

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Service Appeal No. 308/2016

Date of Institution... 21.03.2016

Date of decision.... 26.01.2018

Adnan Yaqoob son of Yaqoob Khushi R/O St. John High School, Outside Kohati Gate, Peshawar. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Communication and Works Department, Peshawar and two others. ... (Respondents)

Mr. Muhammad Kamran Yousafzai, ... For appellant.  
Advocate.

Mr. Kabeerullah Khattak, ... For respondents.  
Addl. Advocate General

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. GUL ZEB KHAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the  
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 13.08.2010 by a general order whereby illegal appointment orders were withdrawn. Some of the affectees came to this Tribunal and this Tribunal vide judgment dated 12.06.2012 in service appeal No. 3125/2010 entitled "*Muhammad Aftab Versus Province of Khyber Pakhtunkhwa through Secretary, C&W Department, Peshawar and others*" gave relief to those appellants. Against the said judgment/order the department went before the august Supreme Court of Pakistan. The august Supreme Court of

Pakistan dismissed the appeals on 19.09.2012. Thereafter, the present appellant filed applications/appeals before the department which were not decided and finally he filed the present service appeal on 21.3.2016.

### ARGUMENTS

3. The learned counsel for the appellant argued that no limitation would be attracted as the cases of similarly placed employees were decided in their favour by this Tribunal and then by the august Supreme Court of Pakistan. In this regard, he relied upon two judgments of the august Supreme Court of Pakistan reported as 2009-SCMR-1 and 1996-SCMR-1185. He further argued that the appeal of the appellant clearly fell within the four corner of the appeals of the appellants referred to above.

4. On the other hand the learned Addl. Advocate General argued that the present appeal is not maintainable under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further argued that the appellant filed time barred departmental appeal. That he also filed successive departmental appeals which were not permissible as per the judgment of the august Supreme Court of Pakistan reported as 2013-SCMR-911.

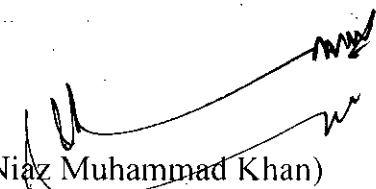
### CONCLUSION

5. The issue of limitation would be decided first. The judgment relied upon by the learned Addl. Advocate General is applicable in those cases where the issue of similarly placed employees is not attracted. In view of the judgment relied upon by the learned counsel for the appellant no limitation would be attracted in cases of similarly placed employees. Mere filing of successive departmental appeals would not snatch the right to which the appellant is otherwise entitled. The present appeal is, therefore, maintainable and well within time.

6. It has not been refuted before this Tribunal by the respondent department that the case of the appellant is not similar to those referred to by the learned counsel for the appellant. But after perusing both the cases this Tribunal is of the view that both the cases are similar in material terms. This Tribunal is therefore, of the view that the appellant should also be treated at par with all those whose appeals were decided by this Tribunal.

7. This appeal is also decided in line with the earlier mentioned appeals. The appellant is reinstated with back benefits. Parties are left to bear their own costs. File be consigned to the record room.

  
(Gul Zeb Khan)  
Member

  
(Niaz Muhammad Khan)  
Chairman

ANNOUNCED  
26.1.2018

01.12.2017

Since 1<sup>st</sup> December, 2017 has been declared as Public Holiday on account of Rabbi-ul-Awal. To come up for arguments on 26.01.2018 before the D.B.



Reader


26.01.2018

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. Arguments heard and record perused.

This appeal is disposed of as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.



MEMBER



CHAIRMAN

ANNOUNCED  
26.01.2018

21.12.2016

Appellant in person and Mr. Mubarak Ali Shah, Admin Officer alongwith Additional AG for the respondents present. Rejoinder not submitted. Appellant seeks adjournment due to non-availability of his counsel. Adjourned. To come up for rejoinder and arguments on 08.05.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)  
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 rejoinder and final hearing for 18.8.2017 before D.B.

Member

Chairman

18.08.2017

Appellant in person and Mr. Muhammad Jan, DDA alongwith Muhammad Arif, Admn. Officer for the respondents present. Rejoinder submitted. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned. To come up for final hearing before the D.B on 01.12.2017.

Member

Chairman

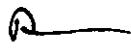
10.08.2016

Agent to counsel for the appellant and Mr. Mubarak Ali, Admin Officer alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 20.09.2016.

  
Member

20.09.2016

Counsel for the appellant and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. Last opportunity granted. To come up for reply/comments on 10.10.2016 before S.B.

  
Member

10.10.2016

Appellant in person and Mr. Mubarak Ali Shah, Admin Officer alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 21.12.2016.

  
Chairman

11.04.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Lab: Attended BPS-14 when removed from service vide impugned order dated 13.08.2010 by withdrawing his appointment order where-against he preferred departmental appeal on 16.4.2015 which was not respondents and hence the instant service appeal on 21.3.2016.

That similarly placed employees have preferred service appeals including service appeal No. 3125/2010 decided on 12.6.2012 and that the same was maintained by august Supreme Court of Pakistan vide judgment dated 19.9.2012. That the appellant is entitled to similar treatment as laid down by august Supreme Court of Pakistan in case reported on 1996-SCMR=1185. That time limitation would come in the way of the appellant. Placed reliance on case law reported in 2002 PLC(C.S) 1368.

Points urged need consideration. Admit subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.6.2016 before S.B.

  
Chairman

01.06.2016

Appellant in person and requested for extension of time to deposit security and process fee. Security and process fee shall be deposited within a week thereafter notices be issued to the respondents for submission of written reply on 10.08.2016 before S.B.



  
Chairman

Appellant Deposited  
Security & Process Fee

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 308/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29.03.2016	<p>The appeal of Mr. Adnan Yaqub resubmitted today by Mr. M. Kamran Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	30-3-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>11.4.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

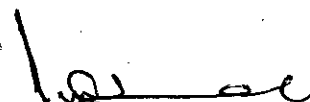


The appeal of Mr. Adnan Yaqub son of Yaqoob Khushi r/o St. John High School Outside Kohati Gate Peshawar received to-day i.e. on 21.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.

No. 479 /S.T,

Dt. 22/3 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M. Kamran Yousafzai Adv. Pesh.

Respected Sir,

Re-submitted after necessary  
completion.

Shahzad Ahmed  
Advocate, Peshawar.



Dated: 28-03-2016.

**BEFORE THE KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 308/2016

Adnan Yaqoob

VERSUS

Govt. of KPK and others

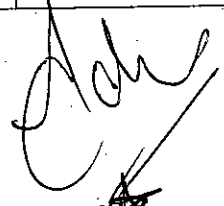
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Dated: 21/03/2016

Through

Appellant

  
**Muhammad Kamran Yousafzai**  
Advocate, High Court, Peshawar.

Cell No. 0312-5007473

Office: Jamil Plaza, GT Road, Near  
KPK Chamber of Commerce,  
Peshawar.

(1)

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Appeal no. 308/2016

**N.W.F. Province**  
**Service Tribunal**  
Diary No. 248  
Dated 21-03-2016

Adnan Yaqoob Son of Yaqoob Khushi R/o St John High School, Outside Kohati Gate, Peshawar.

.....Appellant

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Communication and Works, Department Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer, Central Design Office, C&W Department, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER**  
**PAKHTUNKHWA, SERVICE TRIBUNAL ACT,**  
**1974 AGAINST THE IMPUGNED ORDER**  
**DATED 13/08/2010, WHEREBY THE**  
**APPOINTMENT OF THE APPELLANT WAS**  
**CANCELLED AND ALSO NOT TAKING ANY**  
**ACTION ON THE DEPARTMENTAL APPEALS**  
**FILED BY THE APPELLANT TIME AND**  
**AGAIN.**

illegally

re-submitted to-~~40~~  
and filed.

*Signature*  
29/3/16

*Signature*  
21/2/16

PRAYER:-

2

**ON ACCEPTANCE OF THE INSTANT APPEAL  
THE IMPUGNED CANCELLATION ORDER  
DATED 13/08/2010, MAY KINDLY BE SET ASIDE  
AND THE APPELLANT BE RE-INSTATED  
WITH ALL BACK BENEFITS ON THE POST OF  
LAB ATTENDED.**

**RESPECTFULLY SHEWETH,**

Brief facts given rise to instant appeal are as under:-

1. That the respondent No. 3 advertised posts of different categories including the post of Lab Attendant.
2. That the appellant properly applied for the post of Lab Attendant and after successful completion of prescribed selection process, on the recommendation of Department Selection Committee, the appellant was appointed against the post of Lab Attendant on 29/07/2010. (Photocopy of appointment order is attached as Annexure A).
3. That the appellant in furtherance of the appointment order dated 29/07/2010 took the charge of the said post and duly started his duties to the entire satisfaction of his superiors.
4. That all at a sudden and astonishingly the appellant received the impugned cancellation order of his appointment dated 13/08/2010, whereby the

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appointment of the appellant was illegally unlawfully, and arbitrary cancelled. (Copy of cancellation order is attached as Annexure B).

5. That time and again the appellant approached the respondents by filling various departmental appeals wherein the respondent adopted the delaying tactics and the respondents are delaying the reinstatement of the appellant with all back benefits, against his post, aggrieved from the said act of the respondents, the appellant approach before this Honourable Tribunal on the following grounds inter alia. (Photocopies of departmental appeal / request are attached as Annexure C).

**GROUND:-**

- A. That the impugned cancellation order dated 13/08/2010 is illegal, void, arbitrary, without lawful authority, against the norms of justice hence not tenable under the law and is liable to be set aside.
- B. That the respondents ignored the fact that one Muhammad Aftab ex-naib qasid through service appeal No. 3125/2010 impugned the said illegal, unlawful and arbitrary cancellation of appointment order dated 13/08/2010, which was decided in favour of the appellant (M. Aftab Ex Naib Qasid) by this Honourable Court, subsequently the respondents impugned the said order and judgment of this Honourable Court in the apex court (Supreme Court of Pakistan).which was

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dismissed by the Honourable Apex (Supreme Court) on 19/09/2012. (Copies of judgments are attached herewith attached as Annexure D and E).

C. That, it is well settled practice of this Honourable Court and the well admired practice of the apex court, and in light of Apex Court judgment reported in SCMR 1996 Page 1185, the relevant is reproduced as under:-

*“The Supreme Court has consistently hold, that if the service tribunal or supreme court decides a point of law relating to the terms and conditions of service of a civil servant, which covers not only the case of civil servant which litigated, but also of other civil servant, who may have not taken any legal proceedings in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servant also who may not be parties to that litigation, instead of compelling them to approach the tribunal or any other legal forum”.*

*In the instant case the appellant was neither a party in litigation before this Honourable court nor before the apex court, so in the light of aforesaid findings of the apex court the appellant is liable to be re-instated against his post in the light of the judgment dated 12/06/2012 of this Honourable Court as well as the order and judgment of the apex court dated 19/09/2012.*

D. That the law favours that cases should be decided on merits and not on technicalities.

E. That any other ground would be agitated at the time of arguments with prior permission of this Honourable Court.

It is therefore, humbly prayed that on acceptance of this appeal, the appellant may kindly be reinstated against his post in the light of orders and judgment of the apex Court (Supreme Court of Pakistan) of this Honourable Court as well as ~~by the light of order and judgment of the~~ impugned order of cancellation of appointment of the appellant dated 13/08/2010 may be set aside in the large interest of justice.

Appellant

Through

  
Muhammad Kamran Khan Yousafzai

  
Irfan ur Rehman

  
Shahid Ahmed

  
Asif ur Rehman

  
Jawad Khan

Advocates, High Court, Peshawar.

(6)


**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

**Adnan Yaqoob                      VERSUS                      Govt. of KPK and others**

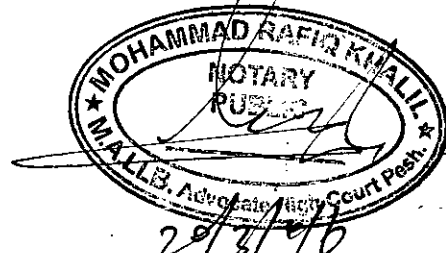
**AFFIDAVIT**

I, Adnan Yaqoob Son of Yaqoob Khushi R/o St John High School, Outside Kohati Gate, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of instant **SERVICE APPEAL** are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Court.

**ATTESTED**



**DEPONENT**



29/3/96

NIL-17301-9010324-9



(7)

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

**Adnan Yaqoob                      VERSUS                      Govt. of KPK and others**

**ADDRESSES OF PARTIES**

**APPELLANT:-**

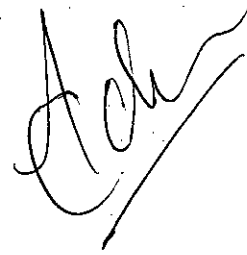
Adnan Yaqoob Son of Yaqoob Khushi R/o St John High School, Outside Kohati Gate, Peshawar.

**RESPONDENTS:-**

1. Govt. of Khyber Pakhtunkhwa through Secretary Communication and Works, Department Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer, Central Design Office, C&W Department, Khyber Pakhtunkhwa, Peshawar.

Appellant

Through



**Muhammad Kamran Khan Yousafzai**

**And**

**Irfan ur Rehman**

Advocates, High Court, Peshawar.

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**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

**Adnan Yaqoob                      VERSUS    Govt. of KPK and others**

**APPLICATION UNDER SECTION 5 OF**  
**THE LIMITATION ACT, FOR THE**  
**CONDONATION OF DELAY, IF ANY**  
**CAUSED IN THE INSTITUTION OF THE**  
**INSTANT APPEAL.**

**RESPECTFULLY SHEWETH,**

1. That the above captioned appeal has been filed today before this Honourable Tribunal in which no date of hearing has been fixed.
2. That, the contents of the accompanying appeal be consider<sup>d</sup> as part and percal of the instant application.
3. That the law favours that cases should be decided on merits and not on technicalities and technicalities should be avoided in the dispence of fair administration of justice. In the instant case the appellant / petitioner has got a good prima facie case and the appellant / petitioner would not be deprived from availing a

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legitimate remedy from this Honourable Tribunal for the redressal of his grievances, if the delay so caused in the institution of the above captioned appeal has been condoned.

4. That the appellant / petitioner seeks leave to appeal of this Honourable Court to argue additional grounds at the time of arguments.

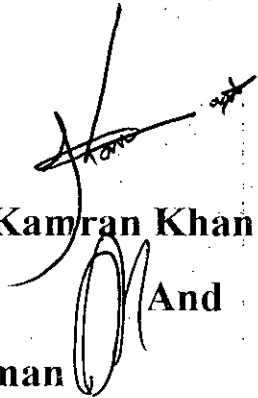
**It is therefore, humbly prayed that on acceptance of this application, the instant application may kindly be accepted as prayed for in the larger interests of justice.**

Appellant

Through

  
**Muhammad Kamran Khan Yousafzai**

And

  
**Irfan ur Rehman**

Advocates, High Court, Peshawar.

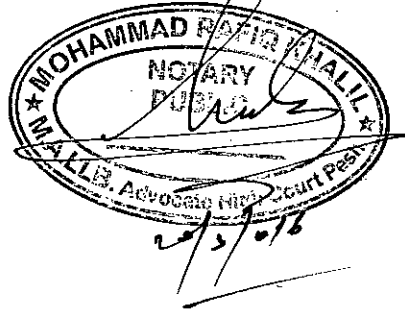
**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

**Adnan Yaqoob                      VERSUS                      Govt. of KPK and others**

**AFFIDAVIT**

I, Adnan Yaqoob Son of Yaqoob Khushi R/o St John High School, Outside Kohati Gate, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of instant **APPLICATION FOR CONDONATION OF DELAY** are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Court.

**ATTESTED**



**DEPONENT**

CNIC - 17301-9010324-9

Atm... - A (14)

**OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN  
OFFICE C&W DEPARTMENT K.P 8-A SHAMI ROAD PESH:**

No. 2 E/324 Dated 29/07/2010

**OFFICE ORDER**

On the recommendation of the Departmental Selection Committee as per its meeting held on 28/06/2010, the Competent Authority is pleased to Offer a post of Lab Attendant (BPS-02) to Mr. Adnan Yarub S / O Yaqub Khushi, ST. John High School O/S Kohatti Gate District Peshawar, on the following terms and conditions:-

- He will get pay at the minimum of BPS-02, including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
- He shall be governed by the KPK, Civil Servants Act-1973 and all the laws applicable to the Civil Servants and Rules made there under.
- He shall, for all intents and purposes, be a Civil Servant except for the 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 Fund (C.P.F) along with the contributions made by the Government to his account in the said fund, in the prescribed manner and rate fixed by the Government from time to time.
- His employment in Communication & Works Department (CDO) is purely temporary and his services are liable to be terminated without assigning any reasons at fourteen (14) days prior 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.
- He shall, initially be on probation for a period of two years extendable up to 3-years.
- He shall, produce a Medical Certificate of fitness from the Medical Superintendent of Police & Services Hospital Peshawar, before reporting himself for duty as required under the rules.
- He has to join duty at his own expenses.
- He shall have to serve any where in KPK.
- If he accepts the post on the above conditions, he should report to the office of the Research Officer Road Research & Material Testing Lab: C&W Department Peshawar, within 14-days of the receipt of this offer and produce original documents in connection with his qualification/domicile and health/age etc.

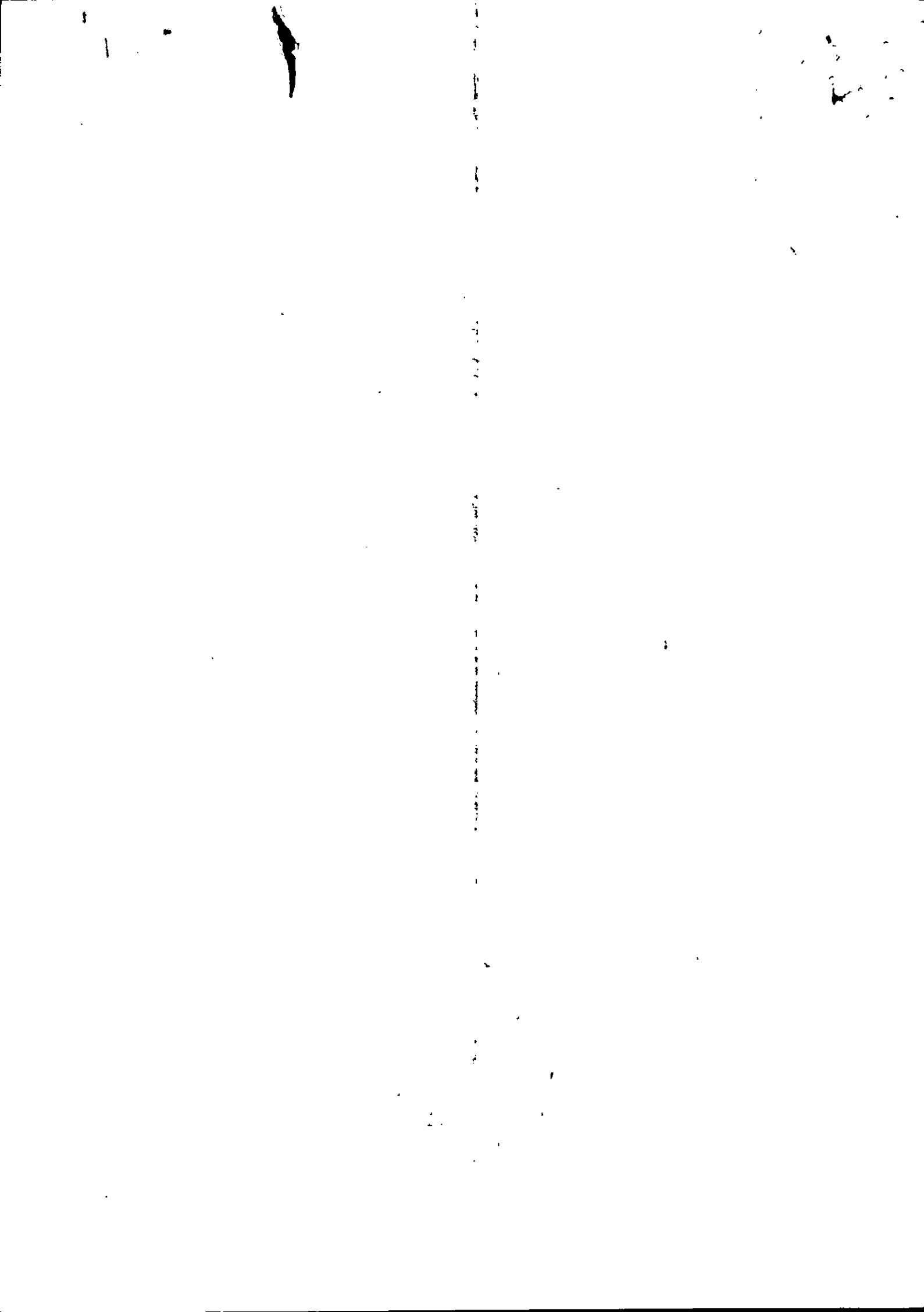
(Engr: KHALID SHAH)  
Chief Engineer

Copy for information to the :-

- Accountant General, KPK, Peshawar.
- Mr. Adnan Yarub S / O Yaqub Khushi ST. John High School O/S Kohatti Gate District Peshawar

(MUHAMMAD ARIF)  
Administrative Officer

Attested  
for



Annexure B

12

Most Immediate  
Top priority



GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT


No. SOE/C&WD/17-4/2010  
Dated Peshawar, the August 13, 2010

TO

The Chief Engineer (CDO)  
C&W, Peshawar

Subject: CANCELLATION OF APPOINTMENTS MADE BY CHIEF ENGINEER  
(CDO) C&W, PESHAWAR

I am directed to refer to the subject noted above and to state that the competent authority has been pleased to direct that all the appointments made by the Chief Engineer (CDO) C&W Peshawar since its establishment, for his office may be cancelled today (13.08.2010) positively, as the appointments have been made without observing codal formalities/procedure, under intimation to all concerned.

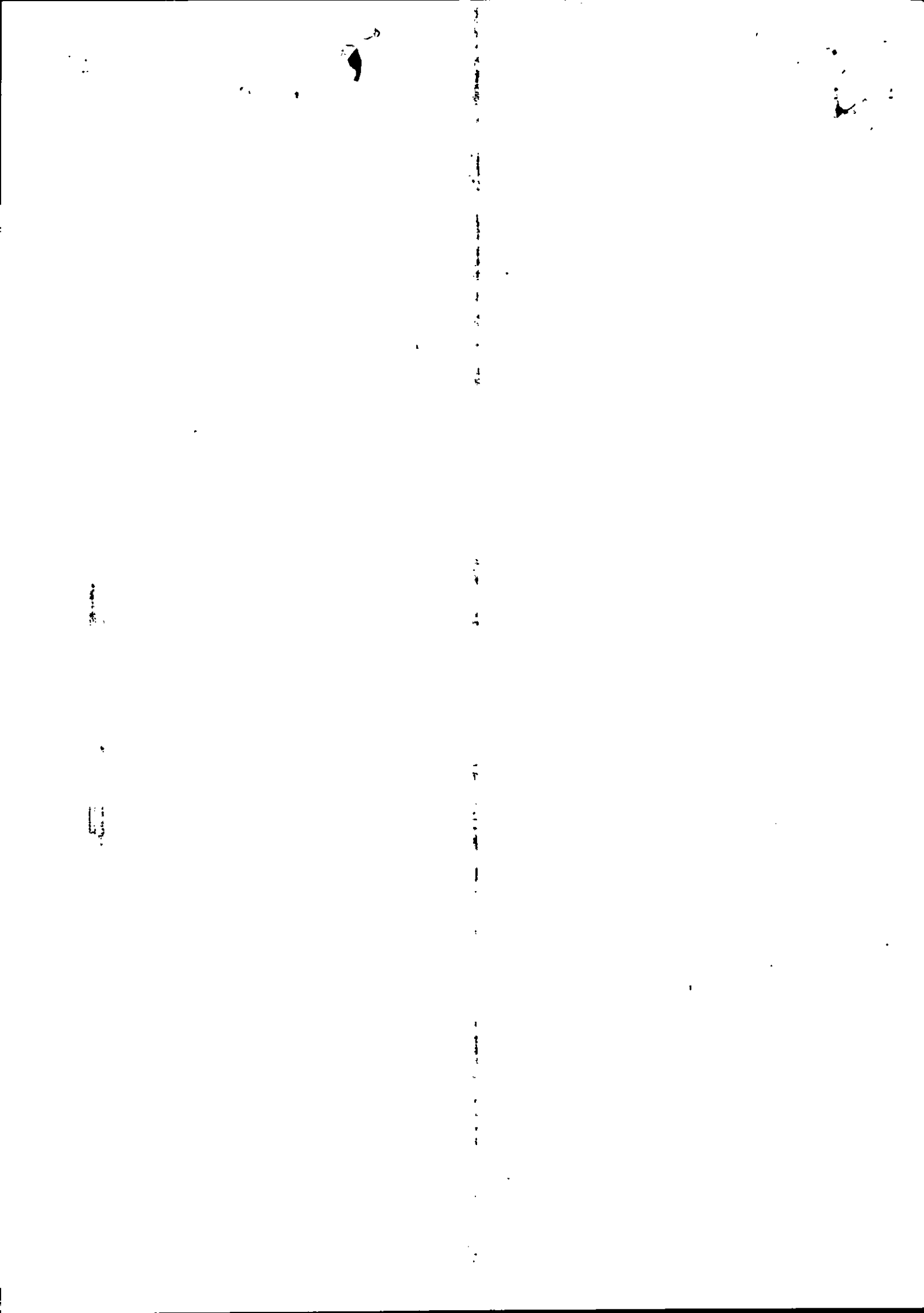
  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

Endst even No. & date

Copy is forwarded to the:-

1. Special Assistant to Chief Minister Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
3. Accountant General Khyber Pakhtunkhwa, Peshawar
4. Chief Engineer (CDO/Centre), C&W Peshawar.
5. PS to Secretary, C&W Peshawar.

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)







Annex: b

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OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN  
OFFICE C&W DEPARTMENT KHYBER PAKHTUNKHWA  
8 A, SHAMI ROAD PESHAWAR

No. E- 361 Dated 18/08/2010

OFFICE ORDER

In compliance with the directive vide Secretary, to GOKP C&W Department letter No:SOE/C&WD/17-4/2010, dated 13.08.2010, and in continuation of this office order No.E-2/356 dated 13/08/2010, the office orders issued in respect of the following officials are hereby cancelled.

Sl:No.	Name	Father's Name	Order No. & Date
1.	Waqar Ali Shah	Umar Shah	2-E/312, 29.07.2010
2.	Muhammad Junaid Abid	Abid Jan	2-E/313, 29.07.2010
3.	Mian Amin Jan	Mian Fazal-e-Nacem	2-E/309, 29.07.2010
4.	Noorullah	Rahmatullah	2-E/271, 29.07.2010
5.	Khalid	Muhammad Sardar	2-E/287, 22.07.2010
6.	Arif Shah	Haji Alif Shah	2-E/323, 29.07.2010
7.	Adnan Yaqub	Yaqub Khushi	2-E/304, 29.07.2010
8.	Zafar Iqbal	Muhammad Bashir	2-E/320, 29.07.2010
9.	Waheed Ahmed	Jamshid Khan	2-E/314, 29.07.2010
10.	Asif Khan	Zarif Khan	2-E/257(d) 29.07.2010
11.	Amjid Ali	Ghulam Hassan	2-E/303, 29.07.2010
12.	Sher Aman Shah	Mir Akbar Shah	2-E/315, 29.07.2010
13.	Jawad Khan	Muhammad Younas	2-E/319, 29.07.2010
14.	Fahim Shah	Abdul Qayum	2-E/317, 29.07.2010
15.	Fida Jan	Faqir Muhammad	2-E/308, 29.07.2010
16.	Rashid Hamced	Abdul Hamced	2-E/310, 29.07.2010
17.	Said Farosh	Mian Farosh	2-E/254, 01.07.2010
18.	Ashfaq Ahmad	Manzar Saleem	2-E/256, 01.07.2010
19.	Arif Khan	Dad Karim	2-E/253, 01.07.2010
20.	Gohar Muhammad	Qadir Muhammad	2-E/257(a)01.07.2010
21.	Muhammad Tariq	Namdar Khan	2-E/257(b)01.07.2010

CHIEF ENGINEER CDO

Copy to the:-

- Secretary, to GOKP C&W Department Peshawar, with ref: to above for information please.

CHIEF ENGINEER CDO

Attested  
[Signature]

Annexure - e

14

To

The Secretary,  
C&W Department  
KPK Peshawar.

Subject: RE- INSTATEMENT IN GOVERNMENT SERVICE.

R/Sir,

With due respect, it is submitted that, I, Adnan Yaqub, Ex: Lab: attendant O/O the Chief Engineer, CDO C&W Department Peshawar have submitted the following few points for your kind consideration and necessary action please:-

That I was appointed as Lab: attendant (BPS-2) in the O/O the CE, CDO, C&W Department, Peshawar, in the year 2010, after fulfilling all formalities (order copies attached) as annexure-I. In pursuance of the order, I reported for duties along with medical certificate (Annexure-II)

Unfortunately, on the direction of the Secretary, C&W Department, Peshawar, the appointment order was cancelled by CE CDO vide O/ order No. 2-E/304, dated 18.08.2010 (Annexure-III). Aggrieved with the illegal act of the Department, one Mr. Muhammad Aftab, Naib Qasid & others, filled the subject appeal before the service Tribunal for setting aside the impugned order dated 18.08.2010. Service Tribunal accepted the above appeal (Annex-V) and set aside the impugned order dated 18.08.2010 by reinstating the appellant into service with all back benefit and also dispose of other connected service appeals having the same question of law and facts.

My service book, medical certificate and other records are in the CDO office.

Therefore, in pursuance of the above quoted judgement of august Supreme Court of Pakistan, and being a similar affectee, I humbly request that I may also be re-instated in Govt. Service with all back benefits, and save me from further litigation and financial losses, please.

Yours obediently,

*Adnan*

Adnan Yaqub S/O Yaqub Khushi  
Ex: Lab attendant O/O the CE CDO  
C&D Department Shami Road Peshawar.  
Date: 16.04 2015.

*Attested*  
*[Signature]*

~~(10)~~ (15)

To:  
The Chief Engineer,  
Central Design Office (CDO),  
Govt. of Khyber Pakhtunkhwa,  
C&W Department, Peshawar.

Subject: APPLICATION FOR REINSTATEMENT OF SERVICE.

Respected Sir,

Due to above cited subject humbly request to your kind honor that I was appointed as Lab Attendant on 27-07-2010. During my services i have proved as an honest Punctual and Hardworking employee.

Unfortunately some departmental and political issues all orders were cancelled on 14-07-2010. Without any reason some of my colleagues appealed in the court for this brutal decision and court has given positive decision. Some of my colleagues were re instated. My case also similar. So, I humbly request you kindly reinstate me like other.

I Hope you will consider my humble request,

I shall be very thank full to you,

Yours Sincerely,

*Adnan*  
11-7-2014

Adnan Yaqub.

S/o Yaqub Khushi.

Designation: Lab Attendant.

Order No. 2E/304.

*An on file -*  
*Spdk*  
*11/7/11*  
*ASHA*

Copies Attached:

- ✓ Appointment Order. Annex (a)
- ✓ Cancellation Order. (b)
- ✓ Court Decision Copy. (c)
- ✓ Order of Re instated employees. (d)
- ✓ Appealed to Department to Secretary (14/01/2013). (e)

*Attached file*

Dairy No: 1029/E-III  
14/01/2013

16

OFFICE OF THE  
CHIEF ENGINEER CDO  
C&W DEPARTMENT PESH:

No.E-III/\_\_\_ Dated \_\_\_/01/2013

To

The Secretary,  
to Govt. of Khyber Pakhtunkhwa,  
C&W Department Peshawar.

CE(CDO)  
for his views

Subject: ADJUSTMENT OF OFFICIALS.

11/1/2013

Respected Sir,

Secretary  
C&W Department  
Peshawar

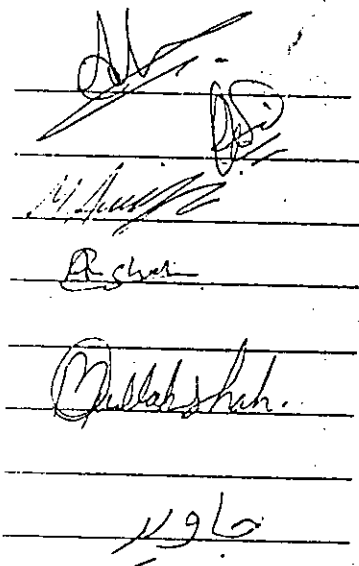
We, the following officials invite your kind attention to the August Supreme Court of Pakistan judgment dated 19-09-2012 wherein Nine Nos. ex-officials were reinstated, and adjusted by the Department against the existing vacancies under your jurisdiction.

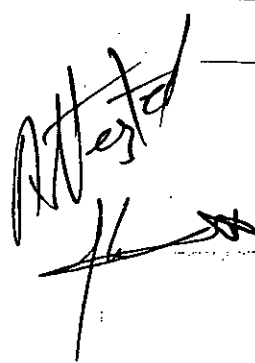
2. We lodged an appeals to your good office for re-instatement through Chief Engineer, CDO C&W Department Peshawar, on the said plea our case was submitted to Law Department for advice by your good office, hence, the Law department returned the same with the request that the said appeal may decide by the Administrative Department i.e, Secretary, C&W, Department.

Therefore, it is requested that the said appeal may be decided in the light of your office letter No.soe/c7wd/17-4/2012, dated 30.11.2012, wherein Mr. Haroon Khan & Muhammad Junaid Abid appeal were re-instated in Government Service, being the appellant in the same issue, for which we shall be very thankful to you sir.

Yours Obediently,

1. Adnan Yaqub Lab Attendant (BS-02)
2. Waqar Ali Shah Daftari (BS-02)
3. Mian Amr Jan Lab Assistant (BS-05)
4. Arif Shah Naib Qasid (BS-01)
5. Zafar Iqbal Daftari (BS-02)
6. Matti ullah Shah Naib Qasid (BS-01)
7. Ashfaq Ahmad Chowkidar (BS-01)
8. Javed Naib Qasid (BS-01)



Attested  




GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

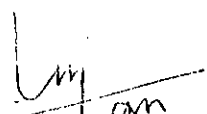
No. SOE/C&WD/17-4/2012  
Dated Peshawar, the April 30, 2015

TO

The Chief Engineer (CDO)  
C&W, Peshawar

Subject: Re-Instatement in Government Service

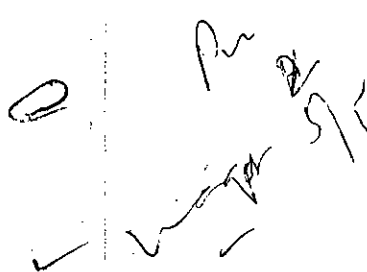
I am directed to refer to the subject noted above and to forward herewith a copy of an application dated 16.04.2015 along-with its relevant document in respect of Mr. Adnan Yaqub S/O Yaqub Khusi for necessary legal action/rules of the Government please.

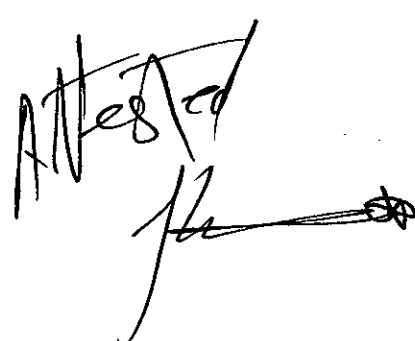
  
(USMAN JAN)  
SECTION OFFICER (Estb)

First even No. & date

Copy forwarded to PS to Secretary C&W Department

SECTION OFFICER (Estb)

  
An  
S/S

  
Attested

E-11 (1)



OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN OFFICE  
C&W DEPARTMENT HOUSE NO. 13/28 STREET NO. 19  
SHAMI ROAD KHYBER PAKHTUNKHWA PESHAWAR  
Ph. No. 091-9211133 Fax. 091-9213923

18

11  
5

No. \_\_\_\_\_ Date: 15/5/2015

The Research Officer,  
RRMT Lab. C&W Department  
Peshawar

Subject: REINSTATEMENT IN GOVT. SERVICE

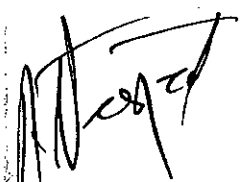
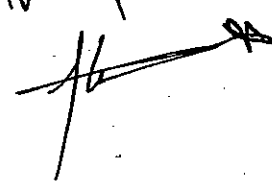
I am directed to refer to to the above noted subject and to enclose herewith copy of Secretary to Govt. of Khyber Pakhtunkhwa C&W Deptment Peshawar letter No. SOFC&W/17-4/2012, dated 30/4/2015 alongwith application of Mr. Adnan Yaqub S/O Yaqub (Retd. Lab. Attendant). The applicant seeks his reinstatement in service with all back benefits in light of the judgement of august Supreme Court of Pakistan being a similar affectee as stated by him so as to save him from further litigation and financial losses.

I am further directed to request that position of the posts of Lab. Attendant in your office may be intimated to this office for further necessary action please.

  
Administrative Officer

Copy to PA to Chief Engineer (CDO).

  
Administrative Officer

CHIEF ENGINEER

19

CENTRAL DESIGN OFFICE C&W DEPTT: KHYBER PAKHTUNKHWA

- (1) Application of Muneef Gull Sweeper No. nil of nil
- (2) ISSUE NO - 1347/E-3(1) Date: 23-1-2015
- (3) CE(C) C&W D Pers. NO: 21-E/337/CE/C&W D of 27<sup>1</sup>/<sub>15</sub>

Ch: 3

May file in view of Ch: 2 P's

Sufait

for

Sufait

2/9/2

- (4) SE C&W Deptt; Nosdam NO: 1683/SE of 10-3-15
- (5) CE(C) C&W D Pers. NO: 21-E/906/CE of 12-3-15
- (6) Application for appointment in E/O Asif Khan Chaudhary of 7<sup>4</sup>/<sub>15</sub>
- (7) Issue NO: 231/E-3(1) Dated 07-04-15
- (8) ————— 245/E-3(1) Dated 13-04-15
- (9) Secy C&W D Pers. NO: 50E/C&W D/17-4/2012 of 30<sup>4</sup>/<sub>15</sub>

OFFICE NOTE:

Ch: (9)

vide Puc Section Officer Estt: C&W Deptt: Pers has advised this office for necessary legal action of Government appeal lodged by the Ex-officials Mr: Adnan Yaqub S/O Yaqub Khushi (Ex-lab: attendant) who were terminated on the direction of the then Secretary C&W Deptt: in year 2010, and did not have taken any legal proceedings for re-instatement in Govt: Services in the light of Supreme Court of Pakistan, Islamabad Judgment in the Court No: Justice Ijaz Ahmad Chaudhary.

may issue necessary order of re-instatement of Ex-officials Mr: Adnan Yaqub S/O Yaqub Khushi (Ex-lab: Attendant) Submitted for order's PIS

*[Handwritten signature]*  
 16

DN

Pl. check with previous file &  
 for reference

Wajid

2/12/15

The following Ex-officials were re-allocated  
 in Govt. Services previously in light of appeal  
 lodged to Secty. Genl. Govt. vide letter No. 27 date  
 noted against each:

S.No	Name & Designation	Recd. & issued letter No.	Appointed NO. & date	Ch.
(01)	Javed Ex-N/Osial S/O Abdul Rahim	SOE/CE/MD/17-4/2013 Dt 27-5-2013	E-III/1096 Dt 26-2-2013	27, 31
2	Mrs. Zafar Iqbal Ex-Draftsman		E-III/2248 Dt 1-2-2013	Ch-35
3	Mrs. Asfayy Ahmad Ex-Chauffeur	SOE/CE/MD/17-4/2012 Dt 23-9-15	E-II/78 22-11-15	Ch-4 39
4	Mrs. Noorullah Ex-Draftsman	do	E-III/20 Dt 22-11-13	43
5	Mrs. Amira Jinn Ex-Lab. Assit.	SOE/CE/MD/17-4/2012 16-5-2014	E-III/415 Dt 2-6-14	Ch-90, 98
6	Mrs. Rashid Hameed Ex-Chauffeur	SOE/CE/MD/17-4/2012 11-4-2014	E-III/1317 Dt 17-1-15	Ch-97, 15

*(Handwritten signatures)*



(10) (20)

To

The Secretary, Govt: of KPK  
C&W Department Peshawar.

Subject:- REQUEST FOR RE-INSTATEMENT IN GOVERNMENT SERVICE.

Ref: Your office letter No. No.SOE/C&WD/, dated 17.04.2012,  
addressed to Chief Engineer, CDO C&W Department Peshawar.

R/Sir,

1. Respectfully, it is submitted that the appellant was duly appointed to the post of Lab: attendant on 28.06.2010, in Chief Engineer, CDO C&W Department Peshawar after fulfilling all the required requirements (copy of the appointment letter attached as Annexure-A).

2. That on dated 13.08.2010 on the direction of the then Secretary, C&W Department issued a impugned notification, No.SOE/C&WD/17-4/2010, dated 13.08.2010, of termination from service which was addressed to Chief Engineer, CDO C&W Department in respect of cancellation of the appointments made by him as the appointments have been made without deserving codal + formalities/procedure, under intimation to all concerned, in which the appellant was at serial No.7. (Photo copies of the said termination letter ~~is~~ attached herewith).

3. That aggrieved with this act of the department one Muhammad Aftab ex-Naib Qasid preferred an appeal under section 4 of the KPK service tribunal act 1974 whereby impugned the said illegal order for the cancellation of appointment, which was accepted by the said Service Tribunal on dated 12.06.2012, wherein disposed of certain other appeals filed by the other aggrieved from the same illegal and unlawful order of the cancellation of the posts. (Photo copies of the said judgments are attached).

4. That aggrieved from the same the department concerned preferred an appeal before the Apex Supreme Court, wherein impugning the said judgment of the honorable Service Tribunal of the KPK, which was dismissed (photo copy of the said judgment of the apex Court is attached herewith).

5. That the appellant was not a party to the said proceedings i.e, before the Service Tribunal or the apex court.

6. That the appellant severely approached before the concerned department in numerous applications, but in vain, hence the present appeal on the following grounds inters -alia.

A. That the said department ignored the fact that it is a very settled principle of law that if in such like the impugned cancellation of pots notice, if any of the aggrieved person impugned the same, would be a judgment in respect of all the aggrieved

Attested  


(21)

persons, hence the appellant is very legal and lawfully being another to be reinstated in the spirits of the aforesaid judgment of the honorable Service Tribunal as well as of the judgment of the apex court .

- B. That it was also ignored that the said department has also appointed some of the aggrieved without legal proceedings in shape of the proceedings or through department appeal (photo copies of the said orders are attached herewith).
- C. That it is also worth to mention here that the appellant also filed numerous applications before the then Secretary, C&W Department KPK Peshawar on dated 16.04.2015 and so on to the Chief Engineer, CDO on dated 11.07.2014, to the Secretary, C&W Department, Peshawar which are self explanatory in its contents but the appellant was ignored and was delayed on one pretext or on another, is also worth to mention have that the Section Officer of Establishment C&W also addressed a letter No.SOE/C&WD/, dated 17.04.2012 to the Chief Engineer, CDO for necessary action but in vain. The appellant belongs to minority and a poor family and is a law abiding citizen has been ignored to be reinstated.

8. That it would be in the interest of both the appellant as well as of the said Deptt: if the appellant may be re-instated with all back benefit or adjusted according to the prevailing law, anywhere in C&W Department against any vacancy so both the parties would safeguarded from unnecessary, lengthy and expensive litigations.

It is therefore, prayed that the appeal of the appellant may kindly be accepted as prayed with a further submission for re-instatement with all back benefits, a kind order for the swift and speedy re-instatement order with back benefits may be passed please.

*sd/-1*  
Appellant

Mr. Adnan Yaqub S/O Yaqub Khushi R/O St.John  
High School O/S Kohatti Gate District Peshawar.

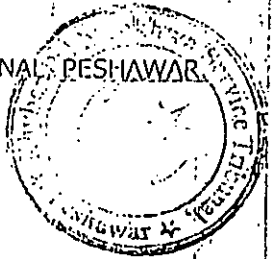
Dated 22.02.2016.

Annexure D-

29

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 3125/2010



Date of Institution, ... 22.12.2010  
Date of Decision ... 12.06.2012

Muhammad Aftab Ex-Naib Qasid S/O Muhammad Yousaf  
Flat No. 67/C, Moh. Gulshan Rahman Colony, Kohat Road,  
Peshawar C/O Chief Engineer, C&W Deptt. Peshawar. ... (Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Peshawar.
2. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer, Central Design Office, C&W Department, Khyber Pakhtunkhwa Peshawar. ... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 13.8.2010 WHEREBY APPOINTMENT ORDER OF THE APPELLANT HAS BEEN CANCELLED AND HIS DEPARTMENTAL APPEAL ELICITED NO RESPONSE WITHIN THE STATUTORY PERIOD.

SHAHZADA IRFAN ZIA, Advocate ... For appellant

MR. ARSHAD ALAM, Addl. Government Pleader ... For respondents.

MR. SULTAN MAHMOOD KHATTAK, MEMBER  
MR. NOOR ALI KHAN, MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER. This appeal has been filed by Muhammad Aftab, the appellant, under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 13.8.2010, whereby his appointment order has been cancelled. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated into service with all back benefits.

2. Brief facts of the case as averred in the memo: of appeal are that respondent No. 3 advertised posts of different categories including the post of Naib Qasid in the press. The appellant applied for the post of Naib Qasid and after

ATTESTED

successful completion of prescribed selection process, and on the recommendations of the Department Selection Committee, he was appointed as Naib Qasid by the competent authority on regular basis, vide order dated 29.7.2010. The appellant took over charge of the post and started to perform his duties to the entire satisfaction of his superiors. His appointment order has been cancelled vide impugned order dated 13.8.2010. Feeling aggrieved, the appellant filed departmental appeal on 6.9.2010 through proper channel, which has not been decided within the statutory period of ninety days, hence the present appeal on 22.12.2010, which is well within time.

3. The appeal was admitted to regular hearing on 17.1.2011 and notices were issued to the respondents. They filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

4. The learned counsel for the appellant argued that being fully qualified for the post, the appellant was appointed as Naib Qasid by the competent authority on 29.7.2010. He took over charge and served on the post for some time and valuable rights have been accrued to him. Subsequent cancellation of appointment order is in clear violation of principles of locus poenitentiae. He further argued that appointment order of the appellant has been cancelled without any reason, which is against the spirit of Section 24-A of General Clauses Act. In support of his arguments, the learned counsel relied on a judgment of august Supreme Court of Pakistan as reported in PLJ 1999 SC 1104. He stated no charge sheet/statement of allegations has been issued to the appellant nor proper enquiry conducted and he has been condemned unheard. In case of removal from service, conduct of regular enquiry against a civil servant is mandatory under the law even against a probationer, but no such enquiry has been conducted. He requested that the appeal may be accepted as prayed.

5. The learned AGP on the other hand, argued that while appointing the appellant codal formalities have not been observed. During selection process, representative of the Administrative Department was not present. Hence appointment order of the appellant was illegal and such appointment order can be withdraw/rescinded at any time. He requested that the appeal may be dismissed.

6. The Tribunal observes that the appellant was appointed as Naib Qasid by the competent authority vide order dated 29.7.2010. He took over charge of the post and served on the post for some time and valuable rights have been accrued to him. If there was some flaw in selection process, it was the responsibility of the

ATTORNEY GENERAL

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respondents for which the appellant could not be suffered. The Tribunal further observes that appointment order of the appellant has been subsequently withdrawn through the impugned order dated 13.8.2010 but no reason whatsoever given for withdrawal of appointment order, which is against the spirit of Section 24-A of General Clauses Act, 1897. However, the last para of the impugned order clearly shows that the Chief Engineer, CDO was not willing to cancel appointment order of the appellant and not acted independently. The impugned order is nothing but a nullity in the eyes of law. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

7. In view of the above, the appeal is accepted, the impugned order dated 13.8.2010 is set aside, and the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

8. Having common questions of law and fact, this order will also dispose of other connected service appeals No. 3126/2010, Akbar Hussain, No. 3127/2010 Mir Afzal, No. 3128/2010 Shahid Ahmad, No. 3129/2010 Asif Khan, No. 3130/2010 Arif Khan, No. 3131/2010 Gohar Muhammad, No. 3132/2010, said Farosh and 3133/2010 Rashid Hameed, in the same manner.

ANNOUNCED  
12.6.2012

(NOOR ALI KHAN)  
MEMBER

(SULTAN MAHMOOD KHATTAK)  
MEMBER

Certificate to be true copy  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

A. A. A. A. A.  
K. K. K. K. K.

Date of Presentation of Application 12-6-2012  
Number of Pages 1200  
Copy Fee 8  
Urgent  
Total  
Name of Applicant  
Date of Original of Copy 15-6-2012  
Date of Delivery of Copy 15-6-2012

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

Attention: 7/4  
Annexure E  
269  
25

**PRESENT:**  
MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE IJAZ AHMED CHAUDHRY

**Civil Petitions No.401 to 409-P/2012**

(Against the judgment dated 12.6.2012 passed by the KPK Service Tribunal, Peshawar in Appeals No.3125-3133/10)

Secretary, Govt. of KPK, Communication & Works, Peshawar and others

Petitioners (in all cases)

Versus.

Muhammad Aftab  
Akbar Hussain  
Mir Afzal  
Shahid Ahmad  
Asif Khan  
Arif Khan  
Gohar Muhammad  
Said Farosh  
Rashid Hamid

Respondent (in CP 401-P/12)  
Respondent (in CP 402-P/12)  
Respondent (in CP 403-P/12)  
Respondent (in CP 404-P/12)  
Respondent (in CP 405-P/12)  
Respondent (in CP 406-P/12)  
Respondent (in CP 407-P/12)  
Respondent (in CP 408-P/12)  
Respondent (in CP 409-P/12)

For the petitioners:

Mr. Zahid Khan, Addl.A.G. KPK

For the respondents:  
(in CPs 401-408-P/12)

In person

Date of hearing:

19.09.2012

**ORDER**

**EJAZ AFZAL KHAN, J:-** These petitions have

out of the judgment dated 12.6.2012 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar, whereby, the appeals filed by the respondents were allowed, the orders cancelling their appointments were set aside and they were re-instated in service with back benefits.

2. The main contention of the learned Addl.A.G. was that where codal formalities were not complied with, the appointments of the respondents being against the law could not be restored by the Service Tribunal.

3. We have gone through the available record carefully and considered the submissions of the learned Addl.A.G.

Signature	Initial
CE CDO CRW Deptt. Pesh:	
Principal Engr: (Hwy)	
S.E. (Hwy)	
Principal Engr (Buildings)	
Admin. Officer/ SQA Officer	✓
Principal Engr	

CE CDO CRW Deptt. Peshawar	
Daily No.	800/10/12
Date	02/10/12

44/16  
A. J. Khan  
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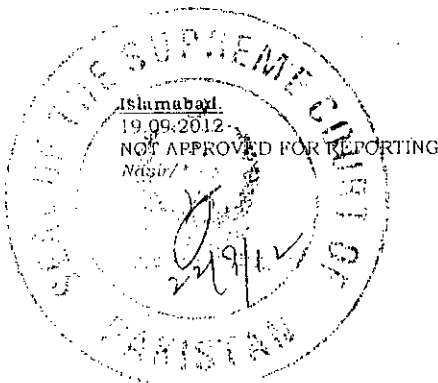
ATTESTED  
Sub-Registrar  
FOR AND IN PLACE OF REGISTRAR  
PESHAWAR

25

4. When, we asked the learned Addl.A.G. whether the respondents were eligible for appointment against their respective posts, the answer was in the affirmative. When, we asked the learned Addl.A.G. whether the person flouting the codal formalities has been proceeded against or he is still in service, the answer was that he has not been proceeded against and that he is still in service. Where the person flouting the codal formalities is still in service and enjoying all the perks and privileges with impunity why should the respondents be ousted from service for none of their faults, that too when their eligibility to hold the posts is not disputed. The impugned judgments thus being free from any error or infirmity much less legal or jurisdictional are not open to any interference.

5. For reasons discussed above, these petitions being without merit are dismissed and leave to appeal refused.

Copy 9/12 Appeal / Chaudhry J  
 Copy 9/12 Appeal / Chaudhry J  
 Certified to be True Copy  
 26/9/12  
 General Manager  
 Supreme Court of Pakistan  
 Islamabad



9681/2012 Civil Criminal  
 Date of Submission: 19.09.2012  
 No. of Warrants: 600  
 No. of Folios: 600  
 Registration Fee: 500  
 Copy Fee: 300  
 Total Fee: 800  
 Date of Completion of Copy: 26/9/12  
 Date of delivery of Copy: 26.9.2012  
 Compared by: [Signature]  
 Received by: Yasir Mahmood

[Large handwritten signature]

<p>قیت 10</p> <p>ایڈووکیٹ/دستخط:</p> <p>بار کونسل ابار ایسوسی ایشن، خیبر پختونخواہ</p> <p>رابطہ نمبر: 0312 5007473</p>	<p>45514</p> <p>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</p>
--	---

بعدالت جناب: K.P.K / حدیث حسن سیمونیل دکن

<p>منجانب: Appellants</p> <p>دعویٰ:</p> <p>مطلب نمبر:</p> <p>مورخہ:</p> <p>جرم:</p> <p>تھانہ:</p>	<p>منجانب: Respondents</p> <p>دعویٰ:</p> <p>مطلب نمبر:</p> <p>مورخہ:</p> <p>جرم:</p> <p>تھانہ:</p>
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**باعت تحریر آنکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام (K.P.K) 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 تقریر حالت و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاؤ گری یا تکلف یا اجیل کی برآمدگی اور منسوخی، نیز دائر کرنے اجیل نگرانی و نظریاتی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پورا اختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جہان اتوائے مقدمہ کے سب سے ہوگا وہ وکیل موصوف وکیل کے اختیار ہوگا کوئی تاریخ پیشی مقام دور یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 21-3-016

الع ہد واہ شد الع ہد

مقام کے لئے منظور ہے۔

(Signatures)



Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No.308/2016

Adnan Yaqoob S/O Yaqoob Khushi R/O

St. John High School, Outside Kohati Gate, Peshawar.

..... **Appellant**

Versus

1. Chief Secretary Govt. of Khyber Pakhtunkhwa Peshawar.
2. Secretary, to Govt. of Khyber Pakhtunkhwa C&W Department
3. Chief Engineer Central Design Office C&W Department

**Respondents**

**COUNTER AFFIDAVIT**

We the Respondents hereby affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and that nothing has been concealed from the Hon'ble Tribunal.

AFFIANT



Chief Engineer  
Central Design Office  
C&W Department Peshawar  
(Respondent No. 3)



Secretary  
to Govt. of Khyber Pakhtunkhwa  
C&W Department Peshawar  
for (Respondent No. 1 & 2)

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No.308/2016

Adnan Yaqoob S/O Yaqoob Khushi R/O

St. John High School, Outside Kohati Gate, Peshawar.

..... **Appellant**

Versus

1. Chief Secretary to Govt. of Khyber Pakhtunkhwa.
2. Govt. of Khyber Pakhtunkhwa through Secretary Communication & Works Department
3. Chief Engineer Central Design Office C&W Department  
Khyber Pakhtunkhwa Peshawar.

..... **Respondents**

Written Reply on behalf of Respondents No. 1, 2 & 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is not maintainable.
2. That the appeal is premature.
3. That the appellant has no cause of action and locus standi.
4. That the appellant has not come to the Hon'ble Tribunal with clean hands.
5. That the appeal is not maintainable and not covered by the relevant rules.
6. That the appeal is bad due to non-joinder of necessary party.
7. That the appellant concealed the material facts from the Hon'ble Tribunal.
8. That the appeal is time barred.


FACTS

1. Pertains to appellant record.
2. Pertains to record.
3. Pertains to record. However, it may be added that while appointing the appellant, proper codal formalities were not observed which include representation of the Administrative Department. Therefore, the competent authority had been pleased to direct that all such appointments made by the Chief Engineer CDO C&W Department Peshawar since its establishment for his office may be cancelled w.e. from 13.8.2010 positively as the appointments were made without observing proper codal formalities/procedure required for such appointment (Order Annexed-"A").
4. Incorrect. As stated in Para-3.
5. Since all such appointments were made in violation of rules, as such the representation was not considered.


GROUNDS

- A. Incorrect. That the appellant was treated in accordance with law, rules and facts.
- B. As replied in para 3 of the facts.
- C. As per Section 21 of General Clauses Act, the respondents have the power to recall or cancel any order.
- D. The case of the appellant is also not maintainable on merits.
- E. The respondents seek leave of this honorable Tribunal to reply on additional grounds at the time of arguments.

In view of the fore going facts of the case, it is humbly prayed that the instant appeal which is not based on facts may please be dismissed.

  
Chief Engineer CDO  
C&W Department Peshawar  
(Respondent No. 3)



  
Secretary to Govt. of  
Khyber Pakhtunkhwa  
C&W Department  
(Respondent No. 1 & 2)

Annexure - A

Most immediate  
Top priority



GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

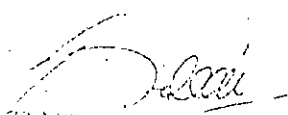
No. SOE/C&WD/17-4/2010  
Dated Peshawar, the August 13, 2010

TO

The Chief Engineer (CDO)  
C&W, Peshawar

Subject: CANCELLATION OF APPOINTMENTS MADE BY CHIEF ENGINEER  
(CDO) C&W, PESHAWAR


I am directed to refer to the subject noted above and to state that the competent authority has been pleased to direct that all the appointments made by the Chief Engineer (CDO) C&W Peshawar since its establishment, for his office may be cancelled today (13.08.2010) positively, as the appointments have been made without observing codal formalities/procedure, under estimation to all concerned.

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

Endst even No. & date

Copy is forwarded to the:-

1. Special Assistant to Chief Minister Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
3. Accountant General Khyber Pakhtunkhwa, Peshawar
4. Chief Engineer (CDO/Centre), C&W Peshawar.
5. PS to Secretary, C&W Peshawar.

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR.

Appeal No. 308, 2016.

3090/HAC

19/01/2016

Adnan Yaqoob Son of Yaqoob Khushi R/O

St John High School, Outside Kohati Gate, Peshawar.

.....Appellant

VERSUS

1. Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. Govt: of Khyber Pakhtunkhwa through Secretary Communication & Works Department Peshawar.
3. Chief Engineer, Central Design Office, C&W Department, Khyber Pakhtunkhwa Peshawar.

.....Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO.1,2 & 3.

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable.
2. That the appeal is premature.
3. That the <sup>appellant</sup> appeal has no cause of action and locus standi.
4. That the appellant has not come to the Tribunal with clean hands.
5. The appeal is not maintainable and not covered by the relevant rules.
6. That the appeal is bad due to non-joinder of necessary party.
7. That the appellant concealed the material facts from the Tribunal.
8. That the appeal is time barred.

**FACTS**

1. Pertain to appellant record.
2. ~~No comments~~: pertain to record.
3. Pertains to record. However, it may be added that while appointing the appellant, proper codal formalities were not observed which include representation of the Administrative Department. Therefore, the competent authority had been pleased to direct that all such appointments made by the Chief Engineer, CDO C&W Department Peshawar since its establishment for his office may be cancelled w.e. from 13.08.2010 positively as the appointments were made without observing proper codal formalities/procedure required for such appointment (~~Annex order~~ Annexed )
4. <sup>interfect</sup> As stated in above-para (Para-3)
5. Since all such appointments were made in violation of rules, as such the representation was not considered.

GROUNDS

- A. Incorrect. That the appellant was treated in accordance with law, rules and facts.
- B. No comments. *As replied in facts para-3 of the facts.*
- C. ~~The General clauses Act 1897, 21. "Power to make to include power to add to amend, vary, rescind orders, rules, bye laws. The respondents have the power to recall or cancel any order.~~  
*As per s. 21 of General Clauses Act*
- D. ~~No comments.~~ *The case is also not maintainable on merits.*
- E. The respondents seek leave of this honorable Tribunal to reply on additional grounds at the time of arguments.

instant

In view of the fore going facts of the case, it is humbly prayed that the appeal which is not based on facts may please be dismissed.

Chief Engineer CDO  
C&W Deptment Peshawar  
(Respondent No.3)

Secretary, to Govt: of  
Khyber Pakhtunkhwa  
C&W SDepartment  
(Respondent No.1 & 2)

~~C. As per Section 21 of General Clauses Act, the respondents have the power to recall or cancel any order.~~

Submitted for vetting Please

*AGS*  
*GP-1*  
*19.9.16*

*19/9/16*  
*19-9-2016*  
*vetted subject to correction, attachment of no amendment, affidavit and approval of AAR*  
*Smart*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**APPEAL NO. 308/2016.**

**ADNAN YAQOOB V/S GOVT. OF KP & OTHERS**

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO  
THE REPLY SUBMITTED BY THE RESPONDENTS**

**RESPECTFULLY SHEWETH:  
ON PRELIMINARY OBJECTIONS:**

**(1-8)**

All the objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the appeal.

**ON FACTS:  
( 1 to 5 )**

- 1- Admitted correct hence needs no comments.
- 2- Admitted correct, hence needs no comments.
- 3- Incorrect and not replied accordingly, as the appellant was properly appointed but was illegally withdrawn by the competent authority without fulfilling codal formalities which is a clear violation of the verdicts of the Apex Supreme Court of Pakistan.
- 4- Incorrect and not replied accordingly. Hence needs no comments.
- 5- Incorrect and not replied accordingly, hence needs no comments. Moreover, a complete explanation is available in Para-3 above.

**GROUND:  
( A to E )**

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. Moreover, the withdrawal of appointment or cancellation of appointment order dated 13-08-2010 is without fulfilling codal formalities as it falls in the ambit of major penalty i.e removal from service. That, the Department has acted in an arbitrary manner while cancelling the appointment order of the appellant, and the respondent Department have acted in malafide manner just to harass the appellant, to deprive

him from his legal rights and just to accommodate their blue eyed person but nothing else. Furthermore, the section-21 of the General Clauses Act has no concern with the case of the appellant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

**APPELLANT**

**ADNAN YAQOOB**

**THROUGH:**

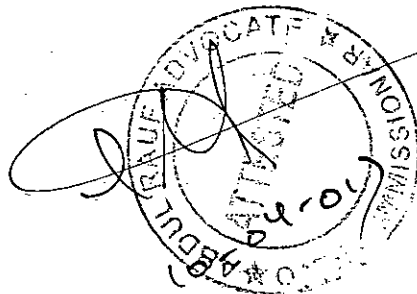
*Kamran*  
**MUHAMMAD KAMRAN  
YOUSAFZAI**

*Jawad*  
**&  
MUHAMMAD JAWAD  
ADVOCATES, Peshawar.**

*Affidavit: I Adnan Yaqub S/O  
Yaqub Khashi do hereby Solemnly  
affirm that the contents of this  
instant re-joinder are true and  
correct to the best of my  
knowledge.*

*Adnan*  
*10-4-17*  
Deponent.

CNIC # 17301-9010324-9





**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**APPEAL NO. 308/2016.**

**ADNAN YAQOOB      V/S      GOVT. OF KP & OTHERS**

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO  
THE REPLY SUBMITTED BY THE RESPONDENTS**

**RESPECTFULLY SHEWETH:**  
**ON PRELIMINARY OBJECTIONS:**

**(1-8)**

All the objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the appeal.

**ON FACTS:**

**( 1 to 5 )**

- 1- Admitted correct hence needs no comments.
- 2- Admitted correct, hence needs no comments.
- 3- Incorrect and not replied accordingly, as the appellant was properly appointed but was illegally withdrawn by the competent authority without fulfilling codal formalities which is a clear violation of the verdicts of the Apex Supreme Court of Pakistan.
- 4- Incorrect and not replied accordingly. Hence needs no comments.
- 5- Incorrect and not replied accordingly, hence needs no comments. Moreover, a complete explanation is available in Para-3 above.

**GROUND:**

**( A to E )**

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. Moreover, the withdrawal of appointment or cancellation of appointment order dated 13-08-2010 is without fulfilling codal formalities as it falls in the ambit of major penalty i.e removal from service. That, the Department has acted in an arbitrary manner while cancelling the appointment order of the appellant, and the respondent Department have acted in malafide manner just to harass the appellant, to deprive

him from his legal rights and just to accommodate their blue eyed person but nothing else. Furthermore, the section-21 of the General Clauses Act has no concern with the case of the appellant.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

**APPELLANT**

**ADNAN YAQOOB**

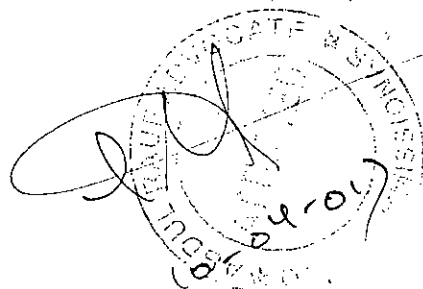
**THROUGH:**

*Kamran*  
**MUHAMMAD KAMRAN  
YOUSAFZAI**

*Jawad*  
**&  
MUHAMMAD JAWAD  
ADVOCATES, Peshawar.**

*Affidavit: I Adnan Yaqub S/O  
Yaqub Khashi do hereby solemnly  
affirm that the contents of this  
instant re-joinder are true and  
correct to the best of my  
knowledge.*

*Adnan*  
*10-4-01*  
**Deponent.**  
**CNIC # 17301-9010324-9**



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 294 /ST

Dated 08 /02/2018

To

The Secretary Communication and Works, Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 308/2016, MR. ADNAN YAQOOB.**

I am directed to forward herewith a certified copy of Judgment/Order dated 26/01/2018 passed by this Tribunal on the above subject for strict compliance.

**Encl: As above**

REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

*Plu*