Secretary Khyber Pakhtunkhwa and others on behalf of respondent
No. 2 in ~~the service Tribunal~~ Peshawar.


Deputy Secretary (Litigation)

SERVICE APPEAL NO. 2567/2021

Naveed ur Rehman Afridi and OthersPetitioners.

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa and others.....Respondents.

AFFIDIVATE

Mr, Shah Wali Khan Section Officer (Litigation) Home & T.As
Department Peshawar do hereby solemnly affirm and declares on oath that the
contents of reply in Service Appeal No. 2567/2021 titled. Naveed ur Rehman
Afridi & Others Versus Government of Khyber Pakhtunkhwa and Others on behalf
of (Respondent No. 2 are true and correct as per record provided to me and to the
best of my knowledge and belief and nothing has been concealed from this
Honorable Court.

DEPONENT


Section Officer (Litigation)

CNIC NO 15307-6304697-9

Identified by

Advocate General

Khyber Pakhtunkhwa.



NOTIFICATION

NO.SOE-II(ED)2(9)2010:-

WHEREAS, the appellant Mr. [Name] EAC - Illaqa Qazi (BS-17), Registrar, Ex FATA Tribunal, Per Shawa [Name] under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) P after fulfilment of due process the Competent Authority ordered to impose Penalty of "Removal from Service" notified vide Notification of even No. [Number]

AND WHEREAS, aggrieved with the decision, the appellant filed Appeal and upon regretal, filed Service Appeals No.2770/2021 in Khyber Pakhtunkhwa Tribunal

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal on his appeal, set aside the major penalty and converted it into "Minor Penalty of Increment for one year through judgment dated 01/02/2022.

AND WHEREAS, the department filed CPLA against the judgment of Khyber Pakhtunkhwa Service Tribunal dated 01/02/2022 which is pending before the august Supreme Court of Pakistan.

AND WHEREAS, the appellant filed Execution Petition No. [Number] Appeal No.2770/2021 which came for hearing today on 31/08/2022, the Tribunal on the Reply to execution petition submitted by the Department on [Date] to produce implementation report as ordained in the Tribunal judgement dated [Date]

AND NOW THEREFORE, Chief Minister Khyber Pakhtunkhwa being Competent Authority in terms of Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment Promotion & Transfer) Rules, 1989 has been pleased to order conditional re-instatement of the appellant into service by converting his major penalty of "Removal from Service" into "Minor Penalty of Stoppage of Increment for one year in compliance to the Khyber Pakhtunkhwa Service Tribunal judgement dated 10/09/2020, subject to the final outcome of the CPLA which is pending adjudication before the Supreme Court of Pakistan

[Handwritten Signature]
Chief Minister
(Khyber Pakhtunkhwa)

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to the:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
2. Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department.
3. Accountant General, Khyber Pakhtunkhwa.
4. Secretary Finance Department, Khyber Pakhtunkhwa.
5. Secretary Law Department, Khyber Pakhtunkhwa.
6. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. SO(Secret)/SO(Admn)/EO/SO(Lit-III), Establishment & Administration Department
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
10. PS to Special Secretary (Estt), Establishment Department.
11. PS to Additional Secretary (Estt:), Establishment Department
12. PS to Additional Secretary (Judicial), Establishment Department
13. PA to Deputy Secretary (Estt), Establishment Department.
14. Officer concerned.
15. Personal file.

27/10/22
SECTION OFFICER
(ESTABLISHMENT-II)

1. Chief Officer (E-III)
Establishment &
Administration Dept

(TERMS AND CONDITIONS OF SERVICE)

3. The terms and conditions of service of an employee of the Tribunal shall be as provided under these Rules or any such orders or instructions to be issued by the Governor, Khyber Pakhtunkhwa or the Chairman of the Tribunal from time to time.

4. **METHOD OF APPOINTMENT:-** (1) Appointment to a post shall be made:-

- (a) By promotion or transfer in accordance with the provisions contained in the relevant recruitment rules;
- (b) By initial recruitment in accordance with the provisions contained in the said rules.

Provided that all persons serving in connection with the affairs of Tribunal to whom these Rules apply shall continue to hold their respective posts and serve the Tribunal till they are absorbed in the service of Tribunal or attain the age of superannuation.

Provided further that as and when a vacancy occurs in the Tribunal as a result of retirement, death or otherwise, the competent authority may, in the prescribed manner, fill such vacancy.

5. **APPOINTING AUTHORITY.**

The following shall be the authorities competent to make appointment by initial recruitment, promotion or appointment by transfer to the posts specified against each on the recommendations of appropriate Selection Committees or Management Council as the case may be:-

S.No	Post/Pay Scale	Competent Authority
1.	For post 1 to 14	Registrar
2.	For post in B-15 to 17	Chairman
3.	For posts in B-18 and above.	Governor

6. **MANAGEMENT COUNCIL/SELECTION COMMITTEE:-**

There shall be a Management Council for initial recruitment, promotion and appointment by transfer to posts in B-17 and above and a Selection Committee for initial recruitment, promotion and appointment by transfer to posts in B-16 and below. The composition of the Management Council and Selection Committees shall be as under:-

7. **Management Council:-**

- i. Chairman:- Convener.
- ii. Secretary Admin. & Coordination,
FATA Secretariat or his rep; Member.
- iii. Secretary Finance of FATA Secretariat or his rep; Member

- iv. A member of the Tribunal to be nominated by the Chairman;
- v. Registrar of the Tribunal;

Member
Member/Secretary

8. Selection Committee;

- i. Chairman of the Tribunal;
- ii. A member of the Tribunal to be nominated by the Chairman;
- iii. Secretary Admin & Co-ordination FATA Secretariat or his rep;
- iv. Registrar of the Tribunal;

Incharge
Member
Member
Member/Secretary

9. Selection Committee;

- i. Registrar
- ii. Deputy Secretary Law & Order
- iii. Deputy Secretary Admin
- iv. Section Officer Finance

10. APPOINTMENT TO POSTS;

(a) BY Initial recruitment

- (1) On the vacation, creation or re-designation of a post in the Tribunal, the office of Registrar with the approval of the chairman shall advertise it for information of all concerned if the same falls within the quota of initial recruitment;
- (2) The advertisement shall be made in at least two leading news papers (one Urdu and one English) as well as hoisting on the web-site of the Tribunal.
- (3) At least two weeks time shall be given to the candidates to apply for the Posts on the prescribed form (if applicable).
- (4) The applications submitted by the candidates should be supported with Bio-Data/C.V of the applicants and all relevant testimonials relating to the qualifications and experience of the applicants duly certified by a gazetted officer.
- (5) The office of the Registrar shall prepare a list of the short listed candidates in order of merit and place it before the Management Council or the Selection Committees as the case

may be, for scrutiny and recommendations of the suitable candidate(s) for selection;

- (6) The Management Council/Selection Committee will interview, scrutinize and assess the suitability of the candidates on the basis of merit by evaluating their comparative eligibility, efficiency, their capabilities and the relevancy of their qualifications and experience to the post(s) in question and length of service/experience required for the post under these Rules.
- (7) The method of appointment, qualification and other conditions applicable to a post shall be such as laid down in the recruitment Rules (**Appendix-A**). selection for direct recruitment shall be made on merit in accordance with the criteria evolved by the Govt. from time to time for recruitment of civil servants in B-17 and above (**Appendix-B**) and for posts in B-16 and below (**Appendix-C**).
- (8) Recommendations of the Management Council/Selection Committee to this effect shall be placed before the Governor or Chairman of the Tribunal, as the case may be, for approval;

Provided that the posts fall within the purview of the Public Service Commission shall be made on contract basis for a period of one year or availability of regular selectee of the commission whichever is earlier. In case of non availability of selectee of the commission in one year the tenure of such contract appointment can be extended for a further period of one year or availability of the selectee of the commission whichever is earlier.

Provided further that the before making contractual appointment against the post, a requisition is required to be placed on the commission. If no such requisition has already been placed, the same may be placed within two months after making contractual appointment on those posts.

Provided further that the appointment by initial recruitment against the post not fall within the purview of the commission shall be made on regular basis.

b. **By Promotion or by transfer:**

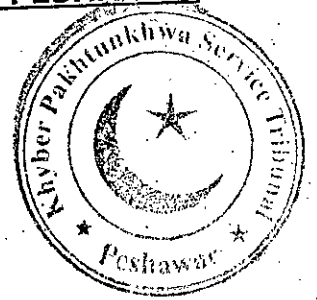
For the purpose of recommendations regarding promotion, the secretary of the Management Council or the Selection committee, as the case may be, shall prepare a working paper according to the prescribed rules which will be duly authenticated by the Registrar of the Tribunal. The Management Council or

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2770/2021

Date of Institution ... 22.11.2021

Date of Decision ... 01.02.2022



Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No. 973, Street No. 28, Sector E-5, Phase 7 Hayatabad Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others.

... (Respondents)

Zartaj Anwar,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

... **CHAIRMAN**
... **MEMBER (EXECUTIVE)**

JUDGMENT


ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant, while serving as Registrar in Ex-FATA Tribunal, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 10-09-2020. Feeling aggrieved, the appellant filed departmental appeal dated 25-09-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 10-09-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Constitution has badly been violated; that no proper procedure has been followed before awarding the major penalty of dismissal from service, the whole proceedings are thus nullity in the eye of law; that the appellant has not done any act or omission which can be termed as misconduct, thus the appellant cannot be punished for the irregularities, if so occurred in the recruitment process; that the allegation so leveled against the appellant regarding the non-production of recruitment record is baseless; that no proper inquiry has been conducted against the appellant, hence the appellant was deprived of the opportunity to defend his cause; that neither statement of any witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the appellant has not been served with any showcause notice, thus the whole proceedings are defective in the eye of law; that the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which the appellant was found guilty of allegations, moreover, there was not a single evidence to connect the appellant with the commission of allegation of misconduct; that mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so called allegations leveled against the appellant in the charge sheet/statement of allegation, hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law; that the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case, but he failed to do so and awarded major punishment of dismissal from service upon the appellant despite the fact that the allegations as contained in the charge sheet/statement of allegation has not been proved in the so called inquiry; that the appellant is neither involved in corruption nor embezzlement nor moral turpitude, therefore such harsh and extreme penalty of dismissal from service of the appellant does not commensurate with the nature of the guilt to deprive his family from livelihood;

ATTESTED

EXAMINER
 Khuzdar Pakhtunkhwa
 Service Tribunal

that the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore the impugned order is not tenable under the law; that the appellant has not been afforded proper opportunity of personal hearing and was condemned unheard.

03. Learned District Attorney for the respondents has contended that the appellant while serving as registrar in Ex-FATA Tribunal, has been proceeded against on account of advertizing 23 posts without approval of the competent authority and appointed 24 candidates against these posts without recommendation of the departmental selection committee; that a proper inquiry was conducted and during the course of inquiry, all the allegations leveled against the appellant stood proved, consequently, after fulfillment of all the codal formalities and affording chance of personal hearing to the appellant, the penalty of removal from service was imposed upon the appellant vide order dated 10-09-2020; that proper charge sheet/statement of allegation was served upon the appellant as well as proper showcause notice was also served upon the appellant, but inspite of availing all such chances, the appellant failed to prove his innocence.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUTS AND AUDIT RULES, 2015, where appointing authority for making appointments in Ex-FATA

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal:

06. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointing authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval of the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal. We have repeatedly asked the respondents to produce any such order/notification, which could show that appointing authority in respect of filling in post in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointing authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegations does not hold ground.

07. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed

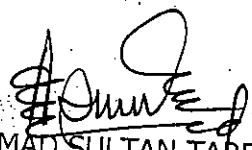
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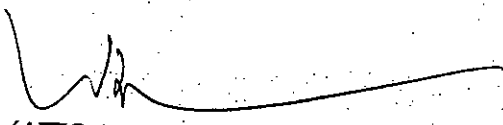
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

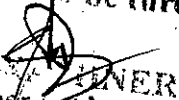
08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. As a sequel to the above, the instant appeal is partially accepted. The appellant is re-instated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22-3-22
Number of Words 2000
Copying Fee 20/-
Urgent 51/-
Total 261/-
Name of Copyee _____
Date of Completion of Copy 22-3-22
Date of Delivery of Copy 22-3-22

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**



**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (Judicial)**

Service Appeal No.774/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Reedad Khan, Ex-Chowkidar (BPS-03), Ex-FATA Tribunal,
Home & Tribal Affairs Department, Peshawar.**

.....*Appellant*

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....*(Respondents)*

Service Appeal No.775/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Samiullah, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home &
Tribal Affairs Department, Peshawar.**

.....*Appellant*

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....*(Respondents)*

ATTESTED

**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

Service Appeal No.776/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Kafil Ahmad, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
 2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
 3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**
-**(Respondents)**

Service Appeal No.777/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
 2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
 3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**
-**(Respondents)**

Service Appeal No.778/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Mr. Sadiq Shah, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

Service Appeal No.779/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Adnan, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

Service Appeal No.780/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Asad Iqbal, Ex-Junior Clerk (BPS-11), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
 3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

Service Appeal No.781/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Shoaib, Ex-KPO(BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
 3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

Service Appeal No.782/2022

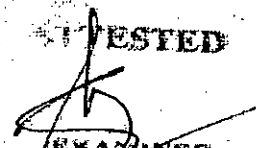
Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Adnan Khan, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
 3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)



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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No.783/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Awais, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....**(Respondents)**

Service Appeal No.784/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Nasir Gul, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

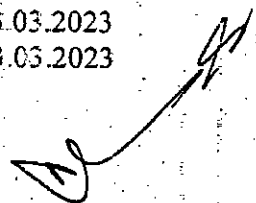
Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....**(Respondents)**

Service Appeal No.802/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023



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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Mr. Mohsin Nawaz, Ex-Stenographer (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....**(Respondents)**

Service Appeal No.811/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Tahir Khan, S/O Arsala Khan R/o Guldara Chowk, PO Namak Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Assisnat/Moharir, Ex-FATA Tribunal Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

.....**(Respondents)**

Service Appeal No.812/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ziafat Ullah Khan S/O Naimat Ullah Khan R/o presently Masjid Ibrahim Bara Gate, PO GPO, Nodhiya Payan Peshawar, Driver, Ex-FATA Tribunal, Peshawar.

.....**Appellant**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

.....(Respondents)

Service Appeal No.813/2022

Date of presentation of appeal.....20.05.2022
Dates of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Faheem Shahzad S/O Hidayat Ullah R/O Kotla Mohsin Khan
Landi Arbab Mohallah Kasaban Peshawar.

.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.814/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Shoaib S/O Arsala Khan, R/o Kakshal Pul P.O
Kakshal, Mohallah Tariq Abac No.1, Peshawar, Naib Qasid, Ex-FATA
Tribunal, Peshawar.

.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.

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Khyber Pakhtunkhwa
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Peshawar

3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.815/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah S/O Rehmat Ali, Junior Clerk, Ex-FATA Tribunal Peshawar.

.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.816/2022

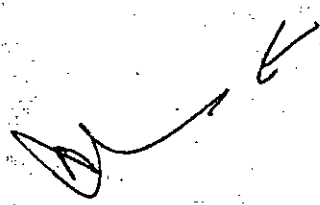
Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Khair Ul Bashar S/O Sahib Din R/O PO Shah Qabool Awliya House No. 2938, Mohallah Dabgari Bazar Sakawat Hussain Peshawar, Junior Clerk, Ex-FATA Tribunal Peshawar.

.....Appellant

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.



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Service Tribunal
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Service Appeal No.817/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Naveed Ahmad S/O Sami Ul Haq R/O Khat Gate, House No. 131, Mohallah Muhammad Khan Sadozai, Peshawar, Naib Qasid, Ex-FATA, Tribunal Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

Service Appeal No.818/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Bahar Ali S/O Mahmood Khan R/O Guldara Chowk, PO Namak Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Chowkidar, Ex-FATA Tribunal Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**



ATTENDED

**Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

Present:

Noor Muhammad Khattak,
Advocate.....

For the appellants
in Service Appeal
No.774/2022,
775/2022, 776/2022,
777/2022, 778/2022,
779/2022, 780/2022,
781/2022, 782/2022,
783/2022, 784/2022,
802/2022,

Imran Khan,
Advocate.....

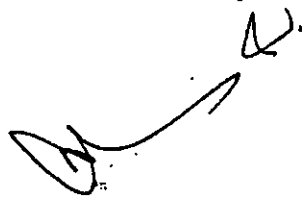
For the appellants
in Service appeal
No.811/2022,
812/2022, 813/2022,
814/2022, 815/2022,
816/2022, 817/2022,
818/2022

Muhammad Riaz Khar, Paindakhel,
Assistant Advocate General.....For respondents.

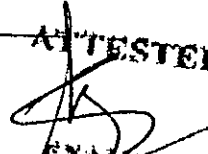
APPEALS UNDER SECTION 4, OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDERS DATED
17.01.2022, WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE HAS BEEN IMPOSED ON
THE APPELLANT AND AGAINST THE IMPUGNED
INACTION OF THE RESPONDENTS BY NOT
DECIDING THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUARY PERIOD OF
NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single
judgment all the above appeals are going to be decided as all are similar,
in nature and almost with the same contentions.



ATTESTED


KALIM ARSHAD KHAN
Chairman
Khyber Pakhtunkhwa
Service Tribunal



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

☎ 091-4214104

☎ 091-4210081

Dated Peshawar the May 15, 2023

ORDER

NO.E&A (HD)2-5/2023. WHEREAS, the appellants/petitioners of Ex-FATA Tribunal, Peshawar were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and after fulfillment of legal and codal formalities the Competent Authority imposed Major Penalty of "REMOVAL FROM SERVICE" upon them vide Order No.HD/FATA Tribunal/B&A/55/2022/184-93 dated 17/1/2022.

AND WHEREAS, feeling aggrieved with the said order, the appellants/petitioners filed Service Appeal No.774 to 784 of 2022 in Khyber Pakhtunkhwa Service Tribunal.

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal after adjudication accepted their appeals, set aside the impugned orders and direct reinstatement of all the appellants/petitioners with back benefits vide judgment dated 3rd March 2023.

AND WHEREAS, the Department filed CPLA against the said judgment of Khyber Pakhtunkhwa Service Tribunal, which is pending adjudication before the august Supreme Court of Pakistan.

AND NOW THEREFORE, the Competent Authority, in terms of Rule-4(2)(c) (ii) of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989, has been pleased to order re-instatement of the following appellants/petitioners into Service in compliance to the Khyber Pakhtunkhwa Service Tribunal judgment dated 3rd March 2023 subject to the final decision of the CPLA which is pending adjudication before the Supreme Court of Pakistan:-

- 1- Mr. Reedad Khan Ex-Chowkidar (BPS-03)
- 2- Mr. Samiullah Ex-KPO (BPS-16)
- 3- Mr. Kafil Ahmad Ex-Assistant (BPS-18)
- 4- Mr. Ikram Ullah Ex-Naib Qasid (BPS-03)
- 5- Mr. Sadiq Shah Ex-Driver (BPS-06)
- 6- Mr. Muhammad Adnan Ex-Assistant (BPS-16)
- 7- Mr. Asad Iqbal Ex-Junior Clerk (BPS-11)
- 8- Mr. Muhammad Shoalb Ex-KPO (BPS-18)
- 9- Mr. Adnan Khan Ex-KPO (BPS-16)
- 10- Mr. Muhammad Awais Ex-Driver (BPS-08)
- 11- Mr. Nasir Gul Ex-Naib Qasid (BPS-03)
- 12- Mr. Mohsin Nawaz Ex-Stenographer (BPS-16)

Home Secretary

Encl: No. & Date even

Copy to:-

- 1- Accountant General, Khyber Pakhtunkhwa
- 2- Secretary Finance Department, Khyber Pakhtunkhwa
- 3- Secretary Law Department, Khyber Pakhtunkhwa
- 4- Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 5- PS to Home Secretary, Home Department
- 6- Officials concerned
- 7- Personal files


Section Officer (General)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

091-9214104

091-9210201

Dated Peshawar the June 12, 2023

ORDER

NO.E&A (HD)2-5/2023. WHEREAS, the appellants/petitioners of Ex-FATA Tribunal, Peshawar were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and after fulfillment of legal and codal formalities the Competent Authority imposed Major Penalty of "REMOVAL FROM SERVICE" upon them vide Order No.HD/FATA Tribunal/B&A/55/2022/194-204, 248-57, 278-87, 238,47,227-37,308-17 and 328-37 dated 17/1/2022.

AND WHEREAS, feeling aggrieved with the said order, the appellants/petitioners filed Service Appeal No.811, 812,813,815,816,817 & 818 of 2022 in Khyber Pakhtunkhwa Service Tribunal.

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal after adjudication accepted their appeals, set aside the impugned orders and directed reinstatement of all the appellants/petitioners with back benefits vide judgment dated 3rd March 2023.

AND WHEREAS, the Department filed CPLA against the said judgment of Khyber Pakhtunkhwa Service Tribunal, which is pending adjudication before the august Supreme Court of Pakistan.

AND NOW THEREFORE, the Competent Authority, in terms of Rule-4(2)(c) (ii) of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989, has been pleased to order re-instatement of the following appellants/petitioners into Service in compliance to the Khyber Pakhtunkhwa Service Tribunal judgment dated 3rd March 2023 subject to the final decision of the CPLA which is pending adjudication before the Supreme Court of Pakistan:-

i-	Mr. Tahir Khan	Assistant
ii-	Mr. Ikram Ullah	J/Clerk
iii-	Mr. Khair ul Bashar	J/Clerk
iv-	Mr. Ziafat Ullah Khan	Driver
v-	Mr. Naveed Ahmad	N/Qasid
vi-	Mr. Bahar Ali	Chowkidar
vii-	Mr. Faheem Shehzad	Naib Qasid

Home Secretary

Endst: No. & Date even

Copy to:-

- 1- Accountant General, Khyber Pakhtunkhwa
- 2- Secretary Finance Department, Khyber Pakhtunkhwa
- 3- Secretary Law Department, Khyber Pakhtunkhwa
- 4- Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 5- PS to Home Secretary, Home Department
- 6- Officials concerned
- 7- Personal files


Section Officer (General)

2. The appellants were appointed against different posts in the erstwhile FATA Tribunal and after merger of the Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa, the employees of the FATA Tribunal including the appellants were transferred to the Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department and they were posted against different posts vide Notification No. E&A (HD)2-5/2021 dated 17.06.2021. Vide different covering letters all issued on 25.10.2021, the appellants were served with show cause notices by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, containing the following stereotyped allegations:

"That consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in EX-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled"

It was thus found by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, that the appellants had been guilty of "Misconduct" as specified in rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule(I)(vi) "appointed in violation of law and rules".

It is pertinent to mention here that the Inquiry was dispensed with by the Secretary.

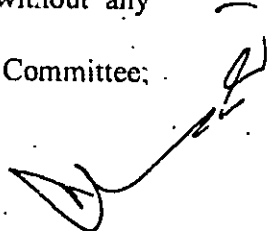
The appellants filed their respective replies and vide impugned orders, the Secretary to the Government of Khyber Pakhtunkhwa, Home

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Khyber Pakhtunkhwa
Service Tribunal

Department, Peshawar, removed all the appellants from service. The appellants filed departmental appeals, which were not responded within 90 days compelling the appellants to file these appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants. It was mainly contended in the replies that the appellants were not aggrieved persons; that a full-fledged enquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was "*coram non judice*"; that enquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 wherein the enquiry report held that the same selection committee was constituted without lawful authority; that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates were/existed no attendance sheet, minutes of the meeting and even the appointment order were found ambiguous; that the said departmental committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of the legitimate Departmental Selection Committee.



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Service Tribunal
Peshawar

that the enquiry committee termed all the said appointments illegal and without lawful authority and recommended to cancel/withdraw.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned orders.

6. It is undisputed that the appellants were appointed by the Ex-FATA Tribunal and they had been performing duties until their removal from service. The allegations against them are that the recruitment process was unlawful and the appointment orders were issued without lawful authority. Not a single document was produced by the respondents in support of these allegations before the Tribunal. All the appellants were the candidates in the process of selection initiated in response to the advertisement in two Urdu dailies "AAJ Peshawar" and "AAYEEN Peshawar". It is worth mentioning that all the appellants had duly applied for the posts. The appointment orders show that each appointment had been made on the recommendation of the Departmental Selection Committee (DSC). The respondents though alleged that the DSC was unlawful but have not explained as to how that was so? The posts advertised were within the competence of the Registrar under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules,

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2015. Therefore, the allegation that the appointment orders were issued by unlawful authority is also not finding favour with us. Regarding the bald allegation that the selection process was also unlawful, there is nothing more said as to how the process was unlawful except that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates, there were/existed no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. We find that there are no details of any such employees had been produced before us, nor any order of constitution of the selection committee alleged to be against the law was produced, similarly no details regarding number of posts so much so who was appointed against the 24th post alleged to be in excess of the sanctioned posts, nothing is known nor anything in support of the above was placed on the record despite sufficient time given on the request of the Assistant Advocate General. Even today we waited for four long hours but nobody from respondent/department bothered to appear before the Tribunal. It is also undisputed that the appellants were not associated with the enquiry proceedings on the basis of which they were penalized. In the show cause notices, the appellants were also said to be guilty under rule 2, Sub-Rule(I)(vi) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the said provision is reproduced as under:

"Rule 2 sub-rule (I) clause (vi) "making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules".

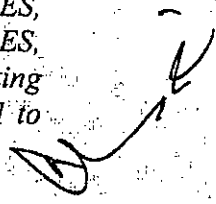
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Peshawar

7. Nothing has been said or explained in the replies of the respondents or during the arguments regarding the alleged violation of law and rules in the appointments of the appellants. It is also to be observed that if at all there was any illegality, irregularity or wrongdoing found in the appointments of the appellants, which have nowhere been explained nor, as aforesaid, any document produced in that regard, the appointment orders of the appellants have not been cancelled rather the appellants were removed from service.

8. The Registrar (Sajjad-ur-Rehman), of the EX-FATA Tribunal, who had made the appointments of the appellants as competent authority under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules, 2015, was removed from service on the basis of the said enquiry. He filed Service Appeal No.2770/2021 before this Tribunal, which was partially accepted on 01.02.2022 and the major penalty of removal from service awarded to him was converted into minor penalty of stoppage of increment for one year. We deem appropriate to reproduce paragraphs 5, 6 & 7 of the said judgment.

"5. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUNTS AND AUDIT RULES, 2015, where appointment authority for making appointments in Ex-FATA Tribunal from BPS-I to



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14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

"6. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointment authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval for the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointment authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegation does not hold ground.

"7. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct out lack of proper care and

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Khyber Pakhtunkhwa
Service Tribunal
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vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60."

In the judgment it was found that there were some irregularities in the appointments made by the Registrar, that were not so grave rather lack of proper care and vigilance was there which might not be willful to make the same as a case of grave negligence inviting severe punishment. It is nowhere alleged by the respondents in the show cause notices, impugned orders or even in the replies that the appellants were either not qualified or were ineligible for the post against which they had been appointed. There might be irregularities in the process, though not brought on surface by the respondents in any shape, yet for the said alleged irregularities, the appellants could not be made to suffer. Reliance is placed on 1996 SCMR 413 titled "Secretary to Government of NWFP Zakat/Social Welfare Department Peshawar and another versus Sadullah Khan", wherein the august Supreme Court of Pakistan held as under:

"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described "purely temporary basis". The petitioners have now turned around and terminated his services due to irregularity and violation of rule 10(2) *ibid*. The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate

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the services of the respondent merely, because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re-instating the respondent."

9. Wisdom is also derived from 2009 SCMR 412 titled "Fauz Asadullah Khan versus Federation of Pakistan through Secretary Establishment and others", wherein the august Court found that:

"8. In the present case, petitioner was never promoted but was directly appointed as Director (B-19) after fulfilling the prescribed procedure, therefore, petitioner's reversion to the post of Deputy Director (B-18) is not sustainable. Learned Tribunal dismissed the appeal of petitioner on the ground that his appointment/selection as Director (B-19) was made with legal/procedural infirmities of substantial nature. While mentioning procedural infirmities in petitioner's appointment, learned Tribunal has nowhere pointed out that petitioner was, in any way, at fault, or involved in getting the said appointment or was promoted as Director (B-19). The reversion has been made only after the change in the Government and the departmental head. Prior to it, there is no material on record to substantiate that petitioner was lacking any qualification, experience or was found inefficient or unsuitable. Even in the summary moved by the incumbent Director-General of respondent Bureau he had nowhere mentioned that petitioner was inefficient or unsuitable to the post of Director (B-19) or lacked in qualification, and experience, except pointing out the departmental lapses in said appointment.

9. Admittedly, rules for appointment to the post of Director (B-19) in the respondent Bureau were duly approved by the competent authority; petitioner was called for interview and was selected on the recommendation of Selection Board, which recommendation was approved by the competent authority.

10. In such-like a situation this Court in the case of

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Federation of Pakistan through Secretary, Establishment Division Islamabad and another v. Gohar Riaz 2004 SCMR 1662 with specific reference of Secretary to the Government of N.-W.F. Zakat/Social Welfare Department Peshawar and another v. Saadulalh Khan 1996 SCMR 413 and Water and Power Development Authority through Chairman WAPDA House, Lahore v. Abbas Ali Malano and another 2004 SCMR 630 held:--

"Even otherwise respondent (employee) could not be punished for any action or omission of petitioners (department). They cannot be allowed to take benefits of their lapses in order to terminate the service of respondent merely because they had themselves committed irregularity by violating the procedure governing the appointment. On this aspect, it would be relevant to refer the case of Secretary to Government of N.-W.F.P. Zakat/Ushr, Social Welfare Department 1996 SCMR 413 wherein this Court has candidly held that department having itself appointed civil servant on temporary basis in violation of rules could not be allowed to take benefit of its lapses in order to terminate services of civil servants merely because it had itself committed irregularity in violating procedure governing such appointment. Similarly in the case of Water Development Authority referred (supra), it has been held by this Court that where authority itself was responsible for making, such appointment, but subsequently took a turn and terminated their services on ground of same having been made in violation of the rules, this Court did not appreciate such conduct, particularly when the appointees fulfilled requisite qualifications."

11. In Muhammad Zahid Iqbal and others v. D.E.O. Mardan and others 2006 SCMR 285 this Court observed that "principle in nutshell and consistently declared by this Court is that once the appointees are qualified to be appointed their services cannot subsequently be terminated on the basis of lapses and irregularities committed by the department itself. Such laxities and irregularities committed by the Government can be ignored by the Courts only, when the appointees lacked the basic eligibilities otherwise not".

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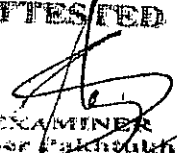
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12. On numerous occasions this Court has held that for the irregularities committed by the department itself qua the appointments of the candidate, the appointees cannot be condemned subsequently with the change of Heads of the Department or at other level. Government is an institution in perpetuity and its orders cannot be reversed simply because the Heads have changed. Such act of the departmental authority is all the more unjustified when the candidate is otherwise fully eligible and qualified to hold the job. *Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education, Secondary, N.-W.F.P. Peshawar and others 2007 PLC (C.S.) 179.*

13. It is well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where a full opportunity of defence is to be provided to the delinquent officer. Efficiency and Discipline Rules, 1973 clearly stipulate that in case of charge of misconduct, a full-fledged inquiry is to be conducted. This Court in the case of *Pakistan International Airlines Corporation through Managing Director, PIAC Head Office, Karachi Airport, Karachi v. Ms. Shaista Naheed 2004 SCMR 316* has held that "in case of award of major penalty, a full-fledged inquiry is to be conducted in terms of Rule 5 of E&D Rules, 1973 and an opportunity of defence and personal hearing is to be provided". Specific reference is made to latest decisions of this Court in cases of *Secretary, Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar and another PLD 2008 SC 392* and *Fazal Ahmad Naseem Gondal v. Registrar, Lahore High Court 2008 SCMR 114.*

14. In the facts and circumstances, we find that in this case, neither petitioner was found to be lacking in qualification, experience or in any ineligibility in any manner, nor any fault has been attributed to petitioner, therefore, he cannot be reverted from the post of Director (B-19). Act of sending summary by the Establishment Secretary to the Prime Minister was not in accordance with Rule 6(2) of the Civil Servants (Appointment,

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Promotion and Transfer) Rules, 1973 as the Establishment Secretary was himself the appointing authority. The departmental authorities at the time of appointment of the petitioner as Director (B-19) did not commit any irregularity or illegality as has been affirmed by the Establishment Secretary in the summary to the Prime Minister. The power vested in the competent authority should have been exercised by the competent authority itself, fairly and justly. Decision has to be made in the public interest based on policy. It must be exercised by the proper authority and not by some agent or delegatee. It must be exercised without restraint as the public interest may, from time to time require. It must not be fettered or hampered by contracts or other bargains or by self-imposed rules of thumb. So a distinction must be made between following a consistent policy and blindly applying some rigid rule. Secondly discretion must not be abused. In the case of Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 this Court observed that "we need not stress here that a tamed and subservient bureaucracy can neither be helpful to government nor it is expected to inspire public confidence in administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait of a bureaucrat. It hardly need to be mention that a Government servant is expected to comply only those orders/directions of superior which are legal and within his competence".

10. In a recent judgment in the case titled "Inspector General of Police, Quetta and another versus Fida Muhammad and others" reported as 2022 SCMR, the honourable Court observed that:

"11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or

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eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12: The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have

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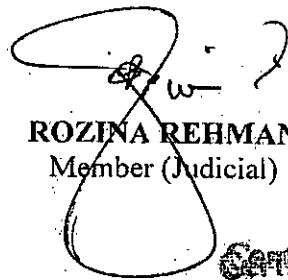
been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system."

11. For what has been discussed above, we hold that the appellants have not been treated in accordance with law and thus the impugned orders are not sustainable. On acceptance of all these appeals we set aside the impugned orders and direct reinstatement of all the appellants with back benefits. Costs shall follow the event. Consign.

12. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of March, 2023.



KALIM ARSHAD KHAN
Chairman



ROZINA REHMAN
Member (Judicial)

Certified to be true copy

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Date of Presentation of Application 13/3/23
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BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA, PESHAWAR



Put up to the Hon'ble chair-man along with relevant file.

2/6/2021

Reader Naveed ur RehmanAppellant

VERSUS

Govt of KPK & others.....Respondents

APPLICATION FOR EARLY HEARING OF THE CAPTIONED APPEAL

*Regretted.
8/10/2021*

Respectfully Sheweth:

1. That the above titled Appeal is pending adjudication before this Honourable Court which is fixed for 05.08.2021.
2. That the Appellant was illegally terminated from Service which is subjudice before this Hon'ble Tribunal, Furthermore the appellant are jobless since long and are the only earning hand, being issue pertain to termination and reinstatement, hence the case is of urgent nature and if the above titled Writ Petition is not fixed for an early date the petitioners would suffer extreme irreparable loss, hence the case may kindly be fixed for an early date.
3. That being sanguine about the success of Appeal it is requested the case may be posted for early date.


4. That there is no legal bar on acceptance of this application.

It is, therefore, most humbly prayed that on acceptance of this application, the above titled Service Appeal may kindly be fixed an early date of hearing within Week with the larger interest of Justice.


Appellant

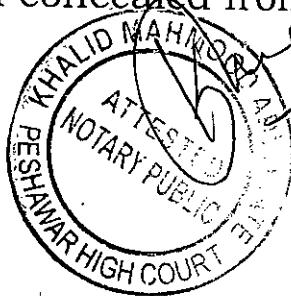
Through

Dated: 02.06.2021


ZARTAJ AWNAR
Advocate, High Court
Peshawar

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the Instant **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




DEPONENT