

04.3.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for the respondents present.

2. At the outset, the question of lack of jurisdiction of this Tribunal was raised by the Government Pleader on the ground that the issue involved in this appeal is that of "upgradation" which does not fall in ambit of terms & conditions of service of a civil servant which has been so held by the Larger Bench of the august Supreme Court of Pakistan in its recent latest judgment dated 17.2.2016 in Civil Appeals No. 101 & 102-P/2011, titled "Regional Commissioner Income Tax, Northern Region, Islamabad etc. Versus Syed Manawar Ali and others".

3. It was not disputed on behalf of the appellant that the issue involved is that of upgradation of the appellants. With the assistance of the learned Government Pleader, we would like to reproduce relevant portion from the said judgment:-

"The aforesaid definition of the expression "Upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another vs. Muhammad Afzal Khan (Civil Appeal No. 992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its


constitutional jurisdiction and bar contained under Article 212 (3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed there-under. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this court.”

4. In the light of the foregoing brief discussion, this Tribunal is of the view that since it lacks jurisdiction to adjudicate upon this appeal, therefore, the same is directed to be returned to the appellant, after retaining its copy, for presentation before the competent/proper forum, if so advised.

ANNOUNCED

04.03.2016


MEMBER


MEMBER


24.04.2015

Clerk of counsel for the appellant and Addl: A.G for respondents present. Rejoinder submitted, copy whereof is handed over to the learned Addl: A.G. To come up for arguments on 23.11.2015.


Member


23.11.2015

Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to learned member (judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to 4/3/16 for arguments.


Member

10.6.2014

Appellant with counsel M/S Muhammad Sharif Khattak, AD for respondents No. 1 to 3 and Irshad Muhammad, Supdt. for respondent No. 4 with AAG present. Written reply has not been received despite another last chance given for the purpose on the previous date. The learned AAG again requested for further time. Written reply be positively filed in the meantime, with a copy for the appellant/counsel for the appellant for rejoinder alongwith connected appeals on 8.9.2014. In case the respondents failed to file written reply in the meantime, they will be considered as ex-parte and ex-parte arguments will be heard on the basis of available record on the date fixed.


Member

8.9.2014

Mr. Qudratullah, appellant in the connected appeal, on behalf of the appellant, M/S Muhammad Sharif, AD for respondents No. 1 to 3 and Hamad Ahmad, Assistant for respondent No. 4 with Mr. Ziaullah, GP present. Written reply/para-wise comments has been received on behalf of the respondents, *in the meantime* copy whereof has also been handed over to the appellant for rejoinder. Rejoinder has not been received, and request for further time made on behalf of the appellant. To come up for rejoinder alongwith connected appeals on 1.1.2015.


Chairman

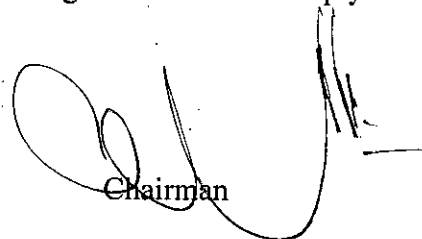
01.01.2015

Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder alongwith connected appeals on 24.04.2015.


Reader.

16.8.2013

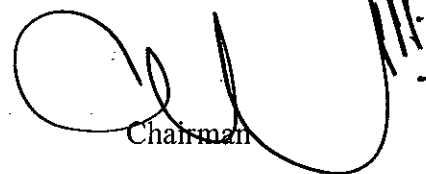
Clerk of counsel for the appellant and Mr. Irshad Muhammad, Supdt. for respondent No.4 with Mr. Usman Ghani, Sr.G.P for the respondents present. Written reply has not been received. On the request of learned Sr.G.P, another chance is given for written reply/comments on 26.12.2013.



Chairman

26.12.2013

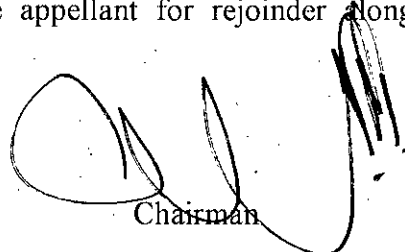
No one is present on behalf of the appellant. M/S Muhammad Sharif Khattak, AD (Labour) for respondents No. 1 to 3 and Irshad Muhammad, Supdt. for respondent No. 4 with Mr. Usman Ghani, Sr. GP present. Written reply has not been received on behalf of the respondents, and request for further time made on their behalf. Last chance is given for written reply/comments on 12.3.2014.



Chairman

12.3.2014

Mr. Muhibullah, appellant in the connected appeal, on behalf of the appellant, M/S Muhammad Sharif Khattak, AD Labour on behalf of respondents No. 1 to 3 and Irshad Muhammad, Supdt. for respondents No. 4 with AAG present. Written reply has not been received despite last chance given for the purpose on the previous date, and learned AAG requested for further time on behalf of the respondents. On the request of learned AAG, another last chance is given for filing of written reply/comments in the meantime, with copy for the appellant/counsel for the appellant for rejoinder alongwith connected appeals on 10.6.2014.

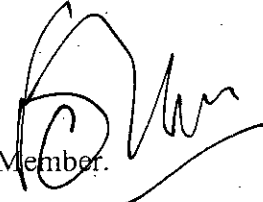


Chairman

Appeal No. 334/2013
Mr. Rizwan Zia.

4. 11.3.2013

Counsel for the appellant present and contended that the appellant is entitled to up-gradation of his post to BPS-14 at par with the Inspectors working in other departments but the same has been denied to him. The appellant preferred a departmental appeal on 3.10.2012 but with no response. Counsel for the appellant further argued that the appellant has not been treated in accordance with the law. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 15.5.2013 for submission of written reply.


Member.

5. 11.3.2013

This case be put before the Final Bench D for further proceedings.


Chairman.

15.5.2013

Counsel for the appellant and Mr. Muhammad Sharif Khattak, Assistant Director (Labour) Headquarter on behalf of the respondents with Mr. Muhammad Jan, GP present. To come up for written reply/comments on behalf of the respondents on 16.8.2013.


Chairman.

1.3.2013



Clerk to Counsel for the appellant present and
requested for adjournment. To come up for preliminary
hearing on 11.3.2013.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 334/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/01/2013	<p>The appeal of Mr. Rizwan Zia Labour Inspector presented today by Mr. Bilal Ahmad Kakaizai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	6-2-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>1-3-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 334 / 2013.

RIZWAN ZIA

VS

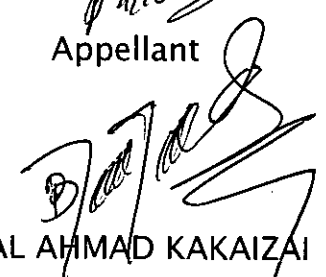
Govt. of K.P.K. etc.

I N D E X

Description of Documents		Page
Memo of Service Appeal		02 - 04
Affidavit		05
Addresses Sheet		06
<i>Annexure-A</i>	Orders of Inspectors relating to other Departments	07 - 10
<i>Annexure-B</i>	Departmental Appeal	11
Wakalat Nama		NIL

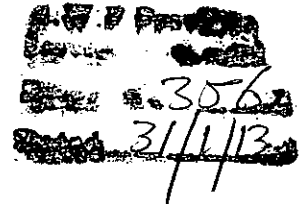

Appellant

Through,


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)
213, SUNEHRI MASJID ROAD,
PESHAWAR CANTT.
0300-9020098

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 334 / 2013


356
31/1/13

RIZWAN ZIA ,
Presently Posted as Labour Inspector,
Directorate of Labour, Peshawar.


..... Appellant

VERSUS

1. GOVERNMENT OF KPK,
Through Chief Secretary, Civil Secretariat Peshawar.
2. SECRETARY,
Labour, Civil Secretariat, KPK, Peshawar.
3. DIRECTOR LABOUR,
Labour Directorate, Peshawar.
4. SECRETARY FINANCE,
Civil Secretariat, KPK, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974
FOR THE GRANT / UP-GRADATION OF POST OF INSPECTOR TO BPS
14 FOR WHICH DEPARTMENTAL APPEAL / REPRESENTATION DATED
03.10.2012 WAS FILED BUT THE SAME HAS NOT BEEN DECIDED /
RESPONDED DESPITE THE LAPSE OF STATUTORY PERIOD.


31/1/13.

PRAYER: That on acceptance of this service Appeal, the
Respondents be directed to resolve the disparity in the
pay scales of the Appellant and allow up-gradation of
the pay scales to BPS 14 as being allowed to other
Inspectors working in the different Federal / Provincial
Departments with such other relief as may deem fit in
the circumstances of the case may also be granted.

Respectfully Sheweth,

Short facts giving rise to the present Service Appeal, are as under:

1. That, Appellant is posted as Labour Inspector BPS-09 in the Respondent No. 2 & 3 Department since.
2. That, Appellant, being Civil Servant under the Civil Servants Act, 1973, is under the control of Respondent No. 1 to 3 and working in BPS-09 while the Post of Inspector in other Provincial / Federal Departments is in BPS-14 and 16, copies of few such orders / letters relating to Inspectors in BPS-14 are attached as Annexure A (04 Sheets).
3. That, Appellant is functioning / performing his duties as Inspector as being performed by the Inspectors in different Government Departments but in lower pay scales, therefore, Appellant submitted his Departmental Appeal / Representation on 03.10.2012 for the grant of BPS-14, removal of disparity and at par with the Inspectors working in different Government Departments, copy of the Appeal is attached as Annexure B.
4. That, the Respondents failed to decided the Departmental Appeal / Representation of the Appellant within requisite statutory period hence this Service Appeal on following amongst other grounds.

GROUND:


- A. That, it is the duty of the State to remove the disparity and discrimination in the pay scales of similarly placed persons in different Departments of the Government.
- B. That, under Article 37 & 38 of the Constitution of Islamic Republic of Pakistan, 1973 the State is bound to promote social justice, social and economic well being of the people and particularly under clause (e) of Article 38, it is obligation of the state to reduce disparity in the income and earnings of the individuals, including various classes of service of Pakistan.
- C. That, the inspectors in Labour Department are placed in BPS 09 while the Inspectors in other Departments of the same Government and other Federal / Provincial Governments are working in BPS 14 and 16.

- D. That, in some of the Provincial / Federal Departments, the posts of the Inspectors were upgraded but the same nomenclature in the Labour Department has not been considered.
- E. That, even otherwise, to improve the efficiency and morale of the Inspectors in Labour Department, the up-gradation of the pay scales is important.
- F. That, the continuous disparity of the post of Inspectors along with other Departments is adversely effecting the efficiency of the Appellant because Appellant in capacity of Inspector generates the Government Revenue in shape of fines and fees from different private and public establishments.
- G. That, the Inspectors of Labour Department are directly / indirectly connected with the Revenue Generation for the Government and under the same Government other Inspectors relating to different Departments have been upgraded hence Appellant has the right to be considered for the up-gradation of his post along with pay scale at par with others.
- H. That, disparity and the discrimination in pay scales of similarly placed employees / inspectors is violative of the Constitution of Islamic Republic of Pakistan, 1973.
- I. That, there exists no reasonable and legal ground in favour of the Respondents to discriminate the Appellant and refuse the up-gradation to BPS 14 i.e. at par with the Inspectors of other Departments.

It is, therefore, requested that appeal be accepted as prayed for.

Through,


Appellant


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2013.

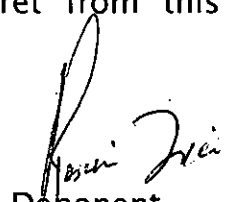
RIZWAN ZIA

VS

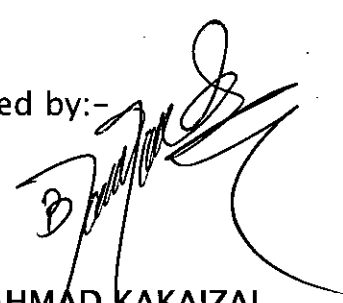
Govt. of K.P.K. etc.

AFFIDAVIT

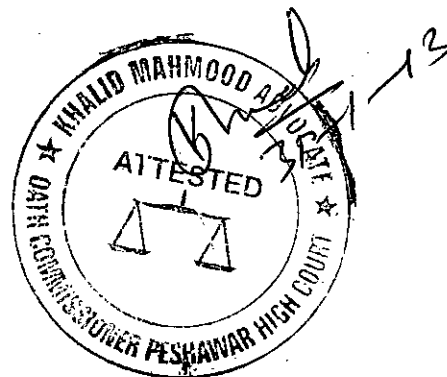
I, RIZWAN ZIA, Presently Posted as Labour Inspector, Directorate of Labour, Peshawar, Appellant do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.


Deponent.

Identified by:-



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)



BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2013.

RIZWAN ZIA

VS

Govt. of K.P.K. etc.

ADDRESSES OF PARTIES.

APPELLANT:

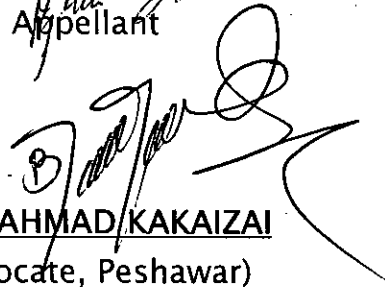
RIZWAN ZIA ,
Presently Posted as Labour Inspector,
Directorate of Labour, Peshawar

RESPONDENTS:

1. Government of KPK, Through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary, Labour, Civil Secretariat, KPK, Peshawar.
3. Director, Labour, Peshawar
4. Secretary Finance, Civil Secretariat, KPK, Peshawar

Through,


Appellant


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

Dated Peshawar the, August, 12, 1999.

To

The Section Officer (Est. E&T),
Finance, E&T Department.

(7) A

SUBJECT:- IMPLEMENTATION OF DECISION OF MEETING HELD
ON 02-08-1999 UNDER THE CHAIRMANSHIP OF
CHIEF MINISTER N.W.F.P.Kindly refer to your letter No. SO(EST. E&T)1-50/
FE&TD/99 dated 9th August, 1999 on the subject noted above.2. To implement the decisions taken in the meeting
held on 02-08-1999 under the Chairmanship of Chief Minister
NWFP, the following posts in Excise & Taxation Department are
upgraded with immediate effect :-

S.NO.	DESIGNATION OF THE POST.	EXISTING PAY SCALE.	UPGRADED PAY SCALE.
1.	Assistant Excise & Taxation Officer.	BPS-14	BPS-16
2.	Inspector.	BPS-11	BPS-14
3.	Constable.	BPS- 1	BPS- 5 subject to possessing the prescribed qualification for the post of Police constable

R. Khaliq
(RASHID KHAN)
SECTION OFFICER (SR.I)

ENDST. NO & DATE EVEN.

A copy is forwarded to :-

1. The Director, Excise & Taxation.
2. The Accountant General, NWFP, Peshawar.
3. All District/Agency Accounts Officers in NWFP & FATA.
4. All Section/Budget Officers in Finance, E&T Department.

R. Khaliq
SECTION OFFICER (SR.I)

H.A. KHALIL.

BA/BA

DG.
ESTD / No. 2871
13/8/Attested
[Signature]

(8)

GOVERNMENT OF THE PUNJAB
LABOUR & HUMAN RESOURCE DEPARTMENT

Dated Lahore, the 4th March, 2010.

ORDER

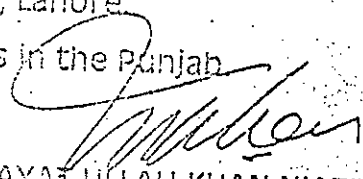
No.SC(Admn)1-61/2008. Sanction is hereby accorded to the upgradation of the post of Labour Inspector from BS-09 to BS-14 with the condition of enhancement of basic qualification for the said post from F.A/F.SC to B.A/B.SC in Labour & Human Resources Department with immediate effect and make amendment in the Service Rules accordingly.

Secretary
Labour & Human Resource Punjab

No. & Date Even.

A copy is forwarded for information & necessary action to:-

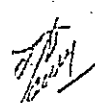
1. The Accountant General Punjab, Lahore
2. All the District Accounts Officers in the Punjab

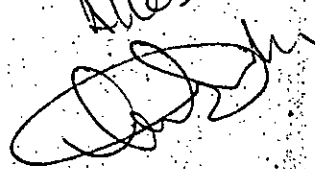

(INAYAT ULLAH KHAN NIAZI)
SECTION OFFICER (PC).

No. & Date Even.

1. The Director Labour Welfare Punjab, Lahore.
2. The Section Officer (PC), Government of the Punjab, Finance Department with reference to his U.O.FD-PC-45-1/2003(Provl) dated 25.02.2010.
3. Office order file.

/Manzoor/


(ZAHID JAVED)
Section Officer (Admn)

Attested


GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

9

C.No.25(8)M.IV/2007.

Islamabad, the 21st June, 2008.

From: Muhammad Yousaf Khan,
Second Secretary(M.IV).

To : The Accountant General of Pakistan Revenues, Islamabad,
The AGPR, Sub-Offices, Peshawar/Lahore/Karachi/Quetta.

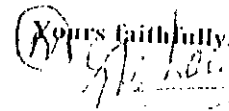
Subject: UP-GRADATION OF PAY SCALES OF THE EMPLOYEES OF DIRECT/IN-DIRECT TAXES.

Dear Sir,

I am directed to convey the sanction of the President of Islamic Republic of Pakistan to the up-gradation of the following cadres of Direct/In-Direct Taxes with immediate effect:-

S.#	Designation	Existing Pay Scales	Up-Graded Pay Scales
1.	Deputy Superintendent (Customs & Excise)	14	15
2.	Inspector Income Tax	11	14
3.	Inspector (Customs & Excise)	12	14
4.	Inspector Preventive Service	14	15
5.	Appraiser/Valuation Officer	14	15
6.	Preventive Officer	11	14
7.	Examiner	11	14

2. This issues in pursuance of the Finance Division's (Regulations Wing)'s O.M.No.F.1(1)R-I/2007-332/08, dated 27th May, 2008.

Yours faithfully,



(Muhammad Yousaf Khan)
Second Secretary(M.IV)

FINANCE DIVISION
(Regulation Wing)

C.No.F.1(1)R-I/2007.

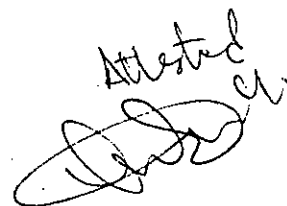
Endorsed.

Islamabad, the 21st June, 2008.


(Muhammad Azim)
Section Officer (R-I)

Distributions:

1. SA to the Secretary General, Revenue Division/Chairman, FBR, Islamabad.
2. All Member, FBR, Islamabad.
3. The Director General, Directorate General of Intelligence & Investigation, FBR, Islamabad.
4. All Heads of the Direct/In-Direct Taxes.
5. Secretary(Expenditure), FBR, Islamabad.
6. Secretary(Automation), FBR, Islamabad.
7. Second Secretary (Expenditure), Direct/In-Direct Taxes, FBR, Islamabad.

Attested


ORDER

No. LAR-III/6-28/85: The Governor of the Punjab is pleased to accord sanction to the Upgradation of the post of Assistant Labour Officers from BS-11 to ES-16 and its merger with the cadre of the Labour Officers BS-16 with immediate effect.

Dated Lahore the
21st Oct. 1990.

S. SAEDAR AHMAD
SECRETARY TO GOVT. OF THE PUNJAB

No. & date even.

A copy is forwarded for information and necessary action to:

1. The Accountant General, Punjab, Lahore.
2. All the District Accounts Officers in the Punjab.

(S. SAEDAR AHMAD)
UNDER SECRETARY (P.C.)
GOVT. OF THE PUNJAB
LABOUR DEPARTMENT, LAHORE

No. & date even.

A copy is forwarded for information and necessary action to:

1. The Under Secretary (P.C.) Govt. of the Punjab, Finance Deptt. with reference to his U.O. No. TD-PC-32-2/87 dated 15.10.1990.
2. The Section Officer Lab-I, Labour Deptt. Lahore.
3. The Section Officer Exp(LG) Govt. of the P.B. T.D.
4. The Director Labour Welfare, Punjab, Lahore.

(S. SAEDAR AHMAD)
SECTION OFFICER (LAB-I)

Attested
[Signature]

(11)

B

To

The Director Labour
Khyber Pakhtunkhwa Peshawar.

Subject:

Up-Gradation of the post of Labour Inspector in the Directorate of Labour Khyber Pakhtunkhwa from BPS-09 to BPS-14.

Sir,

1. Respectfully it is stated that Labour Inspector are appointed for implementation of various Labour Laws, including Shops & Establishment Ordinance, 1969, Employment of Children Act, 1991 and Minimum Wages (for unskilled workers) Ordinance, 1969. Beside, the Labour Inspectors collect fee and deposit in the provincial exchequer on account of Registration of Shops & Establishment.
2. Previously Minimum prescribed qualification for appointment to the post of Labour Inspector was Intermediate (Copy of departmental Service Rules attached at Annexure-A). The minimum prescribed qualification for appointment to the post was enhanced to 'graduation' in the departmental service rules framed/notified in 2005 (copy attached at annexure-B).
3. The Labour Inspectors are recruited by initial recruitment and promoted to the post of Assistant Labour Officer (BPS-11) with 75% quota. The ALOs are further promoted as Labour Officer (BPS-16) with 50% quota. The total numbers of Labour Inspector in the Directorate of Labour are 30, that of Assistant Labour Officers are 5 and that of Labour Officer are 7.
4. Due to less number of posts up in the chain, a Labour Inspector has to wait for his first promotion for more than 20 years. This state of affairs adversely affects their performance.
5. Furthermore, the provincial government, in the recent past, upgraded clerical and non-clerical posts, but the post of Labour Inspector along with certain others was not upgraded. It is worth to mention that officials with the same qualification in other departments like Inspectors in the Excise & Taxation department, Office Assistants in all the departments occupy higher pay scale than the Labour Inspector with the same qualification.
6. Additionally, the government of Punjab, in March 2010, upgrades the post of Labour Inspectors from BPS-9 to BPS-14 (Copy of Order attached at Annexure-C). Further, the post of Assistant Labour Officer (BPS-11), the Directorate of Labour Punjab has upgraded and the incumbents, were promoted as Labour Officer (BPS-16). (Copy of order attached at Annexure-D).
7. In light of the foregoing discussion, it is requested that the quarter concerned may kindly be approached to:
 - i). Up-grade the post of Labour Inspector in the Directorate of Labour from BPS-9 to BPS-14 and
 - ii). Up-grade the post of Assistant Labour Officer from BPS-11 to BPS-16 and re-designate the post as Labour Officer.
8. Submitted please.

ASSI (11)
Pl. Post copy
Jif
9/12

DA
2
03/12

Alkhatib
Khan

Dated: 3.10.2012

802
3.10.12

RIZWAN ZIA
Labour Inspector
PESH

[Handwritten signature]

بعدالت جناب خیبر پختونخواہ سروس ٹریبیونل، پشاور

Appellant

مجاناب

2013

مورثہ

Govt. of KPK etc.

بنام *Rizwan Zia*

مقدمہ

دعویٰ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کے لیے

بلال احمد کے زنی ایڈوکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا کامل

اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے، جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط

کرنے 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 اختیار ہوگا۔ از 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 باختیارات حاصل ہوں

گے۔ اور اس کا ساختہ پرواختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہو گیا

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

لکھ دیا کہ سند ہے۔

2013

ماہ

المرقوم

کے لیے منظور ہوا

بمقام

واہ

Attested &

Accepted

Rizwan Zia

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 334/ 2013.

Rizwan Zia

VS

Government of KPK etc

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

Rejoinder on behalf of Appellant is as under: -

REJOINDER TO THE PRELIMINARY OBJECTIONS:

Preliminary Objections as taken by the Respondents are illegal and unlawful because while raising the same, the Respondents had not cited any lawful reason or justification in support thereof in respect of cause of action, unclean hands, maintainability etc hence the same are mere routine objections having nothing to do with the merits of the case.

REJOINDER TO THE FACTS:

1. Para-1 needs no reply. However it is added that the record pertaining to the case is with the department and the department is bound to produce the same before the Tribunal.
2. Para 2 of the Appeal has partially been admitted correct however the rest of the Para in relation to the Designation of the Inspectors of other Government Departments has been denied without giving any justifiable reasons. It is also noteworthy that the Provincial Government vide Notification dated 20.05.2014 upgraded the pay scales of even Assistants, Junior and Senior Clerks which were working below the Appellant's Rank and the post of Inspector has been ignored, copy of the Notification is attached as Annexure R/1.
3. Para 3 needs no reply.
4. Para 4 of the Appeal pertains to the Appellate Order which has not been passed on the Appeal of the Appellant.


REJOINDER TO THE GROUNDS

- A. Para 1 and 2 of the Comments needs no rejoinder however it is added that as per Article 38 of the Constitution of Islamic Republic of Pakistan, 1973, state is bound to promote the well beings of individuals and is also

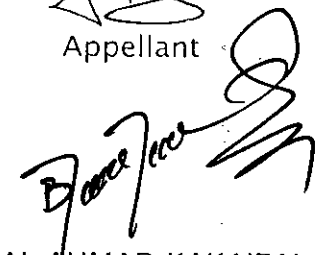
responsible for reduction of disparity in the pay and perks of different persons which are performing almost the same duties.

- B. In response to Para 3 of the Comments it is added that the Respondents in order to get rid of the instant Appeal are evasively denying the legal rights of the Appellant.
- C. Para D of the Appeal is legal and correct while that of Comments is not reasonable or justified.
- D. In response Para E of the Comments it is submitted that the Department / Competent Authority is continuously ignoring the Appellant despite the fact that the post of the same department in other provinces has been upgraded to BPS-14. It is important to mention here that the Labour Inspectors perform their functions under the Industrial Relations Laws (1969, 2002, 2008, 2010), Shops and Establishment Ordinance 1968, Factories Act, 1936 etc which were primarily adopted and legislated by the Federal Legislature. Furthermore an inspector functioning under the same law in other Provinces is in BPS 14 while the Inspector performing under the same law in Khyber Pakhtunkhwa is in BPS-9 which is a clear violation of principles of natural justice. Needless to mention here that after 2013 each province has legislated their own laws.
- E. Para F of the comments as offered by the Respondents is not true. In fact duties of a Labour Inspector includes not only the implementation of laws but they physically check the status of establishments, the relations of employers with workmen and employees, issuance of challans etc and in this respect they are also given targets for the purpose of generation of revenue, copy of the recent order dated 19.08.2014 is attached as Annexure R/2 for ready reference.
- F. Paras G and H need no rejoinder.
- G. Para I of the Appeal, as drafted, is legal and proper while that of comments is evasive denial without any justifiable reason.

It is, therefore, requested that Appeal of the Appellant be accepted as prayed for.


Appellant

Through:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 334 / 2013.

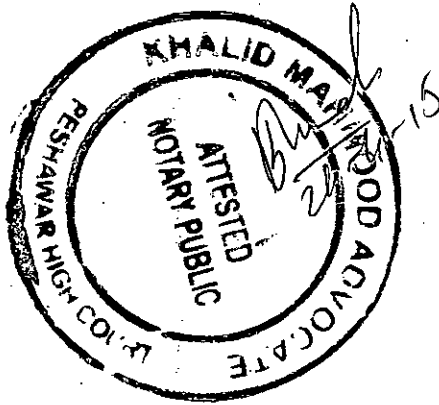
Rizwan Zia

VS

Government of KPK etc

COUNTER AFFIDAVIT

I, BILAL AHMAD KAKAIZAI, Advocate, Counsel for the Appellant, do hereby on oath affirm and declare that the contents of the Rejoinder are true and correct to the best of my information provided by the Appellant and nothing has been kept secret from this Honourable Tribunal.



Bilal Ahmad Kakaizai
Deponent



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 20-05-2014

R/1

NOTIFICATION

NO.FD/SO(FR)10-22/2014 The competent authority has been pleased to accord sanction to the upgradation of pay scales of the following posts, wherever exist, in all the Departments / Offices (except Civil Secretariat) of the Government of Khyber Pakhtunkhwa with immediate effect:

S. No.	Nomenclature of the post	Existing Scale	Upgraded Scale
1.	Superintendent	BS-16.	BS-17
2.	Assistant	BS-14	BS-16
3.	Senior Clerk	BS-09	BS-14
4.	Junior Clerk	BS-07	BS-11

- i. The pay of the existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.

All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

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SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
11. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12. Registrar, Service Tribunal Khyber Pakhtunkhwa.
13. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to Govt. of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
15. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
16. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir-Lower.
17. The Treasury Officer, Peshawar.
18. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
19. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
22. PS to Finance Secretary.
23. PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
24. All Section Officers/Budget Officers in Finance Department.
25. Abbas Khan President of Khyber Pakhtunkhwa Civil Secretariat Superintendent, Assistant, Clerks Association with reference to his application No. PR/KPS/SACA/2-1/2013 dated 8-01-2014

(SHAUKAT ULLAH)
SECTION OFFICER (FR)

R/2

DIRECTORATE OF LABOUR
GOVERNMENT OF KHYBER POKHTUNKHWA
PESHAWAR.

No.DI/DCIS/KPK/Receipt./2014-15/2282-2315 Dated Peshawar 19/8 2014.

All Labour Inspectors
in Khyber Pakhtunkhwa
Peshawar.

SUBJECT:- RECEIPT TARGET FOR THE CURRENT FINANCIAL YEAR.2014-15

The Finance Department of Khyber Pakhtunkhwa has allocated the Receipt Target for the Financial Year 2014-15.

In light of the above mentioned receipt target, this Directorate individually allocate the following target to the Labour Inspectors with the direction to make their best efforts to meet the target without failure. Any shortfall/failure in meeting the allocated target will be considered in competency of the respective inspector.

S.No	Name and address of Labour Inspector	Monthly Target	Yearly Target
1	Mr. Manawar Khan Lab.Inspecto.Peshashawr	79162.66	95000/-
2	Mr. Aftab Khan Lab.Inspector Peshawar.	2916.66	35000/-
3	Mr. Khurshid Anwar Lab.Inspector Peshawar.	5833.33	70000/-
4	Mr. Shakeel Khan Lab.Inspector.Peshawar	4583.33	55000/-
5	Mr. Sajjad Khan Lab.Inspector.Peshawar	2500.00	30000/-
6	Mr. Mohibullah Lab.Inspector.Peshawar.	5416.66	65000/-
7	Mr.Sher Abbas Lab.Inspector,Nowsheera	4583.33	55000/-
8	Mr Mohd. Qaiser Lab.Inspector Charsadda	2500.00	30000/-
9	Qazi Nadeem Jan Lab.Inspector Mardan.	4833.33	58000/-
10	Mr. Noorul Wahab.Lab.Inspector Mardan	2500.00	30000/-
11	Mr. Sanaullah Lab.InspectorTaktubhadi.	2916.66	35000/-
12	Mr. Jehanzeb Durrani, ALO.Swabi	4166.66	50000/-
13	Mr. Amjad Shuja, Lab.Inspector.Swat	3333.33	40000/-
14	Mr. Farid Iqbal, Lab.Inspector.Dir.	2083.00	25000/-
15	Mr. Mohd Yasin, Lab.Inspector,Malakand	2083.00	25000/-
16	Mr. Hamidurrehmand, Lab.inspector.Haripur	4166.66	50000/-
17	Mr.Qasim Tanooli Lab.Inspector.Mansehra-I	3333.33	40000/-
18	Mr.Mr. Rashid Khan, Lab.Inspector.Mansehra	3333.33	40000/-
19	Lab.Inspector,A/Abad	4583.33	55000/-
20	Mr. Aurangzeb, Lab.Inspector,Abbottabad.	2500.00	30000/-
21	Mr.Sadiq Amin, Lab.Inspector,Kohat.	3333.33	40000/-
22	Mr. Nishat Khan Lab.Inspector.Kohat	3333.33	40000/-
23	Mr.Bilal Salim, Lab.Inspector.Bannu	4166.66	50000/-
24	Mr. Tufail Nawaz, Lab.Inspector.Bannu	2500.00	30000/-
25	MrShahid Muhmood, Lab.Inspecto.rKarak.	2500.00	30000/-
26	Mr. Imtiaz Khan,Lab.Inspector Lukki Marwat	2500.00	30000/-
27	Shaikh Waqas Hik, Labour .Inspector,DIkhan	2500.00	30000/-
28	Mr. Mohammad Hyas,Lab.Inspector,DI Khan.	2916.66	35000/-

(Engr. Waheed)
Dy;Chief Inspector of Shops and Estt.
Khyber Pakhtunkhwa, Peshawar

BEFORE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL , PESHAWAR.

Service Appeal No.334/2013.

RIZWAN ZIA Labour InspectorAppellant.

VERSUS

- 1. GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR.**
Through Chief Secretary, Civil Secretariat Peshawar
- 2. SECRETARY,**
Labour, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 3. DIRECTOR LABOUR,**
Labour Directorate, Peshawar.
- 4. SECRETARY FINANCE,**
Civil Secretariat, Khyber
Pakhtunkhwa, Peshawar.....**Respondents.**

Para Wise Reply/Comments on behalf of the Respondents.

Respectfully Sheweth:-

Preliminary objections

- 1) That the appellant has no cause of action.
- 2) That the appellant has not come to this Honorable Tribunal with clear hands.
- 3) That the appellant has been stopped by his own conduct to file the instant appeal.
- 4) That the appeal is badly time barred.
- 5) That the appellant has no locus standi.
- 6) That this honorable Tribunal has got no Jurisdiction to entertain the appeal.
- 7) That the appeal is bad for non-joinder and misjoinder of necessary parties.
- 8) That the appeal is not maintainable in its present form.

FACTS.

1. Pertaining to record.
2. Correct to the extent that the Appellants are under the Control of Respondents No.1 to 3 working in BPS-09. The rest of the para is denied.
3. Correct to the extent that the appellants have submitted their Departmental Presentation/ Appeal on 3.10.2012 for the grant of BPS-14.
4. Subject to proof.

GROUND.

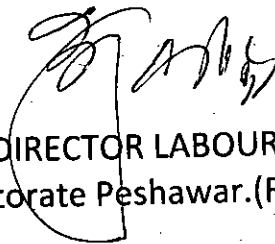
- A. No Comments. However, no discrimination committed by the Respondents.
- B. No Comments.
- C. Correct to the extent that all the Inspectors are placed in BPS-09 in the Department of Respondent No.1 and 2. The rest of the para is denied.
- D. Not based on facts, hence, denied.

- E. No Comments However, no one can claim up gradation as a right.
- F. Incorrect. Major functions of the Labour Inspector are the Implementation of various Labour Laws applicable to shops and Establishment.
- G. As above at Para F.
- H. No Comments.
- I. Incorrect. The appellant is not entitled for up gradation as none can claim it as a right and where there is no right there is no remedy.

It is therefore, prayed that the appeal being legally hollow and without any justification is not maintainable, hence be dismissed.



SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
Labour Department (Respondent No.2 &
On behalf of Respondent No.1)



DIRECTOR LABOUR
Labour Directorate Peshawar.(Respondent No.3)



SECRETARY FINANCE
Civil Secretariat, Khyber Pakhtunkhwa (Respondent No.4)



BEFORE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 334 /2013

Rizwan Zia Labour Inspector.

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR.

AFFIDAVIT.

I, Irfan Ullah Khan, Director Labour, Directorate of Labour Khyber Pakhtunkhwa, Peshawar Respondent declared that the contents of the reply is true and correct to the best of my knowledge and belief and nothing has been kept has been secret from this Honorable Tribunal.


Respondent.
Director Labour.