

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

Service Appeal No. 2319-P/2023

Muhammad Imran

..... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary and others.

..... (Respondents)

INDEX

S. #	Description of Documents	Annex	Pages
01	Parawise Comments	-	1-5
02	Affidavit	-	6
03	Delegations of Powers, Second Schedule, <u>Powers Common to All Departments</u>	Annex-1	7-8
04	Written Reply to the appeal before the Worthy Chief Secretary.	Annex-2	9-10
05	Rule 5(4) of the Government of Khyber Pakhtunkhwa Rules of Business (ROB), 1985	Annex-3	11-12

Dated: 24/11/2023


Representative/Deponent

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 2319-P/2023

Muhammad Imran

..... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary and others.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No 4&5

Respectfully Sheweth,

Preliminary Objections:

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9584

Dated 29-11-2023

1. That the Appellant has got no cause of action to file the instant Appeal.
2. That the Appellant is estopped by his own conduct to file the instant Appeal.
3. That the Appeal is bad in its present shape and is not maintainable in its present form.
4. That the instant Appeal is false, frivolous and vexatious and is liable to be dismissed with cost.
5. That with utmost respect this Honorable Tribunal have got no jurisdiction to entertain the present Appeal, as the appeal is still pending before the Worthy Chief Secretary, vide judgment in the Writ Petition No 3206-P/2023 by the Honorable Peshawar High Court. (Copy of the Judgement already annexed with the Appeal).
6. That the Appeal is bad for non-joinder and miss-joinder of necessary parties.
7. That the Appellant has got no locus standi to file the instant Appeal.
8. That the instant Service Appeal is pre-mature, hence liable to be dismissed with heavy cost.
9. That the Appellant has concealed material facts from this Hon'ble Tribunal.
10. That due to non-compliance of section 79 & 80 of CPC, the instant Appeal is not maintainable.
11. That the instant Appeal is barred by law.

On Facts:

- 1) Para-1 of the Appeal is subject to proof.
- 2) In reply to Para 2 of the Appeal it is submitted that the project was sanctioned according to the need of the time and all staff of the project was recruited on contract/ fixed pay package for one year renewable for further period.

- 3) Para 3 of the Appeal is correct to the extent that the subject post along with others were advertised for hiring on contract/fixed pay package for one year renewable for further period.
- 4) Para 4 of the Appeal needs no comments.
- 5) Para 5 of the Appeal needs no comments.
- 6) Para 6 of the Appeal needs no comments.
- 7) Para 7 of the Appeal needs no comments.
- 8) Para 8 of the Appeal also needs no Comments.
- 9) Para 9 of the Appeal needs no Comments.
- 10) In reply to Para 10 of the Appeal, it is submitted that the said orders were issued as a stop gap arrangement to initiate the project activity being a routine administrative matter.
- 11) Detail reply in Para 11 has already been submitted at Para-10 that the said distribution of work was a routine administrative matter and was a Stop gap arrangement.
- 12) Para 12 of the Appeal needs no Comments.
- 13) Para 13 of the Appeal also needs no Comments.
- 14) Para 14 of the Appeal is correct to the extent that the Director, Transport wrote a letter dated: 13-06-2023 to the Secretary, Transport & Mass Transit which is reproduced below:-

“It is submitted that the printing of route permits has already been deployed in Provincial Transport Authority (PTA) and all Regional Transport Authorities (RTAs) across the Province which are working independently under the Motor Vehicles Ordinance 1965. Moreover, there is no provision in Motor Vehicles Ordinance 1965 regarding interfering in the matters of and overlapping the domain of PTA and RTAs by MIS with regard to the issuance of route permits. Therefore, the post of DD (IT)/Manager MIS has been completely redundant and is of no utility. It is further submitted that this Directorate has sufficient manpower, and this redundant position is not contributing in any manner, rather, putting an undue burden on Government exchequer. Moreover, the officer in this position is working and interfering in other matters/services/domain of this Directorate (for example, driving License) that do not pertain to his position.

In light of the above, it is recommended that the Finance Department may be approached to abolish this position henceforth and the services of this officer may be placed at the disposal of surplus pool of the Establishment Department”. (Letter already annexed with main Appeal)

It is further added that the post of the petitioner has no cause of action. The order of his placement in the surplus pool has been issued in the best public interest, to save the precious exchequer of Provincial Government and posting of the petitioner in any suitable place.

- 15) Para 15 of the Appeal is incorrect. It is submitted that under the Delegations of Powers, Second Schedule, Powers Common to All Departments, Administrative Department has full powers to abolish a post. Since the post was not required to the Directorate of Transport and Transport Department anymore; hence, the post was abolished, and the officer was referred to surplus pool wing of the Establishment Department for onward posting in the appropriate department so as to use his services in the best public interest in any other relevant department. The action of abolishment of the post by the Administrative Department and placement of services of the officer at the disposal of the Establishment Department for further adjustment/posting and withdrawal of pay/salary from Surplus Pool wing of Establishment Department was ordered by Administrative Department (respondent 4) in the best public interest. The post was not required to the Directorate of Transport anymore; hence, the post was abolished, and the officer was sent to surplus pool wing for onward posting in the appropriate department (**Already annexed with main Appeal as Annex-P&Q**), so as to release the undue financial burden on the government exchequer. The Answering respondents has acted under the Delegations of Powers, Second Schedule, **Powers Common to All Departments**, Administrative Department has full powers to abolish the post (**Annex-1**). According to Condition-1 of the said Schedule the abolishment report was sent to Finance Department.
- 16) In reply to Para 16 of the Appeal, it is correct that the Secretary Transport requested the Establishment Department for placing the services of the Appellant at the disposal of Surplus Pool Wing under the Surplus Pool Policy. However, the allegations/grievances are wrong/incorrect, as the appellant has not submitted his arrival report in the Surplus Pool Wing, Establishment Department and started litigations against the answering Respondents (**Already annexed with main Appeal as Annex-P&Q**). It is further added that the Answering Respondent-04 has already filed written reply to appeal pending before the Worthy Chief Secretary. (**Annex-2**)
- 17) In reply to Para 17 of the Appeal, it is submitted that representation of the Appellant is still pending before the Worthy Chief Secretary and yet to be decided. The Appellant does not pursue the said representation for final decision.
- 18) Para 18 of the Appeal is correct to the extent that the Appellant filed Writ Petition No. 3206-P/2023, which was disposed of by the Hon'ble Peshawar High Court. However,

the Appellant did not pursue the disposal of the representation mentioned at Para-17.

- 19) Para 19 is incorrect. Proceeding in the representation before the Chief Secretary, Govt: of Khyber Pakhtunkhwa is under process and the Appellant does not bother to pursue the same.
- 20) Para 20 of the Appeal is incorrect. Grievances of the Appellant with regard to the abolition of the post is baseless and the instant Appeal has no grounds further.

GROUND:


- A. Ground A is incorrect. The post of the Appellant has been abolished and declared as redundant and his services placed at the disposal of Establishment Department by the Competent Authority for further posting/payment of salary from surplus pool wing in public interest, until his adjustment in the appropriate department where his professional expertise and acumen can be best utilized in the best public interest.
- B. Ground B of the Appeal is incorrect. The Provincial Caretaker Government has not played any role in the abolition of the post rather it was carried out by the Competent Authority in best public interest, to release an undue financial burden on government exchequer.
- C. Ground C is incorrect. The action taken is neither against the direction of the Election Commission nor it has any adverse effect on conducting fair Election as Transport Department & its employees have no concern with election process.
- D. Ground D is also incorrect. The abolishment and surrender of the said post to the Establishment Department is not politically motivated, rather it was carried out by the Competent Authority under the Delegation of Powers in the best public interest.
- E. In reply of Ground E, it is stated that the copy of the said letter for abolition to the then Minister Transport was under **Rule 5(4) of the Government of Khyber Pakhtunkhwa Rules of Business (ROB), 1985**, states **"The Secretary shall keep the Minister generally informed of the working of the Department and of any important case disposed of without reference to him"** (Annex-3).

The abolition order was communicated to the Finance Department by the Competent Authority and Establishment Department was asked for further placement of the Appellant. (Already annexed with main Appeal as Annex-O)


- F. Ground F is incorrect. The said process completed under the Law & Rules as the instant post was no more required to the Department, being a burden on the government exchequer in Transport Department; however, the petitioner is **not unemployed** rather his service was placed at the disposal of the Establishment Department for further posting in any other Department.

- G. Ground G needs no Comments. The post was abolished by the Competent Authority under Serial No. 1 Second Schedule – Powers Common to all under Khyber Pakhtunkhwa Delegation of Power Rules, 2018, circulated vide letter No. SO(FR)/FD/9-1/2017/17441/DOP dated: 2nd July 2018, in the best public interest, without any loss of job of the petitioner. All government employees have sufficient opportunities for promotion as prescribed in the service matter.
- H. Ground H is incorrect. The detail reply has already been submitted. Furthermore, the Provincial Government has also framed policy for adjustment of surplus pool employee in another department.
- I. Ground I is incorrect. The post of the Appellant was no more required to the Respondent Department. Justification by the Director Transport for abolition of the post of petitioner are **Bonafide** and **True**. The services of other IT professionals are available for operating the main server which is not any extraordinary thing to manage.
- J. Ground J is incorrect. The detail reply is already been submitted.
- K. Ground K is incorrect. The Appellant has no cause of action and Locus Standi, hence has no grounds to raise further.

In reply to the prayer, it is most humbly prayed that on acceptance of the instant Parawise Comments/Replies, the instant Service Appeal may kindly be dismissed with cost.


 Secretary (R-04)
 Transport & Mass Transit Department,
 Khyber Pakhtunkhwa

Mehdi Lia-ud-Haq


 Director Transport (R-05)
 Khyber Pakhtunkhwa

Zeeshan Abdullah

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

Service Appeal No. 2319-P/2023

Muhammad Imran

..... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary and others.

..... (Respondents)

AFFIDAVIT

I Zeeshan Abdullah, Director, Transport, Khyber Pakhtunkhwa do hereby solemnly declare on oath that the contents of the Parawise Comments of the foregoing titled Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this honorable Court.

The answering Respondent was neither placed ex-parte nor their Defense struck off list.

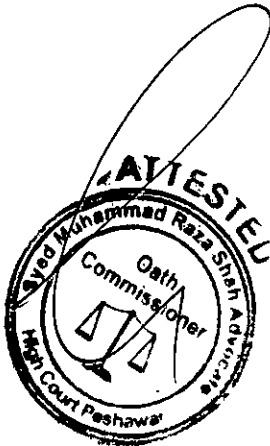
Dated: 24.11.2023

Zeeshan
DEPONENT

Zeeshan Abdullah

CNIC No. 17301-1361193-9

Phone No. 091-9214185



29 NOV 2023




**GOVERNMENT OF KHYBER PAKHTUNKHWA
TRANSPORT & MASS TRANSIT DEPARTMENT**

(Mian Rashid Hussain Shaheed Memorial Block, Civil Secretariat Peshawar Khyber Pakhtunkhwa)

AUTHORITY LETTER

It is certified that **Mr. Hamdullah**, Assistant Director (Legal) (BPS-17) of Directorate of Transport is hereby authorized to submit the Joint Parawise Comments on behalf of Respondent No. 04 and 05 in Service Appeal **No. 2319 & 2320-P/2023** titled "**Muhammad Imran and Waqas Saliheen vs Government of Khyber Pakhtunkhwa through Chief Secretary and others**".


29-11-2023

SECRETARY

Transport and Mass Transit Department
Government of Khyber Pakhtunkhwa

Annex-1

07



**KHYBER PAKHTUNKHWA
DELEGATION OF FINANCIAL
POWERS RULES, 2018**

*Effective
from*

1st July, 2018

**Government of Khyber Pakhtunkhwa
Finance Department**

[Handwritten signatures and scribbles]



Khyber Pakhtunkhwa Delegation of Financial Powers Rules, 2018

Second Schedule - Powers Common to All

S #	Nature of Power	Administrative Department	Officers In Category-I	Officers In Category-II	Officers In Category-III	Officers In Category-IV
1	Abolition of Posts.	Full Powers.	Full Powers in respect of posts under his/her control.	Full Powers in respect of posts in BS-1 to BS-16 under his/her control.	—	—
Specific Condition(s):						
1. All orders regarding abolition of posts shall be communicated to the Accountant General, KP, or District Accounts Officer concerned and Finance Department or District Officer Finance and Planning concerned, with full justification.						
2. The delegated power of abolition of posts shall be without prejudice to the powers of Finance Department.						
-2	To Sanction Expenditure against Budget Provision.					
(i)	Project Pre-Investment Analysis	Full Powers	Full Powers	—	—	—
Specific Condition(s):						
1. Include Feasibility Studies; Research, Surveys and Exploratory Operations.						
(ii)	Operating Expenses					
(a)	Fuel and Power	Full Powers	—	—	—	—
Specific Condition(s):						
1. Include High Speed Diesel Oil - Operational & Non-Operational; Furnace Oil - Operational & Non-Operational; Electric Traction.						
2. Subject to specified departmental admissibility and prescribed conditions:						
(b)	Fees	Full Powers	Full Powers	Upto Rs. 100,000 Each case	Upto Rs. 50,000 Each case	Upto Rs. 20,000 Each case
Specific Condition(s):						
1. Include Bank Fees; Legal Fees; License Fees; Membership Fees.						
(c)	Communication	Full Powers	Full Powers	Full Powers	Full Powers	Full Powers
Specific Condition(s):						
1. Include Postage and Telegraph; Telephone and Trunk Calls; Telex, Tele-printer and Fax; Electronic Communication; Courier and Pilot Service; Photography Charges.						
2. Subject to observance of prescribed ceilings; where applicable.						

Handwritten signature and initials:
 [Signature] [Initials]

Annex: 2
9

REPLY TO APPEAL FILED
BEFORE THE CHIEF SECRETARY
KHYBER PAKHTUNKHWA.

Muhammad Imran

..... (appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary and others.

..... (Respondents)

PARAWISE COMMENTS.

- 1) It is submitted that under the Delegations of Powers, Second Schedule, Powers Common to All Departments, Administrative Department has full powers to abolish a post (**Annex-A**). since the post was not required to the Directorate of Transport and Transport Department anymore; hence, the post was abolished, and the officer was referred to surplus pool wing of the Establishment Department for onward posting in the appropriate department so as to use his services in the best public interest in any other relevant department.
- 2) The ATD/MIS cell was established in January 2011 under the ADP Project "Automation of Transport Department-Computerization or Route Permits (ATD-CRP)". The project was regularized under the private member act namely Khyber Pakhtunkhwa Employee of Transport Department (Regularization of Services) Act, 2017 on 01.06.2017. All the functions of route permits, computerization and operation have already been transferred to their legally responsible entities i.e., Provincial Transport Authority and Regional Transport Authorities, as per Motor Vehicle Ordinance 1965. Therefore, the job of the appellant is no longer required and hence, declared redundant, which is in the best public interest.
- 3) It is further submitted that the said order was issued in the best public interest to streamline the official work as a routine administrative matter. His post has been redundant with no utility for the Directorate of Transport.
- 4) It is submitted that the said orders were issued in the best public interest to streamline the official work for the time being as a stop gap arrangement and as a routine administrative matter. In addition to the above order all office orders were issued to assign the job to other officer/officials as well.
- 5) The claims of Muhammad Imran are incorrect. Various IT/MIS Systems were the initiatives of the Transport and Mass Transit Department for which the appellant was appointed on contract basis. These systems were initiated and established by the Transport Department in the best public interest and the appellant was directed to

perform his assigned duties. None of the tasks had been his individual effort or his initiative and at the moment, all the functions mentioned in Para 5 are continued to be performed by other relevant officers/official.

10

- 6) It is stated that automation of Route Permits etc was the policy of the Transport Department Khyber Pakhtunkhwa in the best public interest and Muhammad Imran along with other staff were hired and directed to perform the assigned duties. It is agreed to the extent that revenue receipts have been increasing and are still increasing day by day which clearly signifies that it is mainly due to automation and not specifically due to any individual or an officer.
- 7) The abolition of the post of DD(IT)/MIS was according to the law and rules (under the Delegations of Powers, Second Schedule, Powers Common to All Departments), as the services of the appellant were no more required to the Transport Department.
- 8) His service career is not affected in any manner as his status as a civil servant is still intact. The worry and claims of the appellant regarding jeopardization of service career are baseless, as he is not unemployed, rather his services were placed at the disposal of the Surplus Pool wing of Establishment Department for starting of pay and further posting in a relevant department, which is rather good for his career progression and better utilization of his services in a relevant department as per need of the government.
- 9) It is further submitted that for the reason mentioned in preceding paras, this department abolished his post being redundant so that Muhammad Imran may be adjusted against any relevant post in some relevant department where he can better contribute to IT sector. In this department, the post was rather redundant and an undue burden on the government exchequer.
- 10) It is submitted that most of the staff were regularized in lower positions/scales below BPS 18 who have presently been assigned tasks in other sections of Directorate instead of MIS and hence they are of utility. Moreover, it is noteworthy to mention that there exist no dedicated MIS cell rather the IT related employees were regularized through a private member act of provincial assembly.

Handwritten signature of the Section Officer (Estab) in blue ink.

Section Officer (Estab)
Transport & Mass Transit Department

**GOVERNMENT OF ¹KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
NOTIFICATION**

Peshawar the, dated 6th April, 1985.

No. SO(O&M) S&GAD/3-3/1985,---In pursuance of the provision contained in Article 139 of the constitution of the Islamic Republic of Pakistan and in suppression of the ²Khyber Pakhtunkhwa Government Rules of Business, 1972, the Governor of the ³Khyber Pakhtunkhwa is pleased to make the following rules:

PART - A --- GENERAL

1. SHORT TITLE AND COMMENCEMENT.

- (1) These rules may be called the ⁴Khyber Pakhtunkhwa Government Rules of Business, 1985.
- (2) They shall come into force at once.

2. DEFINITION .--- In these rules, unless the context otherwise requires.

- (a) "**Assembly**" means the Provincial Assembly of the ⁵Khyber Pakhtunkhwa;
- (b) "**Attached Department**" means a Department mentioned in column 3 of *Schedule-I*;
- (c) "**Business**" means all work done by Government;
- (d) "**Cabinet**" means the Cabinet of Ministers appointed under Article 132 of the Constitution and includes the Chief Minister appointed under Article 130 of the Constitution;
- (e) "**Case**" means a particular matter under consideration and includes all papers relating to it and required to enable the matter to be disposed of, viz: correspondence and notes and also any previous papers on the subject or subjects covered by it or connected with it;
- (f) "**Chief Secretary**" means the officer notified as such in the Gazette, who shall in addition to other Departments and functions that may be allotted to him from time to time, be incharge of the ⁶Establishment and Administration Department and shall also be the Secretary to the Cabinet;
- (g) "**Constitution**" means the Constitution of the Islamic Republic of Pakistan;
- (h) "**Department**" means a self-contained administrative unit in the Secretariat responsible for the conduct of business of Government in a distinct and specified sphere, and declared as such by the Government;
- (i) "**Federal Government**" means the Executive Government of the Islamic Republic of Pakistan;
- (j) "**Gazette**" means the official gazette of the ⁷Khyber Pakhtunkhwa.

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

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

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

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

⁵ Subs. Vide the Khyber Pakhtunkhwa Act No. IV of 2011

⁶ Substituted vide Establishment & Administration Department letter No. SO(O&M)E&A/8-6/2001, dated 30-05-2001.

⁷ Subs. Vide the Khyber Pakhtunkhwa Act No. IV of 2011

A. M. Khan
S. G. A.

4. ORGANIZATION OF DEPARTMENTS.-

- (1) Each Department shall consist of a Secretary to Government and of such other officials subordinate to him as Government may determine:
Provided that the same person may be Secretary of more than one Department.
- (2) The Secretary shall be the official head of the Department and shall be responsible for its efficient administration and discipline, and for the proper conduct of business allocated to the Department under rule 3.
- (3) The Secretary shall, by means of standing orders, distribute the work of the Department among the officers, branches and/or sections. Such order may specify the cases or class of cases which may be disposed of by an officer subordinate to the Secretary.

5. GENERAL PROCEDURE FOR DISPOSAL OF BUSINESS.-

- (1) The framing of the policy of the Department is the responsibility of the Minister, and it shall be the duty of the Secretary to advise the Minister in the formulation of policy.
- (2) The business of the Department shall be disposed of by or under the authority of the Secretary. He shall be responsible to the Minister for the proper conduct of business and for ensuring that the sanctioned policy of the Minister is duly executed.
- (3) While submitting a case for the orders of the Minister, it shall be the duty of the Secretary to suggest a definite line of action.
- (4) The Secretary shall keep the Minister generally informed of the working of the Department and of any important case disposed of without reference to him.
- (5) Where the Minister's order appears to involve a departure from the rules and regulations or from the policy of the Government the Secretary shall re-submit the case to the Minister inviting his attention to the relevant rules or regulations or Government policy.
- (6) Where inspite of action taken under sub-rule (5), the Minister does not change his orders so as to be in line with the rules and regulations or the policy of Government, the Secretary shall submit the case to the Chief Minister for his information.
- (7) The channel for obtaining of transmitting the orders of the Minister is the Secretary or an officer specifically authorized in this behalf by the Secretary.
- (8) All orders should be passed in writing. Where a verbal order is given, it should be reduced to writing at the earliest opportunity by the officer receiving it.
- (9) The Minister shall submit cases to the Chief Minister as required by the provisions of rule 36.
- (10) Notwithstanding the provisions of any other rules, the Chief Minister may, by general or special order, direct that any case specified in rule 37 may be submitted by the Minister directly to the Governor.
- (11) If any doubt or dispute arises as to the Department to which a case properly pertains, the matter shall be referred to the Chief Secretary, who shall obtain the orders of the Chief Minister, if necessary.
- (12) Detailed instructions for the disposal of business in the Secretariat shall be issued by the Chief Secretary.

[Handwritten signature]
40
2