

06.10.2017

Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney on behalf of the official respondents present. Vide separate/common judgment of today of this Tribunal placed on file appeal bearing No. 333/2016 titled Tariq Nawaz Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, the present appeal and the connected appeals are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

06.10.2017

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

1-

[REDACTED]

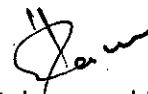
Service Appeal No. 379/2016

09.08.2017

Counsel for the appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant stated that similar nature appeals are already fixed on 18.08.2017 therefore, the instant appeal may also be fixed on same date. Adjourned. To come up for arguments alongwith similar nature appeals on 18.08.2017 before D.B



(Muhammad Amin Khan Kundi)
Member (J)



(Muhammad Hamid Mughal)
Member (J)

18.08.2017

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Muhammad Siddique, Admn. Officer for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.09.2017 before the D.B.



Member



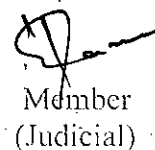
Charman

19.09.2017

Learned counsel for the appellant present. Learned Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.10.2017 before D.B.



Member
(Executive)



Member
(Judicial)

11.04.2017

Counsel for the appellant present. Mr. Muhammad Yasin, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents also present. The present appeal was partially heard by D.B comprising of Chairman and Mr. Muhammad Amin Khan Kundi Learned Member (Judicial) but today the said D.B is not available. The office is directed to put up the instant appeal before a D.B in which both the above mentioned officers are sitting. To come up for arguments on 08.05.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

8.05.2017

Clerk of counsel for the appellant and Addl. AG for the respondents present. Due to strike of the bar counsel for the appellant is not available. To come up for final hearing for 24.05.2017 before D.B.


Member


Chairman

24.05.2017

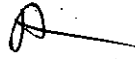
Appellant in person present. Mr. Muhammad Jan Deputy District Attorney for the respondent present. Appellant requested for adjournment. Adjourned. To come up for arguments on 09.08.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

14.11.2016

Counsel for the appellant and Addl: AG alongwith
Mr. M. Yaseen, Supdt for respondents present. Rejoinder
submitted. To come up for arguments on 28.03.2017.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

28.03.2017

Counsel for the appellant, Additional AG and Senior Government
Pleader alongwith M/S Aftab Ahmed, A.O & Muhammad Yasin,
Superintendent for the respondents present. Arguments partially heard. To
come up for remaining arguments on 29.03.2017 before this D.B.



Member



Chairman

29.03.2017

Counsel for appellant, Additional AG & Senior Government
Pleader alongwith Mr. Aftab Ahmed, A.O & Mr. Muhammad Yasin,
Superintendent for respondents present. Learned Additional AG requested
for adjournment. Adjourned for remaining arguments to 11.04.2017 before
D.B.



Member



Chairman



26.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that identical appeal No. 333/2016 has already been admitted for regular hearing.

In view of the above, this appeal is also admitted to regular hearing subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 01.06.2016 before S.B.

Security & Process Fee

Chairman

01.06.2016

Counsel for the appellant; M/S Muhammad Yaseen, Supdt. Muhammad Ali Supdt and Kamran Shahid, Asstt. alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 10.08.2016 before S.B.

Chairman

10.08.2016

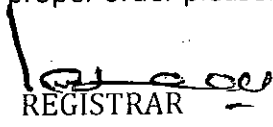

Clerk to counsel for the appellant and Mr. Muhammad Yaseen, Supdt alongwith Addl: AG for respondents present. Written reply submitted on behalf of respondents No.2 and 3. The learned Addl: AG relied on the same on behalf of respondent No.1. The appeal is assigned to D.B for rejoinder and final hearing on 14.11.2016.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 379/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08.04.2016	<p>The appeal of Mr. Shah Khalid presented today by Mr. Shahid Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	11.4.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28.4.16</u>.</p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. 379 /2016

Shah Khalid

..... **Appellant**

Versus

Government of Khyber Pakhtunkhwa etc

..... **Respondents**

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11	Wakalat Nama		


Appellant

Through

PK

Shahid Khan
0300-9393112

&


Yousaf Khan

Advocate High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. 379 /2016

Shah Khalid S/O Wafadar Khan,

(Stenotypist, Public Health Engineering Department, Mardan)

R/O Mohallah Aladad Khel, Village Dagai, Tehsil Rajar District Swabi

..... **Appellant**

VERSUS

**K.W.F. Province
Service Tribunal
Diary No. 357
Dated 08-4-2016**

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

..... **Respondents**

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 14-02-2014 AND 03.03.2016 VIDE WHICH THE
SERVICES OF THE APPELLANT HAVE BEEN TERMINATED.**

PRAYER IN APPEAL

**ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 14-02-2014 OF
THE RESPONDENTS MAY KINDLY BE DECLARED AS ILLEGAL, UNLAWFUL,
ARBITRARY AND VOID AB INITIO AND THE APPELLANT MAY KINDLY BE
REINSTATED INTO HIS SERVICE WITH ALL BACK BENEFITS.**

Handwritten signature and date
8/4/16

Respectfully Sheweth,

The Appellant humbly submits as under:-

1. That the appellant, being duly qualified, after going through the required procedure, was appointed as Stenotypist (B-14) vide appointment order dated 12.01.2010 on the terms and conditions mentioned therein.
(Copy of the educational documents & order is annexed as Annexure-A).

2. That the appellant was serving the department to the best of his abilities and to the satisfaction of his superiors when all of a sudden he was issued with a back dated joint show cause notice. The plea raised in the show cause notice was that some adhoc employees approached the August Supreme Court of Pakistan for the reinstatement/ regularization of their services. During the pendency of the said petition, the counsel for those petitioners maintained that his clients were removed from service while others were left, to which the then Chief Engineer had replied that the cases of those appointees are underway. The Hon'ble Apex court directed to finalize action and submit a report to that effect.
(Copies of the verdict of the Apex court dated 15.01.2014 is annexed as Annexure-B).

3. That in the garb and misleading statement and verdict before the Apex court, the appellants were issued the alleged back dated show cause notice, although the same was never mandated. In reply to show cause notice, the respondent No.3 was requested to extend time for him to file a reply, but the respondent No. 3, was determined with all malafide to terminate the appellant among others unlawfully, terminated the appellant vide order dated 14-02-2014.
(Copy of order dated 14-02-2014 and application for time extension to show cause is annexed as Annexure-C).

4. On arrival of the aforesaid judgment of the Apex court, the respondents sought guidance from the E & A department for further course of action vide letter No. SO (Estt) PHED/1-9/2012-13 dated 22-01-2014. In response, the E&A department vide letter No. SOR-V(E&AD)/15-3/09 dated 30-01-2014 advised that necessary action be initiated against the officers who were involved in the appointment after conducting proper inquiry into the case. It was binding upon the respondents to act upon the advice of the E&A department, where they instead of acting upon the advice, terminated the appellant without fulfillment of legal requirements of inquiry etc to establish the charges against the appellant which is not only a formality but a mandatory requirement of law. (Copy of letter No. SOR-V (E&AD)/15-3/09 dated 30-01-2014 is annexed as annexure-D).

5. That the appellant submitted his departmental appeal, however, it was not responded, hence the appellant approached the Hon'ble Peshawar High Court, Peshawar in a W.P. No. 615-P/2014 who vide its order dated 26-02-2014 observed that the instant petition relates to the terms and conditions of the service, therefore the appellant should seek his remedy before proper forum, the W.P. was dismissed accordingly.
(Copy of writ and order dated 26-02-2014 is annexed as Annexure-E).

6. That feeling aggrieved, the appellant moved the August Supreme Court through a civil petition, but the August Supreme Court directed the appellant to approach this Hon'ble Tribunal which shall decide the appeal as mandated in law.

(Copy of the order in C.P No. 551/2014 dated 28-04-2014 is annexed as Annexure-F).

7. That the appellant approached this Hon'ble tribunal through a service appeal No. 868/2014 which appeal was remanded through order dated 30-12-2015 with the observations that the departmental appeal be decided within two months.

(Copy of appeal and order dated 30-12-2015 is annexed as Annexure-G).

8. That while dealing with the departmental appeal, all the 31 appellants including the present appellant were assembled in a hall and they were told by the respondent No.2 that all his sympathies lie in favour of the appellants and he is going to restore them, but despite all stated above, their appeals were dismissed vide order dated 03-03-2016. It is worth to mention here that the respondent No. 2 disclosed during the interview that there is huge pressure upon him by the Minister for PHE not to restore the appellants even if they deserve re-instatement.

(Copy of order No. SO(Estt)/PHED/1-90/2013-14.Vol-II dated 03-03-2016 is annexed as Annexure-H).

9. That Appellant feeling aggrieved of the order dated 14-02-2014 and 03-03-2016 prefers this Appeal, *inter alia*, on the following:

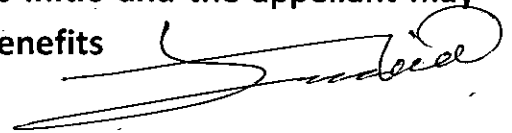
GROUND OF APPEAL

- A. That the impugned orders of the respondents are against the law on the subject, illegal, void ab intio and arbitrary, hence liable to be struck down.
- B. That the impugned termination(s) is the result of discrimination and against the fundamental rights guaranteed under the constitution of the Islamic Republic of Pakistan, 1973, hence liable to be set aside.
- C. That the impugned orders of the respondents is the sheer violation of article, 25 of the Constitution of the Islamic Republic of Pakistan, 1973, hence liable to be set aside.
- D. That the impugned orders of the respondents are against the spirits of the natural justice, hence untenable.
- E. That there is great malafide on the part of the respondents in terminating the appellant, hence the same needs setting aside.

5

- F. That the termination of the appellant is based on the misconceived judgment of the August Supreme Court, of Pakistan and the said judgment never mandated the termination of the appellants, hence termination of the appellant is nullity in the eyes of law.
- G. That the August Apex court was misled by the department, hence all the proceedings against the appellant are in violation of the order of the Apex court, law of the land and natural justice, hence liable to be set aside.
- H. That the appellant has served the department for almost five years with zeal and dedication and has got vested rights and the termination of services at the one stroke of pen is unjust, unfair, arbitrary, unlawful, hence liable to be set aside.
- I. That the impugned termination order(s) is against the principles of locus poenitentiae, hence liable to be struck down.
- J. That any other ground not specifically raised herein may be allowed at the time of arguments

It is therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 14-02-2014 of the respondents may kindly be declared as illegal, unlawful, arbitrary and void ab initio and the appellant may kindly be reinstated into his service with all back benefits



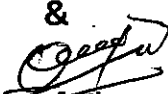
Appellant

Through



Shahid Khan

&



Yousaf Khan

Advocates High Court,
Peshawar

Dated .04.2016

Appeal No. _____/2016

Shah Khalid

..... Appellant


Versus

Government of Khyber Pakhtunkhwa etc

..... Respondents

AFFIDAVIT

I, Shah Khalid S/O Wafadar Khan, (Stenotypist, Public Health Engineering Department, Swabi) R/O Mohallah Aladad Khel, Village Dagai, Tehsil Rajar District Swabi do solemnly affirm and declare on oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent



BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2016

Shah Khalid

..... Appellant

Versus

Government of Khyber Pakhtunkhwa etc

..... Respondents

Application for condonation of delay

Respectfully Sheweth.

- 1. That the appellant is filing the accompanying appeal wherein no date of hearing has been fixed as yet.
- 2. That the impugned letter No. SO(Estt)/PHED/1-90/2013-14.Vol-II dated 03-03-2016 has been received to the appellant on 12-03-2016.
- 3. That the wife of the appellant fall seriously ill and ~~here~~ was non to care but the appellant.
- 4. That there is no delay in filing the accompanying appeal, however if there is any delay, the same may be condoned.

It is therefore, most humbly prayed that the delay, if any, in filing of the accompanying appeal may very graciously be condoned.

[Handwritten Signature]

Appellant

Through

[Handwritten Signature]

Shahid Khan

&

Yousaf Khan

Advocate High Court, Peshawar

AFFIDAVIT

It is solemnly affirm and declare on oath that the contents of the ~~application~~ *application*

ATTESTED

are true and correct to the best of my knowledge and belief and nothing

has been concealed from this Hon'ble Tribunal.



[Handwritten Signature]
Deponent

Annexure "A" (8)

OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG. DEPARTMENT
NWFP, PESHAWAR.

No. 18 / E-4 / PHE

Dated Pesh: the 12 / 01 / 2010.

OFFICE ORDER.

On the recommendation of the Department Selection Committee as per its meeting held on 02/12/2009, the competent authority is pleased to offer a post of Steno Typist (BPS-12) to Mr. Shah Khalid S/O Waffadar Khan R/O Village & P.O Dagai Tehsil & District Swabi on the with following terms and conditions :-

- 1) He will get pay at the minimum of BPS-12 (Rs.4355 -- 310 - 13655) including usual allowances as admissible under the rule. He will also be entitled to annual increment as per existing policy.
- 2) He shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) He shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) His employment in the PHE Department is purely temporary and his services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu of the notice. In case he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) He shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) He shall produce a medical certificate of fitness from Medical Superintendent, Mardan before reporting himself for duty to the Deputy District Officer Water Supply & Sanitation Mardan, as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Deputy District Officer Water Supply & Sanitation Mardan within one month of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

CHIEF ENGINEER

Copy to the :-

- 1) ✓ Deputy District Officer WS&S Mardan.
- 2) District Accounts Officer Mardan.
- 3) Mr. Shah Khalid S/O Waffadar Khan R/O Village & P.O Dagai Tehsil & District Swabi.

ATTESTED

ATTESTED

EVK

CHIEF ENGINEER

6

Serial No. 215

Date 9.9.98

Khyber College of Commerce and Management

3, THE MALL, PESHAWAR CANTT.

Affiliated with NWFP Board of Technical Education

Provisional Certificate DIPLOMA IN COMMERCE

MS

This is to Certify that

NAME : SHAH KHALID
 FATHER'S NAME : WAFADAR KHAN
 ROLL NO. : 21118
 EXAMINATION : SUPPLY 1997
 MARKS OBTAINED : 362
 TOTAL MARKS : 750
 CHARACTER : VERY GOOD

*appeared from this college in the
 Diploma In Commerce Examination
 conducted by the N.W.F.P. BOARD
 OF TECHNICAL EDUCATION, PESHAWAR
 and has been declared Successful in the
 said examination, according to the Result
 Gazette.*

Students Clerk

MS
 Principal
 Khyber College of Commerce and Management
 Peshawar Cantt.



بسم اللہ الرحمن الرحیم

University of Peshawar

(Pakistan)

Session ANNUAL 2004

SHAH KHALID SON OF WAFADAR KHAN

and a student of GOVT: COLLEGE OF MANAGEMENT SCIENCES, MARDAN having

passed the prescribed Examination held in JULY, 2004 is this day admitted by the University of Peshawar to the Degree of

Bachelor of Commerce

in the SECOND Division

The Examination was taken as a whole/extra-part*

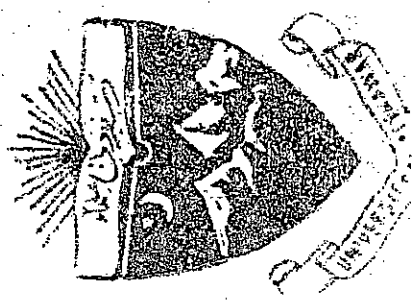
5/11/04

Serial No 0009907

Registration No. 98-MDOM-176

Roll No. 169

Result Declared on NOVEMBER 12, 2004.



[Signature]
Registrar

Countersigned
[Signature]
Vice-Chancellor

~~Attention: Sh. A. S. E~~

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

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

C. Ps. No. 2026 and 2029 of 2013.
(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13)
...Petitioners

Versus
Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

For the petitioners:

Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents:
(on court notice)

Sikandar Khan, Chief Engineer, PHEK, KPK.

Date of hearing:

15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments

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

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

ATTESTED
S/S

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

S.E.P.H.E. Deptt. (South)
File No. 480
Date 25-01-2014
Page No.
NAME (S)
...
...
...
...

12

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

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

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



Certified to be True Copy

Supernatendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal
 Date of Presentation: 15-7-14
 No. of Words: 600
 No. of Follies: 6
 Requisition Fee Rs: 600
 Copy Fee in: 300
 Court Fees stamps: 800
 Date of Completion of Copy: 18-7-14
 Date of delivery of Copy: 18-7-14
 Compared by/Prepared by: Zaymit Jan
 Received by: Zaymit Jan

RECEIVED

SW



Annexure "C" (13)

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

No. 44 / E-4 /PHE,
Dated Peshawar, the 14 /02/2014

To

Mr. Shah Khalid s/o Waffadar Khan
Steno Typist P.H.Engg Division
Swabi

Subject: TERMINATION FROM SERVICE

Your recruitment in PHED made vide this office letter No.18/E-4 /PHE dated 12.01.2010 was illegal and unlawful due to non-fulfillment of codal formalities.

2. Your appointment as a Steno Typist has been reviewed on the direction of Supreme Court of Pakistan Order dated 15.01.2014 in the civil petition No.2026 and 2029 of 2013, Mushtaq Ahmad and Muhammad Nasir Ali and others. The Supreme Court of Pakistan directed the undersigned to finalize action against all illegal appointees within one month. In this regard direction of Establishment & Administration Department vide his No.SOR-V(E&AD)/15-3/2009 dated 30.1.2013 received through Secretary PHE Department Khyber Pakhtunkhwa Peshawar No.SO(Estt)/PHED/1-90/2012-13 dated 3.2.2014 record of the recruitment of Steno Typist and other staff has been checked and found the following irregularities committed by the appointing authority in your appointment.

1. Vacancies/posts of Steno Typist s were not advertized through news paper.
2. Initial recruitment of Steno Typist s will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-I (S&GAD)1-117 /91(c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.
3. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.
4. Departmental selection committee was not constituted by the Administrative Secretary.
5. You have also failed to reply to the show cause notice issued vide this office No. 32/E-4 /PHE dated 21.01.2014 in your defense with in stipulated period.
6. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Steno Typist with immediate effect.

TESTED

Chief Engineer (South)

ATTESTED

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. PS to Minister for Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. The Accountant General Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer (North) Public Health Engg: Department Peshawar.
5. The Chief Engineer (FATA) Works & Services Department Peshawar.
6. All Superintending Engineers/Executive Engineers in South/North P.H.Engg: Department.
7. All District Accounts Officer in Khyber Pakhtunkhwa.

Chief Engineer (South)



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

No. 32 / E-4/PHE

Dated Peshawar, the 21 / 01/2014

To

1. Mr. Tariq Nawaz Sub Engineer,
2. Mr. Sajjad Khan Sub Engineer, 0300-05358603.
3. Mr. S. Muhammad Ihsan Shah Sub Engineer, 03455518060
4. Mr. S. Muhammad Ali Sajjad Sub Engineer,
5. Mr. Abdul Samad Sub Engineer, 03449847092
6. Mr. Shaukat Ali Sub Engineer, 0300-9099910. (0322)
7. Mr. M. Ali Noor Sub Engineer, 03159643498.
8. Mr. Irshad Elahi Sub Engineer, 03467845606.
9. Mr. Hussain Zaman Sub Engineer,
10. Mr. Salim Nawaz Sub Engineer, 03419998066
11. Mr. S. Ashfaq Ahmad Sub Engineer,
12. Mr. Murtaza Ali Sub Engineer,
13. Mr. Sahar Gul Sub Engineer, 0342-9408270.
14. Mr. Ishfaq Sub Engineer, 03339331389.
15. Mr. Abdul Shahid Sub Engineer, 03459526307.
16. Mr. Kashif Raza Sub Engineer, 03347238980.
17. Mr. Waqar Ali Sub Engineer, 03455349334.
18. Mr. Muslim Shah Sub Engineer, 0345-9501616.
19. Mr. Ishtiaq Ahmad Sub Engineer, 03339156613
20. Mr. Zubib Khan Sub Engineer, 0314-9398029
21. Mr. S. Hassan Ali Sub Engineer, 03339059020.
22. Mr. Mohsin Ali Sub Engineer,
23. Mr. Muqtada Qureshi Sub Engineer, 0345-9177123.
24. Mr. Ishtiaq Ahmad Sub Engineer, 03469474856.
25. Mr. M. Qaiser Khan Sub Engineer, 0333-9883738.
26. Mr. Nomanullah Senior Scale Stenographer, 03149899305.
27. Mr. M. Imran Steno Typist,
28. Mr. M. Jamil Steno Typist,
29. Mr. Ifikhar Steno Typist,
30. Mr. Shah Khalid Steno Typist, 0334-9282095.
31. Mr. Aziz Ullah Steno Typist, 0345-811343.
32. Mr. Farhan Ullah Steno Typist,
33. Mr. Farman Ali Data E/Operator,
34. Mr. Murtaza Qureshi Data E/Operator, 0345-9088522

Subject: SHOW CAUSE NOTICE

In compliance of Supreme Court of Pakistan decision dated 15.1.2014 action against all illegal appointee's are being taken immediately. As such you are hereby served with this show cause notice regarding your appointment as under:

1. In light of S&GD letter No.SOR-I(S&GAD)/1-117/91(C) dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and Data E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore you are directed to provide recommendation of Public Service Commission, if any.
2. Your appointment orders have been made in contravention of Govt led down policy vide circulated notification No. SOR-VI/EXAD/1-10/2005/Vol-VI dated 15.11.2007.

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[Signature]



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Page -2

3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission, of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil servant (appointment, promotion and transfer rules 1989). Codal formalities have not been fulfilled in your appointments.
4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent Authority.

Keeping in view the above, you are directed to furnish reply to the show cause notice within 15-days positively; otherwise it will be presumed that you have nothing in your defense. As such ex-party action will be taken against you under the E&D rules which will entail your termination from service.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. The Chief Engineer (North) Public Health Engg: Department Peshawar. ^{FATA 4095}
3. All Superintending Engineers/Executive Engineers in South/North Public Health Engg: Department. They are directed to serve the show cause noticed to the above named officials working in your office.

Chief Engineer (South)

To

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

Subject: Departmental appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of the KP Civil Servants (Appeal) Rules, 1986 against the impugned order dated 14.02.2014 whereby the services of appellant was terminated with immediate effect by the Chief Engineer (South) of the Public Health Engineering Department, Peshawar.

Respected Sir,

1. That appellant being qualified for the post of Stenographer so he applied for the existed vacancies of Stenographer in the Public Health Engineering Department Khyber Pakhtunkhwa Peshawar. After observing the codal formalities, on the recommendation of Departmental Selection Committee he was appointed as Stenographer (BPS-15) on regular basis from his respective date of appointment issued by the Chief Engineer.
2. That after completing the requisite formalities including medical fitness certificate, the appellant joined duties at his respective place of posting. The respondent department also maintained the service book of the appellant and necessary entries have been made therein from time to time.
3. That the appellant is regular employee of the respondent department working against the permanent post since his respective appointment having more than five years service at his credit with excellent service record.
4. That some other employees whose appointments were made on adhoc basis so they agitated their regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition Nos.271-P/2013 and 663-P/2013 which were dismissed by common judgment passed on 02.10.2013.
5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also dismissed on 15.01.2014. However during the proceedings, Mr. Sikandar Khan Chief Engineer, Public Health Engineering Department, Khyber

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Pakhtunkhwa orally brought into the notice of Hon'ble Supreme Court of Pakistan about the existence of illegal appointees in the department and accordingly he was directed to finalize the action against such illegal appointees within one month.

6. That a joint show cause notice was issued to appellant alongwith others **vide letter No.32/E-4/PHE dated 21.01.2014** by Chief Engineer (South) therein he has unlawfully and malafidely shown the appointments of appellant and others as illegal. Since the copy of show cause notice was not received within stipulated time therefore he submitted an application before the Chief Engineer (South) requesting for extension in period of reply but before submitting the requisite reply, now which had been submitted, the Chief Engineer (South) had issued the impugned order dated 14.02.2014 thereby his services were terminated with immediate effect.

Grounds:

- A. That the appointment of appellant was made by competent authority on regular basis on the recommendation of **Departmental Selection Committee**. He was within age limit, having prescribe qualifications thus in such circumstances the Chief Engineer (South) was unjustified to treat the valid appointment of appellant as illegal.
- B. That it is pertinent to mention that by notification vide No.SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt.)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.
- C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of

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Stenographer in the W&S Department and done accordingly. In such circumstances the plea of Chief Engineer (South) regarding non fulfilling the requirements of recommendation of Public Service Commission, Khyber Pakhtunkhwa in the cases of appellant is unjustified, unreasonable, malafide and without lawful authority and not sustainable under the law and rules.

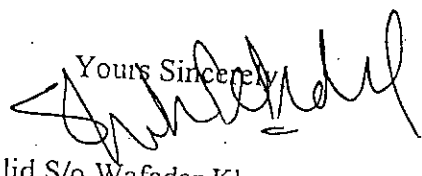
- D. That in view of clause 5 of the appointment order of each appellant, his service was placed on probation for a period of two years extendable upto three years which the appellant has completed satisfactory becoming a confirmed employee of the office Chief Engineer. At the time of passing of impugned order the appellant has rendered more than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without lawful authority.
- E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.
- F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.
- G. That Chief Engineer has malafidely brought in the notice of the Hon'ble Supreme Court of Pakistan during the hearing of an other case. Neither he supplied any list of illegal appointments to Hon'ble Supreme Court of Pakistan at that very moment nor specified such illegal appointments but in general way he mentioned the existence of illegal appointments in the department which now he has exploited the situation and purposely held the appointments of appellant and others as illegal and issued the impugned order of termination without legal justification.

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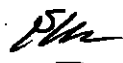
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- H. That the impugned order has been passed at the back of appellant. Neither any regular enquiry has been conducted nor a fair opportunity was provided to them to defend their cases therefore the impugned order is illegal, without lawful authority being violative of principle of natural justice.
- I. That the appellant was continuously serving the department having more than five years service at their credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of locus poenitentiae.
- J. That in case of any defect in the appointment of appellant is existed for which only the departmental authority is responsible and not the appellant therefore the action of the Chief Engineer is not warranted under the law and rules and the impugned order is illegal and of no legal effect.
- K. That the appellant is a permanent and confirmed employee of the department and performing his respective duty efficiently since the date of his appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools and colleges thus in such circumstances, the Chief Engineer has no legal and moral justification to hold the appointment of appellant as illegal. Therefore the act and action of the Chief Engineer is tainted with malafide intention, unlawful and not operative against the vested rights of appellant.

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned order dated 14.02.2014 thereby the services of appellant was terminated with immediate effect, may kindly be set aside and appellant may graciously be reinstated with all back benefits.

Yours Sincerely


Shah Khalid S/o Wafadar Khan,
 Stenographer/Stenotypist, Office of the
 Chief Engineer PHE, Peshawar

APPROVED


dated 13 / 3 / 2014

Shahid
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08/02/2014

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Annexure "D" (20)

Immediate/Cont. Case



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

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

(18)

To

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

Subject: APPOINTMENT OF SUB ENGINEERS

Dear Sir,

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

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20 (F)

Yours faithfully,

(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

for W/A
3/12

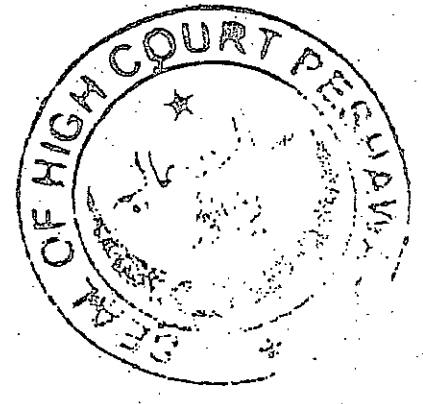
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Annexure "E" (21)
(13)

IN THE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION No. 615-P/2014



1. Tariq Nawaz Khan S/o Ameer Nawaz Khan,
Sub Engineer, Office of
Public Health Engineering Division, Karak
2. Muhammad Sajad Khan S/o Banat Khan,
Sub Engineer, PHE Division Kohat.
3. Syed Muhammad Ihsan Shah S/o
Syed Muhammad Hasan Shah,
Sub Engineer, PHE Division Haripur.
4. Syed Muhammad Ali Sajjad
S/o Syed Abid Hussain Shah,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar
5. Abd-ul-samad S/o Abd-ul-Mueed,
Sub Engineer PHE Division, But Khela.
6. Shaukat Ali S/o Ghulam Qadar,
Sub Engineer PHE Division, Karak.
7. Muhammad Ali Noor S/o Syed Noor Muhammad,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.
8. Irshad Elahi S/o Shah Nawaz,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar
9. Saleem Nawaz,
Sub Engineer, PHE Division, DI Khan.
10. Syed Ishfaq Ahmad S/o Syed Jamil-ud-Din,
Sub Engineer, PHE Division, Mingora, Swat
11. Murtaza Ali S/o Abdul Haq,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.
12. Kashif Raza S/o Abid Hussain,
Sub Engineer, PHE Division, DI Khan.
13. Waqas Ali S/o Farzand Ali,
Sub Engineer, PHE Division, Haripur.
14. Muslim Shah S/o Mahmood Shah,
Sub Engineer, PHE Division, Mardan.

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ATTESTED
BY
EXAMINER
Peshawar High Court
11 MAR 2014

FILED TODAY
Deputy Registrar

22

15. Zohaib Khan S/o Jahanzeb Khan,
Sub Engineer, PHE Division, Mansehra.
16. Syed Hassan Ali S/o Syed Ajmal Shah,
Sub Engineer, PHE Division, Buner.
17. Mohsin Ali S/o Muhammad Parvez,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.
18. Muhammad Qaisar Khan S/o Babu Jan,
Sub Engineer, PHE Division, Upper Dir.
19. Ishtiaq Ahmad S/o Tamhedullah,
Sub Engineer, PHE Division, Charsadda.
20. Hassan Zaman S/o Syed Zaman,
Sub Engineer, PHE Division, Temargara.
21. Abd-ul-Shahid S/o Abd-ul-Azeem,
Sub Engineer, PHE Division, Upper Dir.
22. Sameullah S/o Khuda Bakhsh,
Sub Engineer, PHE Division, DI Khan.
23. Ishfaq Ahmad S/o Muhammad Shoaib,
Sub Engineer, PHE Division, Charsadda.
24. Muqtada Qureshi S/o Afsar Ali Qureshi,
Sub Engineer, PHE Division, Sawabi.
25. Naumanullah S/o Amanullah,
Stenographer, Office of the Chief Engineer
PHE, Peshawar.
26. Shah Khalid S/o Wafadar Khan,
Stenographer/Stenotypist, Office of the
Chief Engineer PHE, Peshawar
27. Farman Ali S/o Juma Gul,
Data Entry Operator, Office of the
Chief Engineer PHE, Peshawar
28. Muhammad Iftikhar S/o Chinar Gul,
Stenotypist, Office of the Chief Engineer
PHE, Peshawar
29. Murtaza Qureshi,
Assistant, Office of the Chief Engineer
PHE, Peshawar.
30. Farhan Ullah S/o Aziz Ullah,
Stenotypist, Office of the
Executive Engineer
PHE Division, Bannu.....Petitioners

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File

FILED TODAY
Deputy Registrar
25 FEB 2014

Versus

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Peshawar High C
MAR 2014

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

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

Respectfully Sheweth,
The brief facts giving rise to the present petition are as under:-

1. That petitioners had applied against the vacant posts of Sub Engineers, Stenotypists and Data Entry Operators in the office of respondent No.3. The petitioners were in possession of higher qualification in addition to prescribe qualification for their opted posts. After observing the codal formalities, on the recommendation of Departmental Selection Committee they were appointed against their opted posts on regular basis on different dates. Copy of the appointment orders are attached as Annex: A1-A21.
2. That after completing the requisite formalities including medical fitness certificate, the petitioners joined duties at their respective places of postings. The respondent department also maintained the service books of each petitioner and necessary entries have been made therein from time to time. The extracts of service book are attached as Annex: B.
3. That the petitioners are regular employees of the respondent department working against the permanent posts since their respective appointments having more than five years service at their credit with excellent service

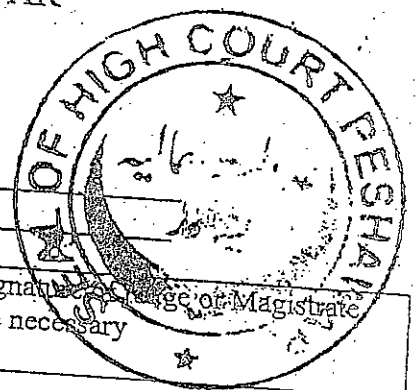
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Peshawar High
11 MAR 2011

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PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

Court of _____
Case No _____



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	26.02.2014	<p><u>W.P.No.615-P/2014.</u></p> <p><u>Present:-</u> Mr. Khushdil Khan, Advocate for petitioners. *****</p> <p><u>MALIK MANZOOR HUSSAIN, J:-</u> Through instant petition, the petitioners are invoking Constitutional jurisdiction of this Court and prays as follows:-</p> <ol style="list-style-type: none"> 1. <i>Declare the act of respondent No.3 against the fundamental rights as guaranteed under chapter 1 of part II of the Constitution, 1973.</i> 2. <i>Direct the respondent No.3 to act in accordance with law and rules on subject and also treat the petitioners in accordance with law and rules and their appointments be treated as legal and valid for all purposes.</i> 3. <i>Set aside the impugned order of termination issued on 14.02.2014 being malafide, unlawful, unjustified and violative of principle of</i> <p style="text-align: center;">ATTESD, CL <i>[Signature]</i></p> <p>TESTED EXAMINER Peshawar High Court. 1 MAR 2014</p>

natural justice.

2. Briefly, the facts as per contents of instant petition are that the petitioners were appointed as sub-Engineers (BPS-11) in Public Health Engineer Department, Government of Khyber Pukhtunkhwa, Peshawar. While hearing Civil Petitions No.2016/2013 and No.2029/2013, the August Supreme Court of Pakistan take notice of illegal appointments in the petitioners Department, directed the Chief Engineer of the Department to finalize the action against illegal appointees. For convenience, it would be appropriate to reproduce the relevant para of Judgment dated 15.01.2014 of August Apex Court, which is as under:-

"So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, chief Engineer, Public Health engineering, Department, KPK is present in Court, he states that although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

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 Peshawar High Court.
 1 MAR 2014

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

In pursuance thereof show cause notices were issued and ultimately through impugned order dated 18.02.2014 the services of petitioners were terminated.

3. At the very outset the learned counsel for the petitioners was confronted with the legal position with respect to the fact that the petitioners, who claims themselves to be civil servants under Civil Servant Act 1973, whether their termination orders does not come within ambit of *terms and condition of service*, and whether the petition is maintainable under barring Provision of Article 212 of the Constitution, 1973? There was no plausible explanation in this regard. The Provision of Article 199 of the Constitution through which the remedies are sought by the petitioners are subject to the Provision of Article 212(3) of the Constitution. It is

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EXAMINER
JUDGE, BENCH
14 MAR 2014

well settled by now that even illegal orders, or order without jurisdiction, regarding Civil Servant, can only be challenged in the proper forum established under the law.

4. Admittedly termination orders of the petitioners related to terms and condition of their services, therefore, Constitutional petition under Article 199 is not maintainable by virtue of article 212 of the Constitution and Section 4 of Service Tribunal Act 1973.

In view of what has been observed above, this petitioner is dismissed being not entertainable, however petitioners are at liberty to seek their remedies before proper forum if so advised.

Announced.
26.02.2014

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JUDGE

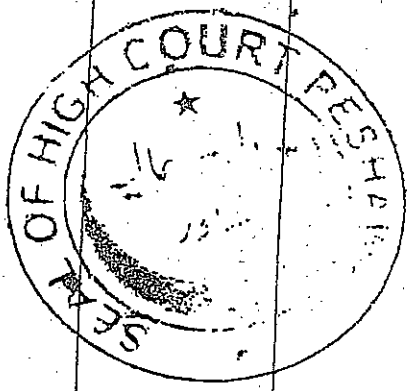
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JUDGE

Sh. Yahya Abzidi
Sh. Malik Mangood Hussain

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CERTIFIED TO BE TRUE COPY

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11-03-14



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Date of Presentation of Application 11-03-14
No of Pages 12P
Copying fee
Urgent fee
Total 24000
Date of Preparation of Copy 11-03-14
Time Given For Delivery 11-03-14
Time of Delivery of Copy 11-03-14
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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Annexure "F" (28)

PRESENT:
MR. JUSTICE TASSADUQ HUSSAIN JILLANI, HCJ
MR. JUSTICE SH. AZMAT SAEED

CIVIL PETITION NO. 551 OF 2014
(On appeal from the judgment dated 26.2.2014 passed
by the Peshawar High Court, Peshawar in WP No. 915-
P/2014)

Tara Nawaz Khan and others ... Petitioners

VERSUS

Government of KPK through Chief Secretary, Peshawar and others ... Respondents

For the Petitioners: Mir Aurangzeb, ASC

For the Respondents: N.R.

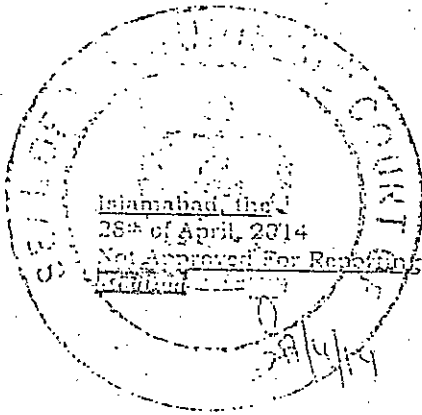
Date of Hearing: 25.04.2014

ORDER

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

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

Ed. Tassadug Hussain Jillani, CJ
Ed. Sh. Azmat Saeed, J

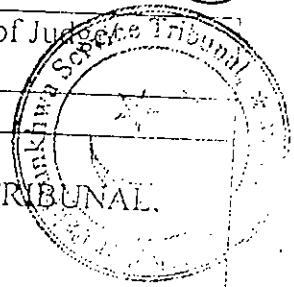


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Certified to be True Copy

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Superintendent
Supreme Court of Pakistan
(Islamabad)

Ami "G" 29



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/Magistrate
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.
PESHAWAR.

1. 665/2014, Farhanullah (Khalid Rahman, Adv)
2. 723/2014, S. M. Ahsan Shah (Rustam Khan Kundi)
3. 724/2014, Saleem Nawaz, -do-
4. 725/2014, Mohsin Ai, -do-
5. 726/2014, Kashif Raza, -do-
6. 727/2014, Syed Muhammad Ali Sajjad, -do-
7. 728/2014, Muhammad Ali Noor, -do-
8. 729/2014, Irshad Elahi, -do-
9. 750/2014, Murtaza Qureshi, (Isaac Ali Qazi, Adv.)
10. 783/2014, Syed Ishfaq Ahmad, (M. Asif Yousafzai)
11. 784/2014, Ishfaq Ahmad, -do-
12. 785/2014, Murtaza Ali, -do-
13. 786/2014, Amir Muqtada Qureshi, -do-
14. 787/2014, Abdus Samad, -do-
15. 788/2014, Hussain Zaman, -do-
16. 789/2014, Abdul Shahid, -do-
17. 790/2014, Waqas Ali, -do-
18. 791/2014, Muhammad Iflikhar, (Isaac Ali Qazi, Adv.)
19. 792/2014, Ishtiaq Ahmad, -do-
20. 793/2014, Shaukat Ali, -do-
21. 794/2014, Muhammad Sajjad, -do-
22. 795/2014, Tariq Nawaz, -do-
23. 796/2014, Ishfaq Ahmad, -do-
24. 797/2014, Noman Ullah, -do-
25. 803/2014, Aziz Ullah, (Aslam Khan Adv.)
26. 810/2014, Muslim Shah, (M. Asif Yousfzai, Adv)
27. 811/2014, Syed Hassan Ali -do-
28. 812/2014, Zohaib Khan, -do-
29. 829/2014, Qaiser Khan, -do-
30. 867/2014, Farman Ali, -do-
31. 868/2014, Shah Khalid, (Isaac Ali Qazi, Adv)

Versus

Govt. of KPK Province through Secretary, Public Health Engineering Department, Peshawar & Others.

30.12.2015

JUDGMENT

PIR BAKHISH SHAH, MEMBER:- Counsels for

the appellants and Sr. Government Pleader (Mr. Usman Ghani) with Muhammad Siddique Admn. Officer for the respondents present.

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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2. The above appellants, employees of the PHE Department, were terminated from service by way of impugned order dated 14.02.2014 and their departmental appeal was not decided, hence this appeal under Section 4 of the KPK Service Tribunal Act, 1974. In view of the common question of facts and law, we propose to dispose of all the above appeals by this single judgment.

3. Relevant facts, in brief, as revealed from record are that the Hon'ble Peshawar High Court Peshawar vide its judgment dated 02.10.2013 dismissed Writ Petitions No. 271-P and 363-P both of 2013 of some of the appellants which judgment came up before the august Supreme Court of Pakistan in Civil Petitions No. 2026/13 and 2029/13. The august Supreme Court of Pakistan vide its order dated 15.01.2014 was pleased to direct as follow:-

"2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, KPK is present in Court, he states that although many other illegal appointees in his department have been removed from service, but against many others such action is in process of various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from to-day and submit his report

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed."

In the wake of the said order of the august Supreme Court of Pakistan, a joint show cause notice was prepared and issued to the appellants followed by the impugned termination order.

4. The charges against these appellants are reproduced as follow from the show cause notice issued to them:-

1. In light of S&GAD letter No.SOR-I(S&GAD)1-117/91© dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and DATA E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore, you are directed to provide recommendation of Public Service Commission, if any.

2. Your appointment orders have been made in contravention of Govt. laid down policy vide circulated notification No.SOR-VO/EXAD/1-10/2005/Vol-VI dated 15.11.2007.

3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Codal formalities have not been fulfilled in your appointment.

4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent authority."

The appellants replied to the show cause notice and after their termination, filed their departmental appeals, copies of which are available on file.

5. Arguments heard ad record perused.

6. The record revealed that on receipt of a list comprising of the appellants from the office of the then Chief Minister, to appoint appellants in the department of PHE, they were accordingly appointed.

7. In support of the appellants, it was submitted that the appellants were terminated from service without observing codal formalities of the charge sheet, enquiry: that no opportunity of defence and personal hearing was provided to them. It was further submitted that the

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


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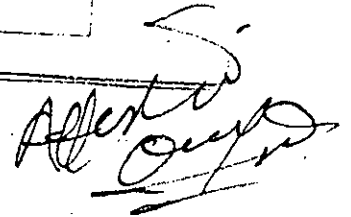
appellants were duly qualified, and they were duly recommended for appointment by DSC where after they were appointed by the competent authority. It was further submitted that being the district cadre posts, its recruitment did not fall in the purview of Public Service Commission. It was also submitted that the appellants had rendered sufficient service and with the passage of time, their rights were protected under the principle of locus poenitentiae. It was also argued that the respondent-department have mis-conceived and misapplied order of the august Supreme Court of Pakistan dated 15.01.2014. That this Tribunal is competent and has jurisdiction to decide these appeals. Finally it was submitted that the appeals may be allowed and appellants may be reinstated in service with all back benefits.

8. These appeals were resisted by the learned Sr. Govt. Pleader on the grounds that the Public Service Commission was the competent forum for the process of recruitment of the posts of the appellants. That no formalities of advertisement, constitution of DSC, conduct of test/interview, preparation of merit list etc. had been observed in those appointments, therefore, the appointments were illegal. That the appointments were the result of political pressure and interference, hence the appellants were rightly terminated. That the respondent department in compliance with the order of the august

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 Khyber Pakhtunkhwa
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 Peshawar


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Supreme Court of Pakistan dated 15.01.2014 terminated the appellants therefore, this Tribunal has no jurisdiction to reinstate the appellants. Finally it was submitted that these appeals may be dismissed..

9. Order dated 15.1.2014 of the august Supreme Court of Pakistan is explicit according to which the respondent department was directed to take action against the illegal appointees. Contention advanced by the learned counsel for the appellants during the course of arguments was that appointments of the appellants were in accordance with the prescribed procedure as the posts did not fall in the purview of the Public Service Commission. Further that the appellants were not given opportunity of defence as evident from the facts that even prior to the lapse of the terminal date for reply to the show cause notice, the appellants were terminated. It was also contended for appellant Farhanullah (Data Entry Operator BPS-12), that prior to this post he was a valve-man in the department, therefore, instead of termination, he should have been reverted to his previous position.

9. On the point as to whether the Tribunal would be competent to adjudicate on these appeals, the learned counsel for the appellants submitted copy of a subsequent order dated 28.04.2014 in CP NO. 551 of 2014 according to which the Service Tribunal shall decide the appeals as

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 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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mandated in law. Evidently no charge sheet has been issued to the appellants nor opportunity of personal hearing has been provided to them and instead show cause notice was served on them. It is apparent from record that the impugned order has been passed quite in haste. After the impugned order, the respondent department vide letter No. 03/G-4-A/HC/PHE dated 17.2.2014 intimated to the Registrar Supreme Court of Pakistan that in pursuance of order dated 15.1.2014, a total of 24 Sub Engineers, 6 stenotypist/Stenographers and 2 Data Entry Operators had been terminated. This being so, we are afraid that due care and caution had not been exercised by sorting out individual case of each of the appellants. In the above scenario, while not interfering with the ^{impugned} order dated 14.2.2014 at this stage, the Tribunal in the interest of justice would remit cases of the appellants to the appellate authority of the department with direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing. This process of disposal of departmental appeals of the appellants be completed within a period of 2 months after receipt of this judgment. In case the appellate authority finds that any of the appellant had been unlawfully terminated or terminated by mis-conceiving order of the august Supreme Court of Pakistan dated 15.1.2014 and

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EXAMINER
Khyber Pakhtunkhwa
Service Commission

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facts of a particular case and it leads the authority to accept such an appeal, the said decision would require to be taken with full justification and shall have to be intimated to the Registrar of the august Supreme Court of Pakistan in continuation of respondent department letter dated 17.2.2014. All the appeals are disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.12.2015.

Certified to be true copy
 907
 Khyber Pachtunkhwa
 Service Tribunal,
 Peshawar

sd

Addulatif
member

sd

Pir Bakhtsh Shah
member

Date of Presentation of Application 5-1-2016
 Number of Pages 3200
 Copies Filed 18-0
 Total 1800
 Name of Copy sd
 Date of Completion 7-2-2016
 Date of Delivery of Copy 7-2-2016

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GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/1-90/2013-14.VOI-II
Dated Peshawar the, March 03, 2016

To,

Mr. Shah Khalid
S/o Waffadar Khan
Village & P/o Box Dagai,
Tehsil & District Swabi

Subject: DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No. 44/E-4/PHE DATED 14-02-2014.

WHEREAS, you managed to get yourself appointed as Steno typist (BPS-12) in PHED vide Chief Engineer PHE Office Order No.18/E-4/PHE dated 12-01-2010.

2. AND WHEREAS, you were served with a Show Cause Notice by the Chief Engineer (South) PHE vide No.32/E-4/PHE dated 02-01-2014, and subsequently your services were dispensed with by the said authority vide his Office Order No.21/E-4/PHE dated 14-02-2014 as a sequel to the apex Court Order dated 15-01-2014 in C.P No.2026 and 2029/2013 and the same was also intimated/confirmed to the said august Court vide letter dated 17-02-2014.

3. AND WHEREAS, you filed a Writ Petition bearing No.615-P/2014 before the Peshawar High Court Peshawar against your termination order which was dismissed by the Hon'ble Court vide its judgment dated 26-02-2014, being not entertainable. Subsequently, you challenged the said judgment before the Supreme Court of Pakistan vide C.P No.551 of 2014 and the apex court vide Order dated 28-04-2014 disposed off the said Civil Petition in terms that in the event of filing the appeal, the Service Tribunal shall decide the appeal as mandated in law.

4. AND WHEREAS, you also filed Service Appeal No.868/2014 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was also disposed off vide its judgment dated 30-12-2015, with the direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing.


5. AND WHEREAS, you were given the opportunity of being heard on 08-02-2016 and material on record perused. It revealed that your appointment as Steno typist was effected in sheer violation of the provisions contained in the K.P Civil Servants Act, 1973 and the rules made there-under. The then Chief Engineer (South) PHE abused his powers while grabbing the authority vested in the K.P Public Service Commission.

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Even C.E (South) PHE was not competent to make your appointment on adhoc basis for want of NOC from the K.P Public Service Commission, advertising the post as per prescribed procedure, observing merit, zonal allocation and mandatory recommendations of the Departmental Selection Committee. As such, your appointment as Steno typist PHE stands void ab-initio and ultra-vires of the provisions contained in the law/rules/policy ibid. Hence, your termination order dated 14-02-2014 by the competent authority is quite legal, lawful, valid and does not require any review, modification or setting aside whatsoever by the appellate authority.

6. NOW THEREFORE, after having considered the material on record & your explanation during personal hearing held on 08-02-2016, your facts appealed against the C.E (South) PHE Office Order dated 14-02-2014 have not been established and in exercise of the powers as Appellate Authority, conferred under the K.P Civil Servants (Appeal) Rules, 1986 and all other such powers in this behalf, your departmental appeal is hereby dismissed for the reasons mentioned in Para-5 supra.


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(NIZAM-UD-DIN) 03/03
SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

ENDST: NO & DATE AS ABOVE:

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.29/ST, dated 05.01.2016 for information.
2. Senior Govt Pleader, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.(SR.GP)E&AD/1-5/Lit/Appeal/2013/492-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.


SECRETARY TO 03/03
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

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**OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGINEERING DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR**

Ph# 091-9213720 Fax# 091-9210228

No. 34 / G-4-AST / PHE,

Dated Peshawar, the 27 / 01 / 2016

To,

Mr. Shah Khalid S/o Waffadar Khan (868/2014)
Village & P/o Box Dagai, Tehsil & District Swabi

Subject: **APPEAL NO.723/2014, TITLED "SYED MUHAMMAD AHSAN SHAH
& 30 OTHERS VERSUS PHED.**

In light of Judgment of Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar dated 30.12.2015, the worthy Secretary PHED (appellant authority) vide his No.SO(Estt)/PHED/1-90/2015-16/Appeals dated 27.01.2016 has desired to direct you to submit departmental appeal to appellant authority and also appear for personal hearing on **08.02.2016** at 1030 hours so that decision on your departmental appeal is accorded in stipulated period fixed by honourable Service Tribunal Khyber Pakhtunkhwa Peshawar.

ATTESTED
[Signature]
Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt: of Khyber Pakhtunkhwa, PHED, Peshawar with reference to above for information please.
2. The Registrar, Service Tribunal Khyber Pakhtunkhwa with reference to his letter No.29/ST dated 05.01.2016, received in this office on 14.01.2016 for information, please.
3. The Senior Govt: Pleader, Service Tribunal Khyber Pakhtunkhwa Peshawar with reference to his letter No.(Sr.GP)E&AD/1-5/Lit/Appeal/2013/492-95, dated 06/01/2016 for Information please.

Chief Engineer (South)

Annexure I (40)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the November 05, 2001.

ORDER

~~NO. SO(E)W&S(C&W)13-2/2000~~ Consequent upon the merger of defunct Public Health Engineering, Physical Planning and Housing and Communication & Works Departments into Works & Services Department vide Notification No. SO(O&M) E&AD/8-16/2000, Dated ~~01-08-2001~~, the Governor NWFP is pleased to approve the formation of its two establishments of Frontier Highways Authority and Chief Engineer Works & Services, and accordingly the offices of Chief Engineers North and South (C&W Department) and Chief Engineer PHED stand abolished with immediate effect.

BRIGADIER (RRTD)
SAIFDAR HUSSAIN AWAN
SECRETARY

~~ENDST. NO. SO(E)W&S(C&W)13-2/2000~~ Dated Peshawar, the Nov 05, 2001.

Copy forwarded to the:-

- 1) All Administrative Secretaries in NWFP, Peshawar.
- 2) Secretary, NWFP, Public Service Commission, Peshawar.
- 3) Secretary to Governor, NWFP, Peshawar.
- 4) HQ PMOS C/O HQrs Engineers 11 Corps Peshawar Cantt.
- 5) Accountant General, NWFP, Peshawar.
- 6) All Additional Secretaries/Deputy Secretaries and S.Os in Works & Services Department.
- 7) All DCOs in NWFP.
- 8) All heads of Attached Departments in NWFP.
- 9) All heads of Autonomous/Semi Autonomous Bodies in NWFP.
- 10) The Registrar, Peshawar High Court, Peshawar.
- 11) Director Information NWFP, Peshawar.
- 12) Manager, Government Printing Press, Peshawar.
- 13) All P.Ss to Provincial Ministers, NWFP, Peshawar.
- 14) P.S. to Secretary W&S Department.

(15) A.G. PR. Peshawar

P.F.
08/11/01

(SYED HIDAYAT JAN)
SECTION OFFICER (ESTABLISHMENT)

ATTESTED
SM

Dated Peshawar, the March 22, 2005

NOTIFICATION

No. SO(E)W&S/13-1/77: The competent authority is pleased to order the declaration of provincial cadre posts of BPS-1 to BPS-15 of the Works & Services Department as district cadre posts with immediate effect on the following terms and conditions:-

- 1) Permanent transfer to the districts will be made on domicile and seniority basis.
- 2) In case the personnel of that particular district being more than the sanctioned strength, the deployment will be on the basis of seniority and the junior most over-flow will be posted temporarily to the other districts of the province till such time vacancies occur in the districts of their domicile.
- 3) All such employees of the above status working in FATA but belonging to settled districts will be adjusted as per their seniority in the relevant cadre and the over-flow will continue working in FATA till such time vacancies occur in their districts of domicile.
- 4) The domicile of the female officials will be counted under the wedlock policy and such employees will be given one time, irreversible choice to opt for the districts of their spouse or their own. In case of spouse being a government employee and his transfer to another district, inter-district transfer of the female officials will be allowed subject to availability of vacancy in the desired district.
- ✓ 5) Subsequent to the permanent transfer of all BPS-15 and below staff to the districts, further transfers and service matters including appointments, within the districts, shall be made by the District Government in light of the District Government Rules of Business, 2001.
- 6) All cases of transfers from one district to another will be decided and ordered upon by the Secretary W&S Department as per rules / policy.
- 7) Seniority for the purpose of promotion to the posts of provincial cadre will be maintained at Secretariat level.

It is further to mention here that the district governments will deal with the cases of these employees as per clause 6(B) of District Government Rules of Business. They (the District Govt.) will also adopt a mechanism in such a manner that their inter-se-seniority is not affected.

S E C R E T A R Y

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[Signature]

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No. SOR II (E&AD) (20/98) VII
Provincial Cadre Posts in P.S.I.S. and bel.
District Cadre Posts with in the
The Governor

No. SO(E)W&S/13-1/77:

Dated

Copy forwarded to the:-

- 1) Accountant General NWFP Peshawar.
- 2) Secretary to Chief Minister NWFP, for information.
- 3) Chief Engineer, Works & Services Peshawar.
- 4) All District Coordination Officers in NWFP.
- 5) Chief Engineer (FATA), W&S Peshawar.
- 6) All Executive District Officers W&S in NWFP.
- 7) PS to Secretary W&S Department.
- 8) O/O File.

Shafiqur Rahman
(SHAFIQUR SHAH)
SECTION OFFICER (STP-II)

25/13

ATTACHED

MS

It is
governments will
clause 6(B) of Dis
District Govt.) will
their inter-se-union

Copy for

(NWFP)

No.SOR-V(E&AD)1-368/2005(SE)
Dated Pesh: the 2nd May, 2007.

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Annex-II

NWFP Public Service Commission
03 MAY 2007
DIARY NO. 2543

To

✓ The Secretary,
NWFP Public Service Commission,
Peshawar.

SUBJECT:- REQUISITION FOR FILLING IN THE 20 VACANT POSTS OF SUB-ENGINEERS (B-11) IN THE WORKS & SERVICES DEPARTMENT.

Dear Sir,

I am directed to refer to the letter of Works & Services Deptt. bearing No.SOW&S/11-268/2005 dated 26-09-2005 (copy enclosed) on the above cited subject and to state that the requisition made by the Works & Services Department for filling in the above captioned 20 posts of Sub-Engineers (BS-11) may kindly be considered as withdrawn.

Yours faithfully,
[Signature]
(MUSHARAF KHAN)
SECTION OFFICER (Reg-V).

Encls: (As-above).

Endst: of even No & Date.

Copy for information is forwarded to:

1. Secretary to Govt. of NWFP Works & Services Department, Peshawar.
2. Addl: Secretary (Estt), Establishment Deptt: Government of NWFP.

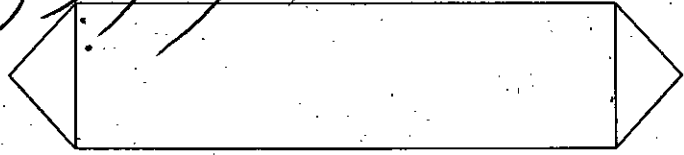
D/A. Pl. put up the requisition
4/5
D/S
DS-1/18

SECTION OFFICER (Reg-V).

ATTES EU

[Signature]

بعدالت سندھ سٹیٹ بینک نزل ۱۴۲۱ھ



Appellant مورخہ
عنوان ۱۴۲۱ھ مقدمہ
و غیرہ دعویٰ
بنام شہ خالد جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام شہید کیلئے شہید خان یوسف خان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

المرقوم ۸ ماہ السہیل ۲۰۱۶ء

العہدہ گواہ العہدہ

کے لئے منظور ہے۔

مقام

**BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.**

Service Appeal No.

379/2016

Mr. Shah Khalid S/O Wafadar
Ex-Steno Typist, PHE Division Mardan

..... (Appellant)

Versus

1. Chief Secretary to Govt: of Khyber Pakhtunkhwa Civil Sectt: Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
3. Chief Engineer Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.

...Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 TO 3

Respectfully stated

Para-wise comments of the Respondent 1 to 3 are as under:-

PRELIMINARY OBJECTIONS.

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

BRIEF HISTORY

A writ petition bearing No W.P 271-P/2013 was filed by Mr. Mushtaq Ahmad, etc, for extending benefits of regularization, before the Peshawar High Court order, Peshawar and the same was declined by the Peshawar High Court, (Copy of the judgment dated 2.10.2013 is annexed as **Annexure-I**). The said petitioners then moved a Civil Petition No 2026 and 2029 of 2013 before the August Supreme Court of Pakistan. Though the August Supreme Court of Pakistan dismissed the same and directed the department to finalize the action against the illegal appointees within one month, vide judgment dated 15.1.2014 (**Annexure-II**) and subsequent reminder dated 07.02.2014 (**Annexure-III**). The appellant was appointed from a list submitted by Political Secretary to then Chief Minister Khyber Pakhtunkhwa (**Annexure-IV**). Upon completion of the legal formalities i.e. issuance of Show Cause Notice etc, the action was taken against the appellant.

ON THE FACTS.

- (1) Incorrect. The appellant was illegally appointed through a list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa without recommendation of Public Service Commission, test interview and advertisement. The appointment of Steno Typist BPS-12 is in purview of Public service Commission. The Chief Engineer was not authorized to appoint the appellant.
- (2) Denied as drafted as one wrong or any number of wrongs cannot be made bases to justify an illegal action. The post of Steno Typist BPS-12 comes in the purview of Public Service Commission according to the Public Service Commission Ordinance and ESTA Code, (Copy of the Public Service Commission Ordinance and the concerned rules of the ESTA code and recruitment policy is attached as **ANNEXURE V, VI & VII**), therefore, the then Chief Engineer was not competent to appoint the Appellant. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgment dated 30/05/2016 (**ANNEXURE-VIII**).

Upon the direction of the August Supreme Court dated 15.1.2014 and subsequent reminder dated 07.2.2014 and on completion of legal formalities, the appellant was removed from service after issuance of show cause notice.

- (3) incorrect. On the direction of apex court order dated 15.1.2014 and subsequent reminder dated 07.2.2014 proper show cause notice issued to all illegally appointees including the appellant. As the appellant was illegally appointed contrary to all prevailing rules/procedure i.e. recommendation of Public Service Commission, test interview. There was no weight age in his reply of show cause notice hence terminated.
- (4) Incorrect. In the advice of the Establishment Department it has clearly been mentioned that appointment is in the purview of Public Service Commission (**ANNEXURE-X**). In light of advice of the Establishment Department, Public Service Commission Ordinance, ESTA Code, recruitment policy, after giving opportunity of show cause notice the appellant was terminated being illegally appointed. Further to above in light of advice of Establishment Department proceeding against the then Chief Engineer and other DPC members has been initiated (**ANNEXURE-X**).
- (5) Denied as drafted. A show cause notice was issued to the appellant but the same was never replied in stipulated time, hence the termination order was validly issued, as the appellant was not come in the category of civil servant. The appellant was illegally appointed and the department was in the obligation to take action, on the direction of the August Supreme Court, against such illegal appointees, in letter and spirit.
- (6) Pertain to record hence no comments.
- (7) Correct to the extent that the case was remanded by the Service Tribunal to the department for giving opportunity to the appellant for departmental appeal and personal hearing which was accordingly given to the appellant in the stipulated period. The appellant authority rejected the departmental appeal having no merit and weight age in his departmental appeal. The illegally appointed has not right of retain in service.

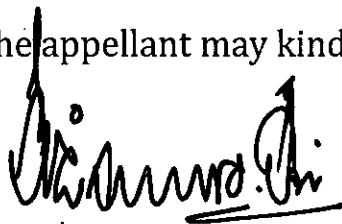
- (8) Denied as drafted. The appellant including the other 31-Nos illegally appointed from the list provided by the Political Secretary to then Chief Minister, contrary to all prevailing rules without recommendation of Public Service Commission, test interview. The advertisement was made for short period on contract basis, but the appellant was appointed on regular basis. There was no merit/weight age in reply of the appellant, hence departmental appeal was rejected by the appellant authority on merit and according to rules.

GROUNDS

- (A) Incorrect. The appellant was illegally appointed contrary to all prevailing rules/procedures. The impugned order has been issued on the direction of Supreme Court of Pakistan for finalizing action against all such illegal appointees vide order dated 15.1.2014 and subsequent reminder dated 07.2.2014. Fact is that the appellant was illegally appointed without test, interview and merit and without recommendation of Public Service Commission.
- (B) Incorrect. No discriminatory treatment has been meted out with the appellant. Since promulgation of Public Service Commission Ordinance all the posts of Steno Typist have been filled through the recommendation of Public Service Commission. One wrong if made in the past cannot be referred as precedent for doing another wrong. According to ESTA Code Advertisement, test/interview for any vacancy is compulsory, statement of the appellant is totally false and may be considered as confessional statement of wrong doing in case of his recruitment.
- (C) Incorrect. The appellant was not a regular civil servant appointed through back door contrary to prevailing rules/procedures. As such the appellant name was never included in the seniority list and never the appellant objected the seniority, service cannot be protected.
- (D) Incorrect. The appellant was illegally appointed by unlawful authority contrary to all prevailing rules/procedures and was not come in category of civil servant. As such the appellant service cannot be protected.

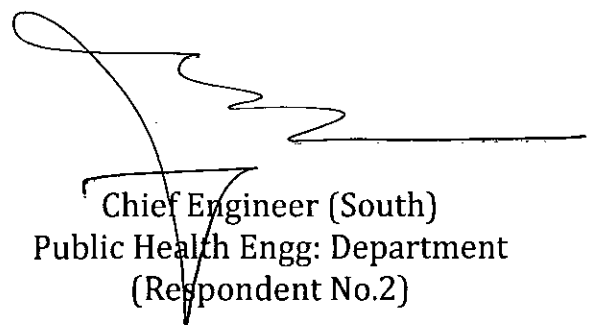
- (E) Incorrect. There is no malafide of the respondent. The respondent take action correctly in the light of direction of the Apex Court against the appellant who was illegally appointed, contrary to all prevailing rules/procedures.
- (F) Incorrect. The appellant misconceived the judgment of Apex Court. The appellant was illegally appointed without the recommendation of Public Service Commission, test/interview and advertisement. In light of direction of Apex Court dated 15.1.2014 and subsequent reminder dated 7.2.2014 to take action against illegally appointees the appellant being illegally appointed was terminated.
- (G) As above.
- (H) Incorrect. Illegally appointees has create no legal right to retain in service. As one wrong cannot be justified for another wrong. The appellant was given opportunity of show cause notice, but the appellant failed to produce legal documents regarding his legality of his appointment.
- (I) Incorrect. The appellant was illegally appointed contrary to rules and procedures without recommendation of Public Service Commission as the appointment of Steno Typist come in purview of Public Service Commission Ordinance, ESTA code and recruitment policy. The illegal appointees has no legal rights to retain in service.
- (J) The respondent seeks leave of this Honourable Tribunal to raise additional grounds and proof at the time of arguments.

In this case article 25 of the constitution has been violated by not giving equal right of opportunity to the citizen of the Khyber Pakhtunkhwa and FATA having the requisite Qualification zonal allocation formula has been violated. Appointment of the appellant is without lawful authority and of no legal effect. It is therefore humbly prayed that in view of the above written reply, the appeal of the appellant may kindly be dismissed with cost.



Secretary

to Govt of Khyber Pakhtunkhwa
Public Health Engg: Department
(Respondent No.1)



Chief Engineer (South)
Public Health Engg: Department
(Respondent No.2)

**BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.**

Service Appeal No.

379/2016

Mr. Shah Khalid S/O Wafadar
Ex-Steno Typist, PHE Division Mardan

..... (Appellant)

Versus

1. Chief Secretary to Govt: of Khyber Pakhtunkhwa Civil Sectt: Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
3. Chief Engineer Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.

...Respondents

AFFIDAVIT

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


DEPONENT



**GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT**

No.SO(Estt)/PHED/4-1/2007
Dated Peshawar, the August 28, 2014

To

The Chief Engineer (South),
PHE Khyber Pakhtunkhwa Peshawar

Subject:

Recruitment to the Five (05) Leftover posts of Junior Scale Stenographers (BPS-14) in Public Health Engineering Department (ADVT: No.01/2013 S.No.81).

I am directed to refer to the subject noted above and to forward herewith a copy of the Director Recruitment, Khyber Pakhtunkhwa Public Service Commission Peshawar letter No.K.P.K-PSC-SR-I/70299 dated 20.08.2014 alongwith original application forms & other relevant documents in respect of the following four recommendees of the Public Service Commission for appointment against the subject cited posts, for favour of further necessary action, under intimation to this department and all concerned:-

S.No	Name with Father's Name	Domicile/Zone
1.	Amar Ullah S/o Sher Zaman	FR Bannu/1
2.	Aamir Shahzad S/o Shair Mohammad Tanoli	Manshera/5
3.	Burhan Hassan S/o Jabir Hussain	Kurram Agency/1
4.	Asad Ullah S/o Muhammad Ullah	Dir/3


SECTION OFFICER (ESTT)

ENDST: NO & DATE AS ABOVE:

Copy is forwarded for information to the:-

1. Director Recruitment, Khyber Pakhtunkhwa Public Service Commission Peshawar w/r to his letter quoted above.
2. PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar.

PHED Deptt: (South)
2347
29/8/14
CERHE (3)
HQ.

*A.O
offer appointment
be referred to them immediately*


SECTION OFFICER (ESTT)



Dated: 20/8/14

To

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

Subject: RECRUITMENT TO THE FIVE (05) LEFTOVER POSTS OF JUNIOR SCALE STENOGRAPHER (BPS-14) IN PUBLIC HEALTH ENGINEERING DEPARTMENT. (ADVT: NO.01/2013.S.NO.81).

Dear Sir,

I am directed to refer to your letter No: SO(Estt)/PHED/4-1/2007/ Stenographers dated 20.12.2010 on the subject noted above and to state that the Commission recommends the following four (04) candidates to Government for appointment against the subject cited posts:-

S.No.	Name with Father's Name	Domicile/Zone
01	Amar Ulah S/O Sher Zaman	F.R Bannu/1
02	Aamir Shahzad S/O Shair Muhammad Tanoli	Mansehra/5
03	Burhan Hassan S/O Jabir Hussain	Kurram Agency/1
04	Asad Ullah S/O Muhammad Ullah	Dir/3

2) Recommendation in favour of the recommendees is provisional subject to their medical fitness and verification of domicile/ testimonials by the Department.

The inter-se-merit of the selectees will be communicated later on.

Upto date zonal state will be as under:-

	Zone-1	Zone-2	Zone-3	Zone-4	Zone-5	Total
Share:	02	02	02	01	01	08
Adjusted:	02	02	01	01	01	07
Balance:	-	-	01	-	-	01

5) Recommendation of one (01) candidate hailing from Zone-3, is being kept pending for want of vital deficient documents.

6) Original applications (with enclosures) of the above four (04) recommendees are enclosed herewith for your record. Please acknowledge receipt.

Yours faithfully,

(GHULAM DASTAGIR AHMAD)
 DIRECTOR RECRUITMENT

These three
 re noted?

INC.

~~Discussed~~
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 Discussed
 DS (Ahmad) 25/8

urgent up
 but up

20/8/14

Diary No. 8265
 25/8-2014

(23)

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

No. 03 / E-4 / PHE
Dated Peshawar, the 19 / 04/2012.

OFFER OF APPOINTMENT

1 On the recommendation of the Khyber Pakhtunkhwa Public Service Commission and in pursuance of provision contained in Sub Section (2) of Section-19 of the NWFP Civil Servants Act, 1973 as amended by the NWFP Civil Servants (Amendment) Act, 2005 the Competent Authority is pleased to offer the post of Computer Operator in the offices noted against each to the following candidates in BPS-12 (Rs.7000-500-22000) subject to the Terms & Conditions mentioned below

S.NO	Merit No	Name with Fathers Name	Domicile/Zone	Place of posting
1	04	Mr. Abdul Salam S/O Feroz Khan	F.R Peshawar/1	Office of S.E. PHE Circle Kohat.
2	01	Mr. Waqas Ahmad S/O Riaz Ahmad	Peshawar/2	Office of CE (S) PHE D Peshawar.
3	06	Mr. Fazal Karam S/O Dil Bar	Swat/3	Placed at the disposal of CE (N) PHE D Peshawar for further posting
4	09	Mr. Saif Ullah S/O Ghani-Ur-Rehman	Lakki Marwar/4	Office of XCN PHE Division Hangu
5	05	Mr. Zia Khurshid S/O Khurshid Ahmed Khan	Abbottabad/5	Placed at the disposal of CE (N) PHE D Peshawar for further posting.

TERMS & CONDITIONS

- (a) They shall, for all intents and purposes, be civil servant except for purpose of pension or gratuity. In lieu of pension and gratuity, they shall be entitled to receive such amount contributed by them towards contributory provident fund (C.P.F) alongwith the contributions made by Government to their account in the said fund, in the prescribed manner.
- (b) They shall be governed by the NWFP Civil Servant Act 1973 and all the laws applicable to the civil servants and rules made there under.
- (c) They shall initially, be on probation for a period of one year extendable upto two years.
- (d) Their employment in the Public Health Enng: Department is purely temporary and their services are liable to be terminated without assigning any reason at fourteen (14) days notices or on the payment of 14 days salary in lieu of the notice. In case they wish to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.

(Contd; on page-2)

(e) They shall produce a Medical certificate of fitness from Medical Superintendent before reporting for duty as required under the rules, if they are not already in Govt Service.

(f) They have to join duty at their own expenses.

(g) Their inter-see-seniority will be reckoned as per merit assigned by the Khyber Pakhtunkhwa Public Services Commission.

2. In case the above terms & conditions are acceptable, an UNDERTAKING to this effect on Bond worth Rs.30/- signed and duly attested by the Oath Commissioner should be produced to this Department within a fortnight's period on joining the services without fall.

3. If they accept the post on the aforesaid conditions, they should report to relevant above offices of PHE Department within a month of the receipt of offer & produce original certificate for scrutiny & record.

(ENGR:GHULAM MUJTABA)
CHIEF ENGINEER (S)

Copy forwarded to the:-

- 1 Secretary to Govt Khyber Pakhtunkhwa Public Health Engg: Deptt: Peshawar w/r to his office No.SO(Estt)/PHE D/MISC/2009 dated 14-4-2012.
- 2 Secretary Khyber Pakhtunkhwa Public Services Commission. Fort Road, The Mall Peshawar with reference to his memo No.KPK/PSC/SR-VI/018846 dated 10-04-2012
- 3 The Accountant General Khyber Pakhtunkhwa Peshawar.
- 4 The Chief Engineer,(N) Public Health Engg: Deptt: Peshawar.
- 5 The Superintending Engineer, Public Health Engg: Circle Kohat.
- 6 The Executive Engineer, Public Health Engg: Hangu.
- 7 The District Accounts Officer Kohat/Hangu.
- 8 Principal Govt: High School Rajoya Abbottabad. If the official accepts the terms and conditions as stated above, then re-lieve the official and submit the Service Book P/file LPC etc of Mr.Zia Khurshid S/O Khurshid Ahmad Khan for this office record.
- 9 Mr. Abdul Salam S/O Feroz Khan Village Kwal Gul, Ali Khel P/O Sher Kera Tehsil & Distt: Peshawar.
- 10 Mr. Waqas Ahmad S/O Riaz Ahmad H.No.2094, Near, Govt High School No.4 Kakshal Peshawar.
- 11 Mr. Fazal Karam S/O Dil Bar P.O & Village Fatehpur Mohallah Saleem Abad Tehsil Khwazakheal, Distt: Swat.
- 12 Mr. Saif Ullah S/O Ghani-Ur-Rehman Mohallah Haqdadabad C/O Gul Muhammad Shop District Lakki Marwat.
- 13 Mr. Zia Khurshid S/O Khurshid Ahmad Khan Mohallah Salmanzoi Village & P.O Rajoya Abbottabad.
- 14 Personal file of the official.

CHIEF ENGINEER (S)

ATTESTED
EXAMINER
Peshawar
20 FEB 2014

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20 FEB 2014

IN THE PESHAWAR HIGH COURT, PESHAWAR

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR:
JUDICIAL DEPARTMENT

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

JUDGMENT

Date of hearing: 2.10.2013.

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

Respondent/*M. J. Khan*

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

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

TESTED
EXAMINER
Peshawar High Court
20 FEB 2014

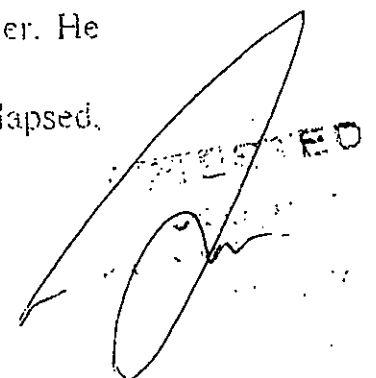
the adhoc/contract employees of the Province were regularized, however, the same benefit was not extended to the petitioners. Moreover, services of some six Sub-Engineers have been regularized after appointment of the petitioners. The petitioners preferred an application/appeal to the competent authority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

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

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

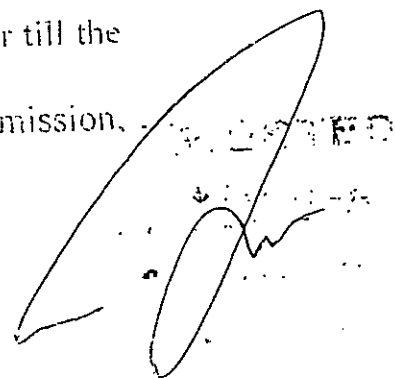
4. Learned AAG controverted the arguments from other side and straight away referred to the advertisement dated 23 April 2010 against which the petitioners were appointed as Sub-Engineers, wherein it was clearly mentioned that the term of appointment would be on adhoc basis for one year or till the arrival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



which is followed by re-appointment of the petitioners for further one year and the recommendees of the Public Service have come and appointed, therefore, the services of the petitioners were rightly not regularized. He maintained that no similarly placed persons have been regularized rather their services have been dispensed with, hence question of discrimination does not arise. He maintained that presently there is no vacant post available in the concerned department against which the petitioners can be adjusted/regularized. Lastly, he contended that the instant petition is not maintainable keeping in view the facts and circumstances of the case hence prayed for dismissal of the same on the above grounds.

We have heard learned counsel for petitioners and learned AAG for respondents and gone through the record available before us.

5. Admittedly, the respondents in order to fill up the vacant posts of Sub-Engineers floated advertisement in Daily Mashiq Feshawar in its issue dated 23rd April, 2010, wherein applications were asked from desiring candidates for appointment against the said posts, however, it was mentioned that the term of appointment against the post in question would be for one year and on adhoc basis or till the arrival of recommendees of Public Service Commission.

A handwritten signature in black ink is written over a circular official stamp. The stamp contains some illegible text, possibly a date or a reference number.

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

6. The petitioners are taking the shelter behind Act No XVI of 2009 and can be pressed into service in case of those adhoc employees, who were holding the posts on 11th December, 2008 or till the commencement of the Act, which is not the case in hand, therefore, the plea taken is of no help to them. Moreover, the learned AAG produced a copy of the letter dated 1.7.2013 showing that those employees, who were retained by the respondent/department have also been terminated after the arrival of candidates from Public Service Commission.

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

Sd/- Nisar Hussain Khan - J
Sd/- Ms. Musarrat H. Qureshi - J

CERTIFIED TO BE TRUE COPY
Examiner
Cashwar High Court
Authorized Signatory
The Cantonment
FEB 2014

20-02-14

RECORDED

56

ANNEXURE - ~~10/11~~

24

PE: 9082235
Fax: 9220406

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

Islamabad, dated 16/11/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

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

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

Dear Sir,

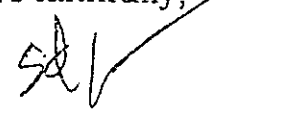
I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 dismissing the above cited civil petitions with directions for information and further necessary action.

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

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

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

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

Encl: Order

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

26

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

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

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

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13).
...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

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

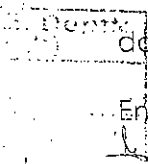
For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

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

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



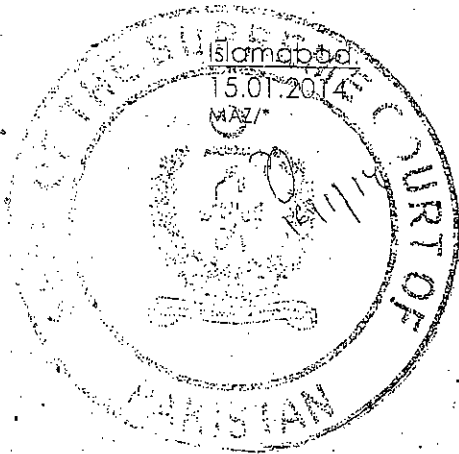
ATTESTED

[Handwritten Signature]
Superintendent
Supreme Court of Pakistan
Islamabad

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

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

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



Certified to be True Copy

Supintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Words: 600

No. of Folios: 6

Requisition Fee Rs: 5.00

Copy Fee in: 3.12

Court Fee stamps: 8.22

Date of Completion of Copy: 18-1-14

Date of delivery of Copy: 18-1-14

Compared by: [Signature]

Received by: Zahid Jamali

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Chief Engineer,
Public Health Engineering Department,
Khyber Pakhtunkhwa,
Peshawar.

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

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

Dear Sir,

In continuation of this Court's letter of even number dated
16.01.2014, I am directed to say that while dismissing as time barred the above
cited civil petition on 15.01.2014, this Hon'ble Court was pleased to direct as
under:-

"...2. So far as some other illegalities in the
appointments brought to our notice is concerned, in
response to our earlier order dated 09.01.2014, Mr.
Sikandar Khan, Chief Engineer, Public Health
he states that although many other illegal appointees
in his department have been removed from service,
but against many other such action is in process at
various stages and they are still in service.

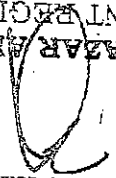
3. In view of the above statement, he is directed
to finalize the action against such illegal appointees
within one month from today and submit his report
through Registrar of this Court. In case, he faces any
difficulty in this regard, those difficulties may also be
brought to our notice so that appropriate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

Accordingly, a certified copy of the Order was sent to you vide letter
referred above for immediate necessary action and report compliance but no
compliance report in this regard has been received so far from your end.

Contd: P/2

Kaami/**

(MAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR



Yours faithfully,

Jeffery J. ...
to
to

dt. 16.01.2014

You are, therefore, required to submit requisite compliance report
enabling this office to place the same before Hon'ble Court.

132

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(23)

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

No. 03 K-4-A/H/PHE

Dated Peshawar, the 17 /02/2014

To

The Registrar,
Supreme Court of Pakistan,
Islamabad

Subject: Civil Petition Nos. 2026 & 2029 of 2013.

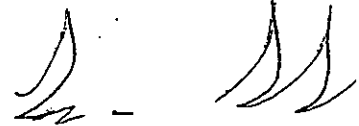
Mushtaq Ahmed & another in C.P. 2026/2013
Muhammad Nasir Ali & Others in C.P. 2029/2013
Versus

Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others

Reference: No. C.P. 2026 & 2029 of 2013 - SCJ dated 16.1.2014

In light of direction of honourable Supreme Court of Pakistan order dated 15.1.2014 action against illegally appointees in Public Health Engg: Department Khyber Pakhtunkhwa has been finalized. Services of the 24-Nos Sub Engineers, 6-Nos Seno typist/Stenographer and 2-Nos Data Entry Operator who were appointed without advertisement and recommendation of Public Service Commission have been terminated. List attached for your good self perusal please.

DA/As above

ok 
Chief Engineer (South)

LIST OF ILLEGAL APPOINTEES IN PUBLIC HEALTH ENGG:
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

A. 24-Nos SUB ENGINEERS


- | | |
|-------------------------------|---------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad Khan | Sub Engineer, |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman | Sub Engineer, |
| 10. Mr. Salim Nawaz | Sub Engineer, |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Ishfaq | Sub Engineer, |
| 14. Mr. Abdul Shahid | Sub Engineer, |
| 15. Mr. Kashif Raza | Sub Engineer, |
| 16. Mr. Waqas Ali | Sub Engineer, |
| 17. Mr. Muslim Shah | Sub Engineer, |
| 18. Mr. Ishtiaq Ahmad | Sub Engineer, |
| 19. Mr. Zuhib Khan | Sub Engineer, |
| 20. Mr. S. Hassan Ali | Sub Engineer, |
| 21. Mr. Mohsin Ali | Sub Engineer, |
| 22. Mr. Muqtada Qureshi | Sub Engineer, |
| 23. Mr. Ishfaq Ahmad | Sub Engineer, |
| 24. Mr. M. Qaiser Khan | Sub Engineer, |

B. 6-Nos STENO TYPIST/STENOGRAPHERS

- | | |
|---------------------|----------------------------|
| 1. Mr. Nomanullah | Senior Scale Stenographer, |
| 2. Mr. M. Jamil | Steno Typist, |
| 3. Mr. Iftikhar | Steno Typist, |
| 4. Mr. Shah Khalid | Steno Typist, |
| 5. Mr. Aziz Ullah | Steno Typist, |
| 6. Mr. Farhan Ullah | Steno Typist, |

C 2-Nos DATA ENTRY OPERATOR

- | | |
|------------------------|------------------|
| 1. Mr. Farman Ali | Data E/Operator, |
| 2. Mr. Murtaza Qureshi | Data E/Operator, |


Chief Engineer (South)

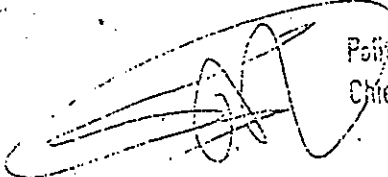
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Subject: - APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOYPIST & DEO. (24)

It has come in to the notice of Honourble Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenotypists & DEO are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE, on more than one occasions, it was told that the posts of BPS-10 and above are to be filled through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments.

In view of above, the Honourble Chief Minister NWFP, has been pleased to direct to consider the application of the following personnels for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite codal formalities if any will be accorded by the competent authority at due course of time separately:-

<u>S.No</u>	<u>Name of Applicant</u>	<u>Name of Post</u>
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M. Hassan Shah District D.I.Khan	-do-
4.	Mr. S.M Ali Sajjad S/O S. Abid Hussain Shah District D.I.Khan.	-do-
5.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
6.	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
7.	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
9.	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
10.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
11.	Mr. S. Ashfaq Ahmad S/O S. Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jafil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/o S. Abid Hussain District D.I.KLhan.	-do-
18.	Mr. Waqas Ali S/O Farzad Ali District Nowshera.	-do-
19.	Mr. Muslim Shan S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S. Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gul District Mardan.	Stenotypiest
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	-do-
27.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaz S/O Afsar Ali District Peshawar	D.E.O



Political Secretary to
Chief Minister NWFP

WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

AND WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

AND WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

AND WHEREAS the Government of the North-West Frontier Province has been pleased to pass the following Ordinance...

ORDINANCE

AN

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

ORDINANCE, 2002

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

Enacted by the Government of the North-West Frontier Province on the 9th August, 2002.

9th August, 2002

NOTIFICATION

LAW DEPARTMENT

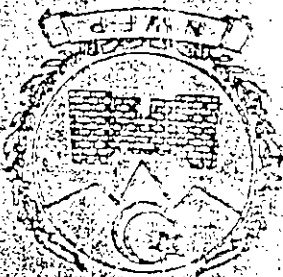
GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE

GOVERN

SHAWAR, FRIDAY, 9TH AUGUST, 2002

Published by Authority

North-West Frontier Province



GOVERNMENT

ENACTED

SECRETARY

SECRETARY

Amex - V

On receipt of the report of the Commission...
The Commission shall take the following steps...
1. The Commission shall...
2. The Commission shall...
3. The Commission shall...
4. The Commission shall...
5. The Commission shall...
6. The Commission shall...
7. The Commission shall...
8. The Commission shall...
9. The Commission shall...
10. The Commission shall...
11. The Commission shall...
12. The Commission shall...
13. The Commission shall...
14. The Commission shall...
15. The Commission shall...
16. The Commission shall...
17. The Commission shall...
18. The Commission shall...
19. The Commission shall...
20. The Commission shall...

35 N-W.F.P. GOVERNMENT GAZETTE EXTRAORDINARY 5th AUGUST, 2002

1 Short title and commencement. (1) This Ordinance may be called the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

2 Amendment of section 3 of N.W.F.P. Ord. No. XI of 1978. In the North-West Frontier Province Public Service Commission Ordinance, 1978, hereinafter referred to as the said Ordinance, in section 3—

(a) in sub-section (3), the full stop appearing at the end shall be replaced by a colon and thereafter the following proviso shall be inserted, namely:—
"Provided that a serving member of the Commission may be appointed as Chairman for a term not exceeding the un-expired portion of his term as such member."
in sub-section (4), the words and figure "and has been retired in base pay scale 20 or above" shall be added after the word "years" appearing at the end.

3 Amendment of section 4 of N.W.F.P. Ord. No. XI of 1978. In the said Ordinance, in section 4, for sub-section (1), the following shall be substituted, namely:—
(1) A member of the Commission shall hold office for a term of five years from the date on which he enters upon office and shall not be eligible for re-appointment.

4 Insertion of new section 4A to N.W.F.P. Ord. No. XI of 1978. In the said Ordinance, after section 4, as so amended, the following new section 4A shall be inserted, namely:—
"4A. Oath of office.—Before entering upon office, the Chairman and a member shall take oath in the form set out in the Schedule to this Ordinance, before the Governor in the case of a member, and before the Chairman in case of a member."
Insertion of new section 5 to N.W.F.P. Ord. No. XI of 1978. In the said Ordinance, for section 5, as so amended, the following shall be inserted, namely:—
"5. Ineligibility for further employment.—On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan."

5. Insertion of new section 6 to N.W.F.P. Ord. No. XI of 1978. In the said Ordinance, for section 6, as so amended, the following shall be inserted, namely:—
"6. Ineligibility for further employment.—On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan."

6. Ineligibility for further employment.—On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan."

(2)

- (b) to advise the Governor—
 - (i) on matters relating to qualifications for, and method of recruitment to, services and posts referred to in clause (a);
 - (ii) on the principles to be followed in making—
 - (1) initial appointments to the services and posts referred to in clause (a);
 - (2) appointments by promotion to posts in BPS-17 and above and
 - (3) transfer from one service to another, and
- 1 Civil Secretariat (through Establishment Department)
 - 2 Board of Revenue
 - 3 Police Department
 - 4 Prison Department
 - 5 Services and Works Department
 - 6 Irrigation Department
 - 7 Industries, Labour and Manpower Department
 - 8 Health Department
 - 9 Education Department
 - 10 Local Government and Rural Development Department
 - 11 Excise and Taxation Department
 - 12 Food Department
 - 13 Physical Planning and Environment Department including Urban Development Board; and
 - 14 Organizations, except autonomous bodies, under the Health and Education Departments.

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

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

(4)

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

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

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

(i) posts in the Governor's House;

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

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

7. **Insertion of section 10A of Ordinance XI of 1978.**—In the said Ordinance after section 10, the following new section shall be inserted, namely:

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

8. **Addition of Schedule to the N.W.F.P. Ordinance XI of 1978.**—In the said Ordinance, the following Schedule shall be added at the end, namely:

SCHEDULE
(Section 4A)

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

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

Peshawar,
Dated the 6th August, 2002

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

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

Printed by the Controller
Pig. & Staty. Dept., NWFP Pesh.

(23)
Annex - V

ESTA CODE

(Establishment Code)

Khyber Pakhtunkhwa

Rs. 875

Law Books Publishers

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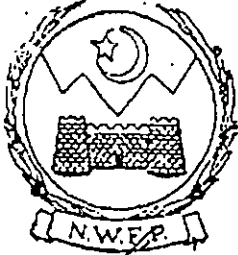
ESTA CODE [Establishment Code Khyber Pakhtunkhwa]

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

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

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

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



To

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

(REGULATION WING)

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

The Accountant General
NWFP, Peshawar.

Subject: NEW RECRUITMENT POLICY/PROCEDURE OF
CONTRACT EMPLOYEES.

Dear Sir,

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

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

Yours faithfully,

(MUHAMMAD MASOOD)
SECTION OFFICER (REG-VI)

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

Dated:-11-12-2007

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

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

ACCOUNTS OFFICER (C&M)
NWFP PESHAWAR

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

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

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

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

(f) The Regional/Zonal quota if not filled will be carried forward till suitable candidates are available from the Region/Zone concerned. No. "Substitute" recruitment shall be made. Existing backlog, if any, in respect of any zone will not be carried forward and the Commission shall take a fresh start in respect of the posts under its purview. However, this condition will not be applicable in respect of posts which have already been advertised by the NWFP Public Service Commission.

(g) The vacancies in all the Departments shall be advertised in leading newspapers on Sundays. The advertisement in electronic media should be to the extent of drawing attention of all concerned to the relevant newspapers in which the vacancies are advertised.

(h) Initial Recruitment to all the vacant posts shall be made on regular known periodic intervals in February and August each year after proper advertisement through electronic and national/regional media. After advertisement, a minimum period of 30 days should be allowed for receipt of applications. A waiting list of the eligible candidates shall be maintained for a period of six months.

(i) [Deleted].

**** (j) 2% quota for disabled persons already fixed earlier shall stand and should be enforced strictly. However, 2% quota has also been fixed for female candidates in all the services which are filled up through initial recruitment. The Commission shall revise the Requisition Form for all such posts for specifying the women's quota in the available vacancies and the Administrative Department shall indicate the quota for women in the Requisition Form accordingly. The 2% quota shall be over and above the selection of women, if any, under general quota of merit etc. This quota shall, however, be restricted to those Departments where no separate female cadres exist.

(k) For initial appointment to posts in BPS-17 and below in the Autonomous Bodies/Corporations, the zonal allocation formula applicable for Provincial Services may be adopted. The method of recruitment shall also conform to sub-para (c) above.

(l) The Provincial Government have already agreed that recruitment to the post of PTC in Education Department in various districts shall be made on constituency-wise basis. For this purpose, the existing districts have been divided into various zones. Each zone shall correspond to the area of constituency of the Provincial Assembly. However, recruitment to the posts shall, in each case, be 50% on merit in open competition on district basis and 50% on constituency basis.

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

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

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

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

(c) Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission, in all the departments shall continue to be made in accordance with Rules 10, 11 and 12 (Part-III) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1939, the criteria as laid down in SGAD letter No. SORJ(S&GAD)4-1/75, dated 11.2.1987 and the zonal allocation formula contained in S&GAD notification No. SOS-III(S&GAD)3-39/70, dated 2.10.1973 as amended from time to time.

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

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

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

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

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

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

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

Annex-V/11

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.



SERVICE APPEALS NO. 1331/2013
Date of institution ... 11.09.2013
Date of judgment ... 30.05.2016

Farhan Ullah S/O Aman Ullah,
Sub Engineer office of Executive Engineer PHE Division Shangla presently Junior Clerk
office of Executive Engineer PHE Division Shangla.

... (Appellant)

VERSUS

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

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974. AGAINST ORDER DATED 05.03.2013 OF CHIEF ENGINEER BEING VOID, ILLEGAL AND WITHOUT LAWFUL AUTHORITY.

Mr. Yousaf Khan, Advocate.

.. For appellant.

Mr. Muhammad Jan. Government Pleader

.. For respondents.

MR. PIR BAKHSH SHAIH

.. MEMBER (JUDICIAL)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAIH, MEMBER: Appointed as Junior Clerk (BPS-05) in the respondent-department (Public Health Engineering) the appellant was promoted to the post of the Sub-Engineer (BPS-11) vide order dated 30.03.2011. This promotion order was withdrawn by the competent authority vide impugned order dated 5.03.2013. hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

A.O.
Arguments heard and record perused.

ATTESTED
EXCUTIVE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

1431
12/7/16

Departmental Promotion/Selection Committee which is not the case of the appellant. In the have been recommended either by Public Service Commission or by the Competent promoted from the post of Junior Clerk. In the first eventuality, the appellant was required to conclusion as to whether the appellant was freshly appointed on the post of Sub-Engineer or Sub-Engineer. We have carefully perused the record and unable to reach on definite relevant rules that he was lawfully promoted from the post of a junior clerk to the post of a of the Public Service Commission and the appellant has failed to prove by showing the After a careful perusal of the record and having pro & contra arguments for the

dismissed.

by the competent authority. He submitted that the appeal being devoid of merits may be in favour of the appellant, therefore, the same was rightly cancelled through impugned order that the promotion order dated 30.03.2011 is fake and unlawful which cannot create any right the appellant failed in the process of selection for the post of Sub-Engineer. He submitted at the Sub-Engineer was advertised by the department but it was for Adhoc appointment and promoted to the said post as was done in the case of the appellant. He submitted that the post Engineer can be filled through Public Service Commission and no junior clerk can be 4. This appeal was resisted by learned GP who submitted that the post of a Sub-

11)

order may be set aside and the appellant may be restored to the post of Sub-Engineer(BPS- post of Sub-Engineer. He submitted that on acceptance of the instant appeal the impugned that the post of Sub-Engineer was also duly recommended by the committee, therefore he was entitled to the diploma holder in Engineering and being qualified he was deserving for the post. He argued Engineer to his regular post of Junior Clerk. He further submitted that the appellant was no charge sheet was framed but the appellant was unlawfully reverted from the post of Sub- learned counsel for the appellant submitted that no regular enquiry was conducted,

case of second eventuality of promotion, it was not shown from the rules that a Junior Clerk can be promoted to the post of Sub-Engineer. Prima-facie, the order of promotion dated 30.03.2011 was unlawful, therefore, the same was rightly withdrawn/cancelled through impugned order dated 05.03.2013. Consequently, there is no merit in this appeal to attract for indulgence of the Tribunal, hence the appeal is dismissed. File be consigned to the record room.

ANNOUNCED
30.05.2016

sd/- P. Bakhsh Shah, Member
sd/- Abdul Latif, Member

Original
Khair
Service Tribunal
Resident
copy

Date of Process 12-07-16
Number of Words 1200
Copying Fee 8/-
Page 2
Total 10
Number of Copies 5
Date of Appeal 12-07-16
Date of Delivery of 12-07-16

Annex 1

23



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

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

To

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

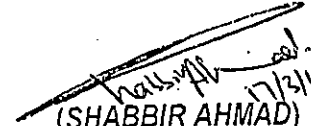
Subject: ADVICE REGARDING STATUS OF APPOINTMENT.

f-112/c

Dear Sir,

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

Yours faithfully,



(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

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10/03/14

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Put up on

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Suppl


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Annex - (X)

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

105

No. 04/E-13/South/PHE

Dated Peshawar, the 27/02/2014

TH)
F
R

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

Subject: ENQUIRY INTO ILLEGAL APPOINTMENT

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

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

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

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

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

[Signature]
Chief Engineer (South)



115
102
OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

NOTE FOR MINISTER PHE

Subject: NOTE FOR PERUSAL OF MINISTER PHED REGARDING ACTION POSITION OF PENDING ENQUIRY

The honourable Minister for PHED has desired to high light and submit position of irregularities/violation of rules committed by officer/official and action taken/required in these cases. The details of such cases are narrated as under:

Sl: No	Description of Irregularities	Action Required against	Remarks
1-	Appointments of 32-Nos Illegal Appointment on the Post of Public Service Commission Preview	Mr. Alla-ud-Din CE (Rd) Mr. Abdul Bashir SE (HQ) Mr. Baqir Shah SO (Rd) Mr. Afsar Ali Qureshi B&AO	Annex-I
2-	Un-lawful appointment of 5-Nos Sub Engineers	Mr. Ghulam Mujtaba SE Kohat	Annex-II
3-	Un-lawful promotion of Farhanullah Junior Clerk to the post of Sub Engineer	Mr. Ghulam Mujtaba SE Kohat	Annex-III
4-	Un-lawful promotion of Abdur Rahim Work Superintendent to the Post of Sub Engineer	Mr. Ghulam Mujtaba SE Kohat	Annex-IV
5-	Un-lawful promotion of Zahid Ullah Junior Clerk and Zaid Ullah Draftsman to the post of Sub Engineer.	Mr. Alla-ud-Din Mr. Afsar Ali Qureshi B&AO	Annex-V
6-	Un-lawful abolishing the post of Work Superintendant and conversion/adjustment Malik Ayaz as Accounts Clerk on wrong cadre post.	Mr. Afsar Ali Qureshi B&AO	Annex-VI
7-	Un-lawful appointment of Mist Beena Rani as J/Clerk and giving salary without performing duty resulting loss to Govt of about Rs.600000/-	Mr. Alla-ud-Din Mr. Afsar Ali Qureshi B&AO	Annex-VI

Secretary PHED
1038

Duty No.

Dated: 03/02/2014

116

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8- Involvement in standardization of fake Firms M/S KB and Bismillah for supply of Voltage stabilizer to facilitate M/S Itehad & Co, just to fulfill the formalities of existing of 3-Nos Firm, required for competition of bids.

Mr. Alla-ud-Din
Mr. Afsar Ali Qureshi B&AO

Annex-I

9- Creation of post against fake WSS in District Lakki

Mr. Qadirullah SDO
Mr. Afsar Ali Qureshi B&AO

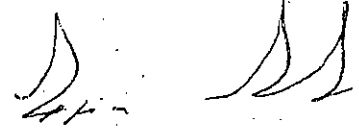
Annex-II

10- Illegal appointment of Mr. Murtaza Qureshi S/O Afsar Ali Qureshi (B&AO) Data Entry Operator (BPS-12) and then subsequently unlawfully conversion/appointment to the rank of Assistant (BPS-14) and facilitated/posted at Head Clerk in PHE Division Mardan while drawing pay from C.E Office Peshawar on higher salary rates. How also involving in irregularities in tendering etc. in PHE Division Mardan.

Mr. Afsar Ali Qureshi B&AO

Annex-X

2. Submitted for favour of initiating punitive action against above named officers for violating rules and giving great financial loss to Govt Exchequer by making payment to illegal appointees/promotes and standardization of fake firms.


Chief Engineer (South)

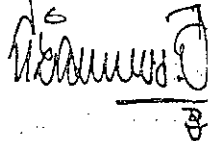
Secretary PHED

3.

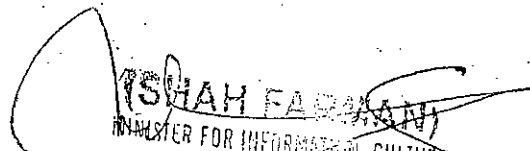
Order is solicited to the proposal contained at Para-2

Para-2, is approved initiate action through NAB & ESTD Dept. for recovery/disciplinary action.

Minister for PHE



Secretary PHED


SHAH FAROOQ
MINISTER FOR INFORMATION, CULTURE
PHED KHUZDAR PAKISTAN
1/10/10/14

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2. Abolishing the post of Work Superintendent and adjustment of Malik Ayaz Work Superintendent to the post of Accounts Clerk on wrong cadre post

- i. You have unlawfully managed/facilitated abolishing of post of Work Superintendent without any justification and without any authority. And then re-created the same post of Work Superintendent, without any authority. Which prove your involvement and malafide intention in all process.
- ii. You have unlawfully facilitated/managed adjustment of Work Superintendent BPS-9 to the post of Accounts Clerk on wrong cadre post.

3. Unlawfully facilitated/managed appointment of Miss Beena Rani Junior Clerk

- i. You have managed unlawful appointment of Miss Beena Rani as Junior Clerk, as admitted by you that no meeting of DSC was held and the minutes of DSC were got signed from the DSC members without holding the DSC meeting.
 - ii. The DSC members have disowned the minutes of the meeting and their signatures giving statement/certificate that no meeting of the DSC was held and they never signed the minutes.
 - iii. You have also managed/facilitated appointment of Miss Beena Rani being over age.
 - iv. The above appointment was made without any interview as admitted by her.
 - v. You were fully involved in her absence from duty in entire service period as you have made all entries in the service book of Miss Beena Rani Junior Clerk without verification/knowing that the official was absent or present, also for the period you were not Admn: officer.
 - vi. You have marked her arrival report and LPS in the office of Chief Engineer (North) PHED in capacity of Budget Officer and not put up to Chief Engineer (North), while the job is entrusted to Admn Officer, thus you kept in dark, the competent authority i.e. Chief Engineer North.
 - vii. You have facilitated the illegal appointment of Miss Beena Rani Junior Clerk and all her service matters.
4. You have recruited your three sons, one as Data Entry Operator BPS-11 and two as Sub Engineers BPS-11 through back door. You have gone to the extreme end of nepotism. What would be the future of deserving persons and where the deservin

persons will go if all the posts are distributed by the Govt among their favorites and relatives.

5. You are involved in standardization of KB and Bismillah fake firms for supply of voltage stabilizer in 2009. At that time the firms did not exist. You have not checked their documents properly. These firms were pre-qualified/standardized just to fulfill the minimum criteria of three Nos firms. In this way the whole Department has been misguided by pre-qualified/standardizing these two dummy/fake firms which is a serious irregularity on your part.
6. You are involved in illegal promotion of Mr. Zahid Ullah Junior Clerk to the post of Sub Engineer. There is no share for Junior Clerk in the service rules for promotion to the post of Sub Engineer. Working paper and minutes of the DPC meeting could not be produced by you.
7. You are involved in illegal promotion of Mr. Zaid Ullah Draftsman to the post of Sub Engineer having no DAE and required length of service. Working paper and minutes of the DPC meeting could not be produced by you.

That as a result thereof, I as the authority in the exercise of powers conferred on me under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) rules, 2011, have tentatively decided to impose upon you the major penalty of compulsory retirement.

You are therefore, required to show cause as to why the aforesaid penalty/penalties should not be imposed upon you, and intimate whether you desire to be heard in person.



If no reply to this notice is received within fifteen days of its delivery, it shall be presumed that you have no defence to put in and an ex-parte action will be taken against you.

Copies of the 3-Nos inquiry reports are enclosed.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa PHED Peshawar.
2. The Chief Engineer (North) PHED Peshawar.

 - 
Chief Engineer (South)



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

No. // /E-13(S) /PHE,
Dated Peshawar, the 01 / 09 /2014

To,

Mr. Afsar Ali Qureshi,
Budget & Accounts Officer (North)
Public Health Engg: Department
Peshawar

Subject: SHOW CAUSE NOTICE

In the light of recommendation of the 3-Nos inquiry officer/committee you are hereby served with this show cause notice regarding your involvement in illegal practices/acts in the capacity as the then Administrative Officer.

That on going through the inquiry reports of the Inquiry Officer/committee, material on record and other connected documents, I am satisfied that the following charges leveled against you have been proved as under:

1 Appointment of Murtaza Qureshi as Data Entry Operator BPS-11 and appointment/conversion as Assistant BPS-14.

- i. You have unlawfully facilitated/managed appointment of his son Mr. Murtaza Qureshi to the post of Data Entry Operator BPS-11 and Assistant BPS-14 which falls under the purview of Public Service Commission. The Public Service Commission was not consulted for approval/NOC and recruitment was unlawfully made through Departmental Selection Committee (DSC) without any proper notification. One of the member of the said DSC, Mr. Abdul Bashir the then ADO, has also denied his involvement in the DSC proceedings and his signature.
- ii. You remain involved in the recruitment of your son Murtaza Qureshi Data Entry Operator thus did not fulfilled moral responsibility neither expose his integrity. Furthermore you have also involved in the appointment of your another son, Mr. Muqtada Qureshi as Sub Engineer, this all happened on your behest being Admn Officer and father of the appointees.
- iii. The signature of Mr. Allaudin Khan the then Chief Engineer PHED on the office order No. 06/E-9/PHE, dated 12.2.2009 for appointment as Assistant BPS-14 through conversion of services of Murtaza Qureshi, seems to be dubious/fake.
- iv. Conversion of DEO to the cadre of Assistant through Administrative order issued under your initial is illegal and unlawful and against the PHE service rules.



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ANNEX-6

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

100

No. 21 / E-13(S)/PHE,

Dated Peshawar, the 04 / 04 / 2014

To,

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

Subject: ENQUIRY INTO ILLEGAL APPOINTMENT

Reference: Your letter No. SO(E)/PHE/8-27/2013/242-2, dated 24-2-2014
This office letter No. 04/E-13(S)/PHE dated 27.2.2014

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

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

- | | |
|---|------------|
| 5. Mr. Allaudin Khan (Retired) Chief Engineer | Chairman |
| 6. Mr. Syed Bakar Shah S.O (E-II) W&SD | Member. |
| 7. Mr. Abdul Bashir ADO (SE HQ) | Member. |
| 8. Mr. Afsar Ali Qureshi Admn: officer | Secretary. |

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

Keeping in view the above it is requested that departmental proceeding against the above officer may kindly be initiated in the interest of Govt please.

10
Chief Engineer