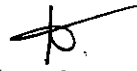
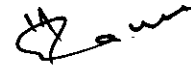


12.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saddique, Administrative Officer for present. Arguments heard. To come up for order on 24.07.2017 before D.B.



(Ahmad Hassan)
Member

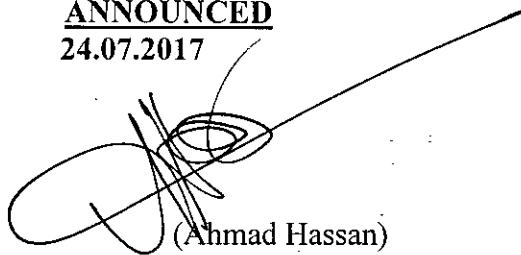


(Muhammad Hamid Mughal)
Member

12. 24.07.2017

Learned counsel for the appellant present. Learned Deputy District attorney on behalf of respondents present. Vide our separate judgment of today placed on file bearing appeal No. 289/2016 titled Amir Muqtada Qureshi Ex-Sub Engineer Versus The Secretary, Public Health Engineering Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.07.2017



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

11.04.2017

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


(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

A11

8.05.2017

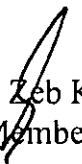
Clerk of counsel for the appellant and Addl. AG for the respondents present. Due to strike of the bar counsel for the appellant is not available. To come up for final hearing for 24.05.2017 before D.B.



Member


Chairman

24.05.2017

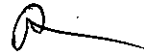
Counsel for the appellant Mr. Muhammad Siddique, Admin Officer alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

14.11.2016

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



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

28.03.2017

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



Member



Chairman

29.03.2017

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



Member



Chairman

13.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that Identical appeals No. 290, 291 , 292 of 2016 have already been admitted to regular hearing and requested that this appeal may also be admitted to regular hearing.

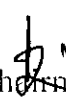
Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 01.06.2016 before S.B.


Chairman

01.06.2016

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


Chairman

10.08.2016





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


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 329/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31.03.2016	<p>The appeal of Mr. Farman Ali presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2	04-04-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13.04.2016</u></p> <p> CHAIRMAN</p> <p></p> <p></p>

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

Appeal No. 329 /2016

Farman Ali

V/S

PHE Department, KPK.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-05
2.	Copy of Appointment Order	- A -	06
3.	Copy of Medical Fitness Certificate.	- B -	07
4.	Copy of Arrival Report.	- C -	08
5.	Copy of Service Book	- D -	09-21
6.	Copy of advertisement	-E-	22
7.	Copy of application	-F-	23
8.	Copy of Judgment	- G -	24-25
9.	Copy of Show Cause Notice	- H -	26-27
10.	Copy of Reply	-I-	28-29
11.	Copy of Termination order	J	30
12.	Copy of Appeal	K	31-35
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16.	Copy of order dated: 3.3.2016	O	49-50
17.	Vakalat Nama	---	51

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI),


(TAIMUR ALI KHAN),

 &
(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR.

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

Appeal No. 329 /2016

Mr. Farman Ali, Data Entry Operator,
Public Health Engineering,
(Division Swat).

A.W.F. Province
Service Tribunal
Diary No 308
Dated 31-3-2016

APPELLANT

VERSUS

1. The Secretary, Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Engineer (South), Public Health Engineering, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent Engineer, Public Health Engineering Department, Circle Swat.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 3.3.2016 RECEIVED BY APPELLANT ON 16.03.2016 PASSED BY RESPONDENT DEPARTMENT IN PURSUANT TO THE DIRECTION OF THIS AUGUST TRIBUNAL DATED. 30.12.2015 WHICH WAS PASSED IN APPEAL NO. 867/2014.

.....

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 3.3.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

added to file
31/3/16

RESPECTFULLY SHEWETH

1. That the appellant was appointed as Data Entry Operator on the recommendation of Departmental Selection Committee by the competent authority vide order dated 15.1.2010. The appellant got his medical fitness certificate and reported his arrival on 16.1.2010. **(Copy of Appointment Order, Medical Fitness Certificate and Arrival Report are attached as Annexure-A, B and C).**

2. That it is also worth to mention here that the proper service book of the appellant was also maintained by the respondent department in which all relevant entries are record. **(Copy of Service Bok is attached as Annexure-D).**

3. That the appellant applied for the post of junior clerk, which was mention in the advertisement dated 28.8.2009 in Daliy Mashriq but the appellalnt was appointed against the post of Data Entry Operator instead of Junior clerk. Which was not the fault of appellant. **(Copy of Advertisement is attached as Annexure-E).**

4. That the appellant filed an application dated 31/08/2009 before the respondent department for adjusted the appellant against his real cadre post (Junior Clerk) intead of the post of Data Entry Operator post. **(Copy of Aplication is attached as Annexure-F)**

5. That in other cases of a different nature, the Supreme Court passed an order on 15.1.2014, wherein the Chief Engineer Mr. Sikandar Khan gave statement that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one month against the illegal pending cases against the illegal appointees. **(Copy of Judgment is attached as Annexure-G).**

6. That the Chief Engineer to save his skin issued as Omni bus show-cause notice and adopted a slipshod manner for removing the appellant from service. **(Copy of the Show cause notice is attached as Annexure-H).**
7. That the appellant submitted a reply to the show cause notice in which the appellant has explained the details and rebutted the objections/allegations leveled against him with full reasons and justification which were not taken in consideration at all. **(Copy of Reply and Show Cause Notice are attached as Annexure-I).**
8. That on 14.2.2014 the appellant was terminated from service without following proper procedures and codal formalities. The appellant also filed a departmental appeal against the termination order and waited for statutory period but no reply has been received. **(Copy of Order and Appeal are attached as Annexure-J and K).**
9. That the appellant and other colleagues also went a Writ Petition before the Peshawar High Court Peshawar in Writ Petition No.615-P/2014 which was decided on 26.2.2014 and the Writ Petition of the petitioner was dismissed for having no jurisdiction as they were civil servants. Then the appellant went an appeal before the august Supreme Court of Pakistan, which was heard on 28.4.2014 and while dismissing the appeal of the petitioner, the Honorable Supreme Court observed that the Service Tribunal shall decide the appeal as mandatory in law. **(Copy of High Court and Supreme Court Judgment are attached as Annexure-L and M).**
10. That the appellant filed an Appeal bearing No.867/2014 against termination from service. That the said appeal was finally heard by the Honorable Tribunal on 30.12.2015 and the Honorable Tribunal was kind enough to accept the appeal and remitted the case to respondent department to proceed against the appellant strictly in accordance with law after giving him opportunity of personal hearing and gave direction to the appellate authority to decide the departmental appeals of the appellant strictly accordance with law rules/rules and

considering each of the appeal on its merit. **(Copy of judgment is attached as Annexure-N).**

11. That after the judgment of the august tribunal, the appellate authority rejected the departmental appeal in summary manner by violating the directions of the Tribunal given in its judgment and passed the impugned order dated: 3.3.2016 which was received by appellant on 16.03.2016 **(Copy of the order is attached as Annexure-O).**
12. That now, the appellant comes to this august Honorable Tribunal on the following grounds amongst the others:

GROUND:

- A) That the impugned order dated 3.3.2016 is against the law, facts, norms of justice and principle of fair play and material on record.
- B) That the impugned order and attitude of respondent department is in sheer violation of Article 4, 25 and 38 of the constitution.
- C) That the respondents not deal the appellant as per law and rules and not considering the appeal on its merit and rejected the departmental appeal of the appellant for no good grounds which is clearly violation of the judgment of Hon'ble Tribunal.
- D) That the appellant has been condemned unheard and treated according to law and rules because being a civil servant of the province, the appellant has not been dealt with E&D Rules 2011 and removed from service in a slipshod manner.
- E) That neither the appellant was served with charge sheet and statement of allegation nor regular enquiry was conducted in the matter so much so the respondents also violated the rules-5 (1) (a) of E&D Rules 2011. Whereby it was mandatory under the law to pass the speaking order for dispensing with the enquiry. Thus, the lacking such procedure the impugned order is liable to be set aside.
- F) That no chance of personal hearing was provided to the appellant which is the violation of declare law and principle of

AUDI ALTERAM PARTREM as reported in the case of Aneesa Rehman.

- G) That even the termination order has not in existence because there is no word "Termination" is provided in the relevant law and rules.
- H) That according to the Government Notification dated 8.4.2006 all posts from BPS-1 to BPS-15 in PHE department were declared as Distt: Cadre post which was not within purview of Public Service Commission that is why the allegations of being non recommendee of the PSC is not a good ground.
- I) That the appellant possesses the prescribed qualification and got his appointment as per law and rules.
- J) That as far as the NOC from the PSC is concerned that is also not correct keeping in view the Department Notification dated 30.4.2008 wherein the Chief Engineer were authorized for making appointment form BPS-1 to BPS-15 through Departmental Selection Committee.
- K) That originally the appellant applied to the post of junior clerk but keeping in view higher qualifications of appellant the respondents appointed the appellant as computer operator instead of junior clerk. Therefore the appellant should have been reverted to junior clerk post for which he qualified test and interview and could not be totally terminated due to fault of others.
- L) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such cases the Hon'ble Supreme Court of Pakistan has held the department responsible and reinstated the poor employees.
- M) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

F. Ali

APPELLANT

Farman Ali

THROUGH:

M. Asif

(M. ASIF YOUSAFZAI),

Taimur Ali Khan

(TAIMUR ALI KHAN),

Syed Noman Ali Bukhari &

**(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR.**

A 6

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

No. 33 / E-4/PHE

Dated Pesh: the 15 / 01 / 2010.

OFFICE ORDER.

On the recommendation of the Department Selection Committee as per its meeting held on 02/12/2009, the competent authority is pleased to offer a post of Data Entry Operator (BPS-11) to Mr. Farman Ali S/O Juma Gul R/O Mohallah Central Jail Saidu Sharif Tehsil & District Swat on the following terms and conditions :-

- 1) He will get pay at the minimum of BPS-11 (Rs.4115 - 275 - 12365) including usual allowances as admissible under the rule. He will also be entitled to annual increment as per existing policy.
- 2) He shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) He shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) His employment in the PHE Department is purely temporary and his services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu of the notice. In case he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) He shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) He shall produce a medical certificate of fitness from Medical Superintendent, Swat before reporting himself for duty to the O/O Superintending Engineer PHE Circle Swat as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Superintending Engineer PHE Circle Swat, within 14 days of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

/

CHIEF ENGINEER

Copy to the :-

- 1) Superintending Engineer PHE Circle Swat.
- 2) District Accounts Officer Swat.
- 3) ✓ Mr. Farman Ali S/O Juma Gul R/O Mohallah Central Jail Saidu Sharif Tehsil & District Swat.

ATTESTED
/

/

CHIEF ENGINEER

MEDICAL CERTIFICATE

16-10-14
33
B

7

Name of official FARMAN ALI.

Ethnicity or race AFGHAN.

Author's name TUMA GUL.

Residence VILLAGE P. O. SAIDU SHARIF MOHALLAH: CENTRAL JAIL SAIDU SHARIF SWAT.

Date of birth 19-10-1977

Actual height by measurement 6' 1"

Personal mark of identification NIL

Signature of the official F. Ali

Signature of head of office

Seal of office Water Supply & Sanitation SWAT.

I do hereby certify that I have examined Mr. Farman Ali a candidate for employment in the Office of the Water Supply & Sanitation SWAT and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except nil

I do not consider this as disqualification for employment in the office of the Dep. Dist Officer

His age according to his own statement 32 year and by appearance about thirty two

MEDICAL SUPERINTENDENT, Saidu Teaching Hospital, Saidu Sharif SWAT

16-10-14

LEFT HAND THUMB AND FINGER IMPRESSIONS

ATTESTED

~~ATTESTED~~

Swat
Data Entry Operator
0/0 S.E. P.H.E Circle
Farman Str.

Yours obedient
P. H. E.

REGISTERED ENGINEER
DIVISION
P. H. E. CIRCLE
SWAT

please

Annual Report today on 16/1/2010
a bag to submit may

15-01-2010

In presence of Civil Engineer
Office order No. 33/E/4/P.H.E dated

Annual Report

Subject:

The Superintending Engineer,
P. H. E Circle Swat.

C
8

(For use in Police Department only)

Hours:

1. _____
2. _____
3. _____

Verification Roll No. _____ dated _____ received back _____

Left Thumb Impression _____

Academic & Qualification:

Qualification	Date	Qualification	Date
S.S.C & passed SSC exam		Professional *	
under Roll No: 5077 marks		First Arts	DIT for Golden/ 75% marks
English obtained 444/850 in 1994		Typing / short hand course	
from BISE Saidu sharif Swat.		B.L. Or B.A.	Secured typing / short hand course from
Computer. Courses. Win x P.			
Urdu [A] Chull MS. Excell		Fanco Commercial	
F.A * Passed F.A exam		Pleadership examination	College Dist Swat
under Roll No: 203730			in 1994 and attained
Plan-drawing		Training School Final examination	the English/Typewriting
Securing marks 92.5/100		Speed. 40 wpm.	
from BISE Saidu Sharif		Other qualification:	
Finger Print Swat in 1996.			
BA Passed from NICE University of Pakistan			
Dr. Waheed Raza No. NIS-BA-138 in 12/2010			
by 74% Marks Grad: B.			
BBA 4 years degree			
Court Duties excellent to MBA 3.41 GPA			
In the year 2012			
Reserve Duties		Superintendent Engineer	
		Public Health Engineering Department	

ATTESTED

S.B. Line to be drawn under the qualification possessed.

The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

Name: FARMAN ALI.

Race: AFGHAN.

Residence: MOH: CENTRAL JALP. O SAIDY SHARIF SWAT.

Father's name and residence: JUMA GUL.

Date of birth by Christian era as nearly as can be ascertained: 19-10-1977.
Nineteenth October N.H & Seventy Seven

Exact height by measurement: 6' 1"

Personal marks for identification: NIL

hand
1977
course

short

Left hand thumb and finger impression of (Non-Gazetted) officer:

at

big

Little Finger



Ring Finger



Middle Finger



Fore Finger



Thumb



Signature of Government Servant:

F. Ali

Signature and designation of the Head of the Office, or other Attesting Officer.

[Signature]
Superintendent Engineer
Public Health Engineering Department
Swat

ATTESTED
[Signature]

~~ARRESTED~~

1	2	3	4	5	6	7	8	9
<p>Name of post</p> <p>Date Employe Director C.D.E.O B-II</p>	<p>Whether substantive or officiating and whether permanent or temporary</p>	<p>(i) substantive, or (ii) whether service under Art. 371 C.S.R.</p>	<p>Pay in substantive post</p>	<p>Additional Pay for officiating</p>	<p>Other emolument falling under the term "pay"</p>	<p>Date of appointment</p>	<p>Signature of Government Servant</p>	<p>Signature of the head of office or other official in official capacity in column 9</p>
						16.01 2/10		
			Rs 4115/- pm					

4115-275-12365 26/7/Temp.

F-2

ATTESTED

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION
MUMBAI

Handwritten notes: 1.10.14, 1.10.14, 1.10.14, 1.10.14, 1.10.14

Handwritten notes: 16-01-2010, 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010

Handwritten notes: 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010

Handwritten notes: 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010

Handwritten notes: 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010, 15-01-2010

9	Signature and Designation of the head of the office attesting officer in columns 1 to 8	Date of termination or appointment	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave		Reference to any record of punishment or censure of Government servant
					Allocation of period of leave on average pay upto four months for which leave is payable to another Government	Period which is debatable to Government	
10							
11							
12							
13							
14							
15							

12

~~ATTESTED~~

805-11
4115-275-12365

(D.F.D.)
B.F.H.

Rs. 4115/-

1/4
2010

(F.S.H.)

(F.S.H.)

(F.S.H.)

1	2	3	4	5	6	7	8	9
Name of Post	Whether substantive or officiating and whether permanent or temporary	(i) Substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emoluments	Date of appointment	Signature of Government Servant	Head of the office attesting column

8	9	10	11	12	13		14	15
Signature of the officer Government Servants (Pensions) Rules 1 to 8	Designation of the officer	Date of termination or appointment	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Leave		Signature of the head of the office or other attesting officer	Reference to any record punishment, censure or part of the Government Staff
					Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitible to another Government		
					Period	Government to which debitible		
<p><i>Pali</i></p> <p><i>pay from and before 1-4-2010 till the period from 1-4-2010 to 3-2-2010 from office Computer</i></p> <p><i>pay bill of 2010</i></p>	<p><i>Authorised to draw pay from</i></p>	<p><i>1-4-2010 on the vacant post</i></p>	<p><i>of Computer Operator / D-E-D in</i></p>	<p><i>vide O/o CE PAE Circle Swat</i></p>	<p><i>vide CE PAE O/O NO. 03/E-9/PHE</i></p> <p><i>dated 24-3-2010.</i></p> <p><i>SING 790 dt. 10/5/10</i></p> <p><i>Pay Rs. 4115/- pm + allowances</i></p> <p><i>Drawn for 4/2010.</i></p> <p><i>Allowed to draw pay up to 1-5-2010</i></p> <p><i>S, O/S</i></p> <p><i>18/5</i></p> <p><i>A TNS 30 dt. 5/1/10</i></p> <p><i>Receipt of one payment of</i></p> <p><i>computer allow: Rs. 1500/- for 4.5/10</i></p> <p><i>made</i></p>	<p><i>EXECUTIVE ENGINEER PUBLIC HEALTH ENGINEERING DIVISION MALAKAND AT BAKHELA</i></p> <p><i>Distt. Controller of Accounts Swat</i></p>		

ATTESTED

**Distt. Controller
of Accounts Swat**

RECEIVED

4355-310-13655

BPS-12

12/2010

Rs. 4665/- per

(P.O.)

in BPS-12

3. From 1/12/2010 (Rs. 4355/-)

12/2010

(P.O.)

1. From 11/7/2010 (Rs. 4115/-)

Computer Operator B-12 (4355-310-13655)

From 1/12/2010 in BPS-12

(P.O.)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	(i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "gr."	Date of appointment	Signature of Government

15

8

9	10	11	12	13	14	15
Name and Designation of the officer (Station of Posts 1 to 8)	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Date of termination or appointment Nature of termination or appointment Amount of period of leave or average pay or other benefits in which the salary is payable in another Government Government to which delectable	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant
<i>Pali</i>				<p>Post upgraded from BPS-11 to BPS-12. vide Govt of K.P Finance Deptt. Reshowr Notification No. KC/FO/50(FR)/7-3/2001 dated 12-7-2010.</p>		
<i>Pali</i>			<p><i>[Signature]</i> SUPERINTENDING ENGINEER PUBLIC HEALTH ENGINEERING CIRCLE SWAT</p>	<p><i>[Signature]</i> SUPERINTENDING ENGINEER PUBLIC HEALTH ENGINEERING CIRCLE SWAT</p>		
				<p>ST. 67 dt 12/8/10 arrears of pay, AR No-09/10 No-10. Provision on MC of Madras. Rs-344/-</p> <p><i>[Signature]</i> District Engineer of Arsoo 12/8/10</p>		
		Annual increment granted.	<p><i>[Signature]</i> <i>[Signature]</i></p>			
				<p>Service verified for the Police... To... from the office copy of Pay bill & acquittance Roll.</p>		

ATTESTED
[Signature]

[Signature]
**SUPERINTENDING ENGINEER
PUBLIC HEALTH ENGINEERING
CIRCLE SWAT**

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature Government
<p>SPS-12 7000-500-22000 Computer Operator App. Assnt</p>			<p>R. 7500/PA1</p>			<p>1-7-2011</p>	<p>Paid</p>
<p>Computer Operator SPS-12 7000-500-22000</p>			<p>R-8000/PA1</p>			<p>1-12-2011</p>	
<p>12 7500/PA1</p>		<p>2011 BASIC PAY SCALE SPS-12 OFFICE OF THE ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA, PESHAWAR PAY FIXED IN THE R.B.P.S 2011</p>	<p>7000-500-22000</p>		<p>12</p>		
		<p>OF RS... AT RS 7500/PA1 WITH NEAR... 2011</p>					
<p>Service Rules Basic Qualification for the post holder Computer Operator 2</p>		<p>ACCOUNTANT GENERAL Pay Fixation Form Peshawar</p>					
<p>Computer Operator</p>		<p>PAID</p>					<p>Paid</p>

Signature of Government	9 Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination or appointment.	11 Reason of termination such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to a provided publication in the Government Servant.	
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitble to another Government			
						Period			Government to which debitble
<i>Pali</i>						12 Period: 1-1/2011 Government to which debitble: PHE PHE fixed RS: 7500/- vide Finance Department notification No. FD (PRC) 1-1/2011 dated 14-7-2011 g.e. m. b. l. o. d.			
Annual Increment Granted									
				<i>Omung</i>	<i>Omung</i>		<i>Omung</i>		
<i>del</i>									

Annual Increment Granted

Transferred to PHE Division Gunt
 vide CE Engineer (North) No 08/E-2/PHE(N)
 dated 25/11/2012 and departure report on 01/31/2012 AN.

Omung
 SUPERINTENDING ENGINEER
 PUBLIC HEALTH ENGINEERING
 DIVISION, GUNTUR

MAILED
[Signature]

★
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12 (PM)
2012

Rs 8500/-
PM

Rs 8000/-

1/12
2012
(PM)

Rs 8000/-

(Total 22000/-) Rs 1

Complex Officer
(A-1)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	(i) substantive appointment, or (ii) whether service counts for pension under Art. 371 CSR.	Pay in substantive post	Additional pay for officiating	Other emolument falling under "p"	Date of appointment	Signature of Government Servant

19

12

9	Nature and Designation of the head of the office or other attesting officer (columns 1 to 8)	Date of appointment or termination or promotion, etc.)	Reason of termination or promotion, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is payable to another Government.	Signature of the head of the office or other attesting officer	Reference to a record of punishment or praise of the Government Servant.
10	10 31 2012 (ANI)			g. e. m. d. d. d.		1/2 (FN)	g. e. m. d. d. d.	Arrived reported on 10/12/2012 (FN)
11				g. e. m. d. d. d.			g. e. m. d. d. d.	Study leave: 10 days Escorted leave on full pay 10 days W. o. f. 03-07-2012 to 08-08-2012 (36 days) granted with 86 PHE Circle, Small Office order No. 095/03 dt. 12-7-2012
12				g. e. m. d. d. d.			g. e. m. d. d. d.	Executive Engineers Public Works Division B. A. 1
13				g. e. m. d. d. d.			g. e. m. d. d. d.	g. e. m. d. d. d.
14				g. e. m. d. d. d.			g. e. m. d. d. d.	g. e. m. d. d. d.
15				g. e. m. d. d. d.			g. e. m. d. d. d.	g. e. m. d. d. d.

پبلک ہیلتھ انجینئرنگ ڈیپارٹمنٹ صوبہ سرحد پشاور
آسامیاں خالی ہیں

درج ذیل مختصر مدت تامل چھ ماہ (توسیع) اور عارضی کنٹریکٹ آسامیوں کیلئے موزوں امیدواروں سے درخواستیں مطلوب ہیں۔

نمبر شمار آسامی کا نام	ذمہ داریاں	کم از کم تعلیمی قابلیت	عمر کی حد	مدت ملازمت
(1) اسٹنٹ ریفرج آفیسر (مختصر مدت)	صوبہ سرحد	بی ایس سی یکسٹری ایما لوجی	32±21 سال	چھ ماہ تامل توسیع
(2) اسٹینو گرافسٹ (مختصر مدت)	صوبہ سرحد	میٹرک یا مساوی قابلیت بعد 80 الفاظ کی منٹ شارٹ ہینڈ اور 35 الفاظ کی منٹ ٹائپنگ رفتار	30±18 سال	کنٹریکٹ
(3) جونیئر کلرک (کنٹریکٹ)	صوبہ سرحد	میٹرک یا مساوی قابلیت بعد 30 الفاظ منٹ ٹائپنگ رفتار	30±18 سال	کنٹریکٹ

شرائط (1) درخواستیں سادہ کاغذ پر جن میں نام، والد کا نام، تاریخ پیدائش، پتہ، تعلیمی قابلیت، تجربہ، ذمہ داریاں، خط و کتابت کا پتہ، فوٹی شناختی کارڈ نمبر، فوٹو یا تازہ تصدیق شدہ مورچہ 10 ستمبر 2009ء تک زیر دستگی کے دفتر میں پہنچ جانی چاہئے۔ (2) جو افراد پہلے سے سرکاری ملازمت میں ہوں وہ اپنی درخواستیں حکمانہ وساطت سے ارسال کریں۔ (3) بالائی عمر کی حد میں رعایت دہرہ بعد کے مطابق ہوگی (4) بائیکل اور بعد از عمرہ تاریخ موصول ہونے والی درخواستیں تامل غور نہ ہوگی (5) ٹیسٹ ایئر ویو میں شمولیت کیلئے کوئی ٹی اے ایڈی اے نہیں دیا جائیگا۔

نوٹ: اسٹنٹ ریفرج آفیسر کے لئے اعلیٰ تعلیم کے حامل اور لیبارٹری کے کام خصوصاً پینے کے پانی اور استعمال شدہ پانی کے معائنہ میں تجربہ رکھنے والے امیدواروں کو اضافی نمبر دینے جائیں گے۔

چیف انجینئر
پبلک ہیلتھ انجینئرنگ ڈیپارٹمنٹ
صوبہ سرحد 1 پولیس روڈ پشاور

Also available on www.nwfp.gov.pk INF(P)2791

attested
[Signature]
Sub Divisional Officer
Public Health Engg: SIDivn.
SWAT.

ATTESTED
[Signature]

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0331-5264900
0946-791262

15602-0248245-1

Medical (1999) 3

DMC 2006 811

DMC 2006/DMC 2006

DMC 2006/DMC 2006

DMC 2006

DMC 2006

DMC 2006

DMC 2006

Handwritten notes in Urdu script, possibly a list or index.

Handwritten notes in Urdu script.

Handwritten notes in Urdu script.

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Attention Shukrot S.E

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

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

~~Amir~~

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

Mushfaq Ahmed and another,
Muhammad Nasir Ali and others.

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

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

For the petitioners:

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

For the respondents:
(on court notice)

Sikandar Khan, Chief Engineer, PHEK, KPK.

Date of hearing:

15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments

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

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

S.P.H.E. Deptt (South)
File No. 480
25-01-014
No.
MR (S)
2

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Superintendent
Supreme Court of Pakistan
Islamabad

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C.P. 2026/13 & 2029/13

~~CONFIDENTIAL~~

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

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

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

Certified to be True Copy

Suprintendent
Supreme Court of Pakistan
Islamabad



GR No: 640/14 Civil/Criminal
 Date of Presentation: 15-1-14
 No. of Words: 6
 No. of Follies: 6
 Requisition Fee Rs: 6.00
 Copy Fee in: 3.22
 Court Fee stamps: 9.27/14
 Date of Completion of Copy: 18-1-14
 Date of delivery of Copy: 18-1-14
 Compared by/Prepared by: Zafar Iqbal
 Received by: Zafar Iqbal

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S.E.P.I
(S)
No. 4
20-c
No.
S.E.P.I
(S)
No.
S.E.P.I
(S)
No.



H (26)

~~26~~

26

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

No. 32 / E - 4 / PHE

Dated Peshawar, the 21 / 01 / 2014

To

- | | |
|-------------------------------|----------------------------|
| 1. Mr. Tariq Nawaz | Sub Engineer. — |
| 2. Mr. Sajjad Khan | Sub Engineer. — |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer. |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman — | Sub Engineer. |
| 10. Mr. Salim Nawaz | Sub Engineer. |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Sahar Gul — | Sub Engineer, |
| 14. Mr. Ishfaq | Sub Engineer. |
| 15. Mr. Abdul Shahid | Sub Engineer. |
| 16. Mr. Kashif Raza | Sub Engineer. |
| 17. Mr. Waqar Ali | Sub Engineer, |
| 18. Mr. Muslim Shaq | Sub Engineer, |
| 19. Mr. Ishtiaq Ahmad | Sub Engineer. |
| 20. Mr. Zuhib Khan | Sub Engineer. |
| 21. Mr. S. Hassan Ali | Sub Engineer. |
| 22. Mr. Mohsin Ali | Sub Engineer. |
| 23. Mr. Muqtada Qureshi | Sub Engineer. |
| 24. Mr. Ishtiaq Ahmad | Sub Engineer. |
| 25. Mr. M. Qaiser Khan | Sub Engineer, |
| 26. Mr. Nomanullah — | Senior Scale Stenographer. |
| 27. Mr. M. Imran — | Steno Typist, |
| 28. Mr. M. Jamil — | Steno Typist, |
| 29. Mr. Iftikhar | Steno Typist, |
| 30. Mr. Shah Khalid | Steno Typist. |
| 31. Mr. Aziz Ullah | Steno Typist. |
| 32. Mr. Farhan Ullah | Steno Typist. |
| 33. Mr. Farman Ali | Data E/Operator. |
| 34. Mr. Murtaza Qureshi | Data E/Operator. |

Subject: SHOW CAUSE NOTICE

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

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

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03-02-14
E-2

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Page -2

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

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

Copy forwarded to:

Chief Engineer (South)

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

Chief Engineer (South)

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[Signature]

To

The Chief Engineer (South).
Public Health Engineering Department.
Peshawar.

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PIE dated 21-01-2014 received by me on 13/02-2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

It is submitted that I am working in PHE Division Swat as Computer Operator and is only under the controlling authority of the worthy Chief Engineer (North) PHE/D as competent authority. Therefore, the Show Casuse Notice issued to me under your signature on that reason too is un-authorized and un-lawful. However, para wise explanation is submitted as under:-

1. In this connection your attenditon is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-1 to B-15 in W&S Department (i.e. C&W and PIE) as District Cadre Posts and outside the purview of P.S.C. Therefore, W & S Department was directed neither to place any such requisition before the P.S.C. nor the P.S.C. was required to advertise such posts (Annexure-I). The E&A Department, vide letter No.SOR-V(E&AD)/1-368/2005(SE) dated 02/5/2007 addressed to P.S.C. and copy thereof endorsed to Secretary W&S Department, further stated that the requisition made by the W&S Department, for filling in the vacant posts may be considered as v'rawn (Annexure-II). In the circumstances, the recommendation of P.S.C. for appointment against such posts, were uncalled for.
2. My appointment agasinst the post was made by the Competent Authority as I having the prescribed qualifications for the same. Hence there involve no contravention to Govt. Policy.
3. As explained in the above paras, it was not the purview of P.S.C. to make recommendation against these Posts, therefore there was no need of N.O.C etc: from them. From the above letters it reveals that requisition for the vacant posts was made, but the same was withdrawn by the E&A Department. Therefore, the Secretary W&S Department, vide his Notification No. E&A/W&S/11-23/2007 dated 30-4-08 assigned all the Establishment matters of officials from BPS-1 to BPS-15 to the respective Chief Engineers of the C&W and PIE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover, my appiointment was made by the competent authority through the DSC.
4. As a candidate and junior employee of the Department, I do not know about any violation of codal formalities in the process of appointment. However, if there is some lapse in procedure, that is supposed to be tackled by the concerned hands with the competent forum for rectification/regularization, rather to proceed against me without any fault of mine at this belated stage/time where I have spent the useful part of my life of about 5 years and have since crossed/near to cross the upper age limit of 30 years and have been overaged.

It is added that I am not party in the case of Mushtaq Ahmad & others C.P No.2026/13 & Muhammad Nasir Ali & others CP No.2029/13, therefore, the decision of the Honourable Supreme Court of Pakistan dated 15.01.2014 is not applicable upon me.

In view of above explanation, it is very humbly prayed that the charges may be dropped.

Thanking you.

Yours Obediently,

[Signature]

Farmay Ali
Computer Operator
PIE Department Swat

Dated 13/02/2014.

ALLEGED
[Signature]

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Copy to the:-

1. Registrar, Supreme Court of Pakistan, Islamabad with reference to C.Ps N.2026 & 2029 of 2013.
2. Registrar, Peshwar High Court, Peshawar w/r to W.Ps No.271-P & 663-P of 2013 w/r to above.
They are requested to direct the Chief Engineer (South) PHE Peshawar to avoid from taking such drastic & one sided action i.e without proper enquiry & opportunity of hearing etc; as required under the law/ natural justice.

3. PS to Secretary PHE Department Peshawar.

4. Executive Engineer PHE Swat
his letter No. 19/30226
dated 13/02/2014

Dated: 14/02/2014

Ali
Farman Ali
Computer operator
PHE Department Swat

ATTESTED

Dated



J = 30
OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 36 / E-4 / PHE,
Dated Peshawar, the 14 / 02 / 2014

Mr. Farman Ali s/o Juma Gul
Data Entry Operator PHE Division
Swat

TERMINATION FROM SERVICE

Your recruitment in PHED made vide this office letter No.33/E-4 /PHE dated 15.01.2010 was illegal and unlawful due to non-fulfillment of codal formalities.

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

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

Chief Engineer (South)

Copy forwarded to:

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

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To

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

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

Respected Sir,

1. That appellant being qualified for the post of ~~Senior Engineer~~ ^{DEO} so he applied for the existed vacancies of ~~Stenographer~~ ^{DEO} in the Public Health Engineering Department Khyber Pakhtunkhwa Peshawar. After observing the codal formalities, on the recommendation of Departmental Selection Committee he was appointed as ~~Stenographer~~ ^{DEO} (BPS-12) on regular basis from his respective date of appointment issued by the Chief Engineer.
2. That after completing the requisite formalities including medical fitness certificate, the appellant joined duties at his respective place of posting. The respondent department also maintained the service book of the appellant and necessary entries have been made therein from time to time.
3. That the appellant is regular employee of the respondent department working against the permanent post since his respective appointment having more than five years service at his credit with excellent service record.
4. That some other employees whose appointments were made on adhoc basis so they agitated their regularization under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition Nos.271-P/2013 and 663-P/2013 which were dismissed

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by common judgment passed on 02.10.2013.

5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also **dismissed on 15.01.2014**. However during the proceedings, Mr. Sikandar Khan Chief Engineer, **Public Health Engineering Department, Khyber Pakhtunkhwa** orally brought into the notice of Hon'ble Supreme Court of Pakistan about the existence of illegal appointees in the department and accordingly he was directed to finalize the action against such illegal appointees within one month.
6. That a joint show cause notice was issued to appellant alongwith others **vide letter No.32/E-4/PHE dated 21.01.2014** by Chief Engineer (South) therein he has unlawfully and malafidely shown the appointments of appellant and others as illegal. Since the copy of show cause notice was not received within stipulated time therefore he submitted an application before the Chief Engineer (South) requesting for extension in period of reply but before submitting the requisite reply, now which had been submitted, the Chief Engineer (South) had issued the impugned order dated 14.02.2014 thereby his services were terminated with immediate effect.

Grounds:

- A. That the appointment of appellant was made by competent authority on regular basis on the recommendation of **Departmental Selection Committee**. He was within age limit, having prescribe qualifications thus in such circumstances the Chief Engineer (South) was unjustified to treat the valid appointment of appellant as illegal.
- B. That it is pertinent to mention that by notification vide No.SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in

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order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt:)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.

- C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of ~~Secretary~~ in the W&S Department and done accordingly. In such circumstances the plea of Chief Engineer (South) regarding non fulfilling the requirements of recommendation of **Public Service Commission, Khyber Pakhtunkhwa** in the cases of appellant is unjustified, unreasonable, malafide and without lawful authority and not sustainable under the law and rules.
- D. That in view of clause 5 of the appointment order of each appellant, his service was placed on probation for a period of two years extendable upto three years which the appellant has completed satisfactory becoming a confirmed employee of the office Chief Engineer. At the time of passing of impugned order the appellant has rendered more than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without law ful authority.
- E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the

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Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.

- F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.
- G. That Chief Engineer has malafidely brought in the notice of the Hon'ble Supreme Court of Pakistan during the hearing of an other case. Neither he supplied any list of illegal appointments to Hon'ble Supreme Court of Pakistan at that very moment nor specified such illegal appointments but in general way he mentioned the existence of illegal appointments in the department which now he has exploited the situation and purposely held the appointments of appellant and others as illegal and issued the impugned order of termination without legal justification.
- H. That the impugned order has been passed at the back of appellant. Neither any regular enquiry has been conducted nor a fair opportunity was provided to them to defend their cases therefore the impugned order is illegal, without lawful authority being violative of principle of natural justice.
- I. That the appellant was continuously serving the department having more than five years service at their credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of locus poenitentiae.
- J. That in case of any defect in the appointment of appellant is existed for which only the departmental authority is responsible and not the appellant therefore the action of the Chief Engineer is not warranted under the law and rules and the impugned order is illegal and of no legal effect.

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K. That the appellant is a permanent and confirmed employee of the department and performing his respective duty efficiently since the date of his appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools and colleges thus in such circumstances, the Chief Engineer has no legal and moral justification to hold the appointment of appellant as illegal. Therefore the act and action of the Chief Engineer is tainted with malafide intention, unlawful and not operative against the vested rights of appellant.

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

Farman Ali
Yours Sincerely,

Farman Ali, Data Entry Operator (BPS-12) PHE (Division Swat)
Address: Mohallah Central Jail, Saidu Sharif, Swat.

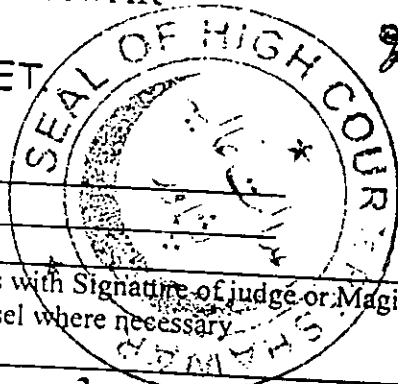
dated ____ / ____ / 2014

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

Court of _____
Case No _____



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

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EXAMINER
Peshawar High Court.
31 MAY 2014

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natural justice.

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

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

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 EXAMINER
 Peshawar High Court,
 11 MAY 2014

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

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

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

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

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

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

Announced.
26.02.2014

Justice Yousaf Ali
Justice Malik Mansoor Hussain

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Constitution of Pakistan Order 148
1 MAY 2014

No. 19933
Date of Presentation of Application 31-5-14
No of Pages 12
Copying fee 10
Urgent Fee 10
Total 2400
Date of Receipt 31-5-14
Date Given to Party 31-5-14
Date of Delivery of Copy 31-5-14
Received By *[Signature]*

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

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

CIVIL PETITION NO. 551 OF 2014
(On appeal from the judgment dated 26.2.2014 passed
by the Peshawar High Court, Peshawar in WP No. 615-
P/2014)

Tariq Nawaz Khan and others

... Petitioners

VERSUS

Government of KPK through Chief Secretary, Peshawar and others

... Respondents

For the Petitioners: Mir Aurangzeb, ASC

For the Respondents: N.R.

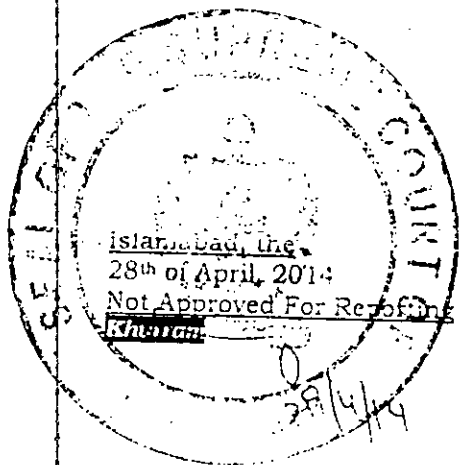
Date of Hearing: 28.04.2014

ORDER

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

2. We are afraid, the apprehension of the petitioners is misconceived. In the event of filing the appeal, the Service Tribunal shall decide the appeal as mandated in law. Disposed of in terms noted above. *1/1/14*

Sd/- Tassaduq Hussain Jillani, CJ
Sd/- Sh. Azmat Saeed, J



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Certified to be True Copy

[Signature]
29/4/14
Superintendent
Supreme Court of Pakistan
Islamabad

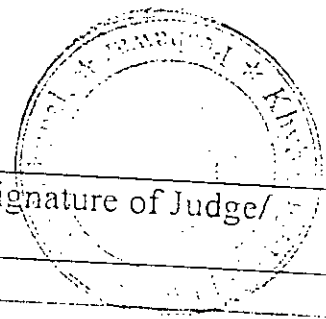
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Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge/Magistrate
1	2	3

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Versus

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

JUDGMENT

PIR BAKHSI SHAHI, MEMBER:- Counsels for

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

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[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

30.12.2015

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

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

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

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

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KPK
Service Tribunal
Peshawar

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

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

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

1. In light of S&GAD letter No.SOR-I(S&GAD)1-117/91© dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and DATA E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore, you are directed to provide recommendation of Public Service Commission, if any.
2. Your appointment orders have been made in contravention of Govt. laid down policy vide circulated notification No.SOR-VO/EXAD/1-10/2005/Vol-VI dated 15.11.2007.
3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for

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Public Service Commission
Khyber Pakhtunkhwa

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

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

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

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

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

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Mr. U
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Member
Service Tribunal,
Peshawar

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[Signature]

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

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

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KHAWAR
 District Tribunal,
 Peshawar

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

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

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

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 Peshawar

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

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

ANNOUNCED
30.12.2015

Sd/- Pir Bakht Shah,
Member

Sd/- Abdul Latif,
Member

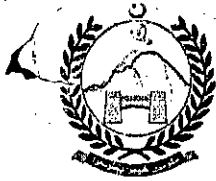
Certified true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of	01-01-2016
Number of	3200
Copies of	18
Legal	18
Cost	18
Date of	06-01-2016
Date of	06-01-2016

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(Signature)



101 (49)
GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

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

To,

Mr. Farman Ali
S/o Juma Gul,
Village & P/o Saidu Sharif,
Mohallah Central Jail,
Saidu Sharif, Swat.

C/O
P. J. J.

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No.36/E-4/PHE DATED 14-02-2014.**

WHEREAS, you managed to get yourself appointed as Data Entry Operator (BPS-11) in PHED vide Chief Engineer PHE Office Order No.33/E-4/PHE dated 15-01-2010.

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

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

4. AND WHEREAS, you also filed Service Appeal No.867/2014 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was also disposed off vide its judgment dated 30-12-2015, with the direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing.

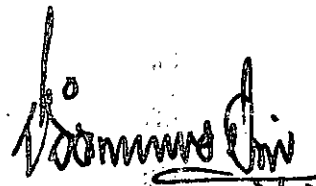
5. AND WHEREAS, you were given the opportunity of being heard on 08-02-2016 and material on record perused. It revealed that your appointment as Data Entry Operator was effected in sheer violation of the provisions contained in the K.P Civil

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Servants Act, 1973 and the rules made there-under. The then Chief Engineer (South) PHE abused his powers while grabbing the authority vested in the K.P Public Service Commission. Even C.E (South) PHE was not competent to make your appointment on an adhoc basis for want of NOC from the K.P Public Service Commission, advertising the post as per prescribed procedure, observing merit, zonal allocation and mandatory recommendations of the Departmental Selection Committee. As such, your appointment as Data Entry Operator PHE stands void ab-initio and ultra-vires of the provisions contained in the law/rules/policy ibid. Hence, your termination order dated 14-02-2014 by the competent authority is quite legal, lawful, valid and does not require any review, modification or setting aside whatsoever by the appellate authority.

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



(NIZAM-UD-DIN) 08/08

SECRETARY TO

GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

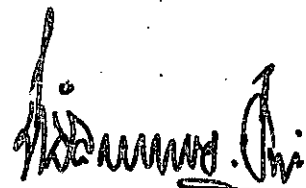
ENDST: NO & DATE AS ABOVE:

Copy forwarded to the:-

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

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SECRETARY TO 03/10
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.K Service Tribunal, Peshawar

Farmen Ali (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

P.H.E Department (Respondent)
(Defendant)

I/We Farmen Ali

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Fali

(CLIENT)

ACCEPTED

M. Asif Yousafzai

M. ASIF YOUSAFZAI
Advocate

See Yousafzai

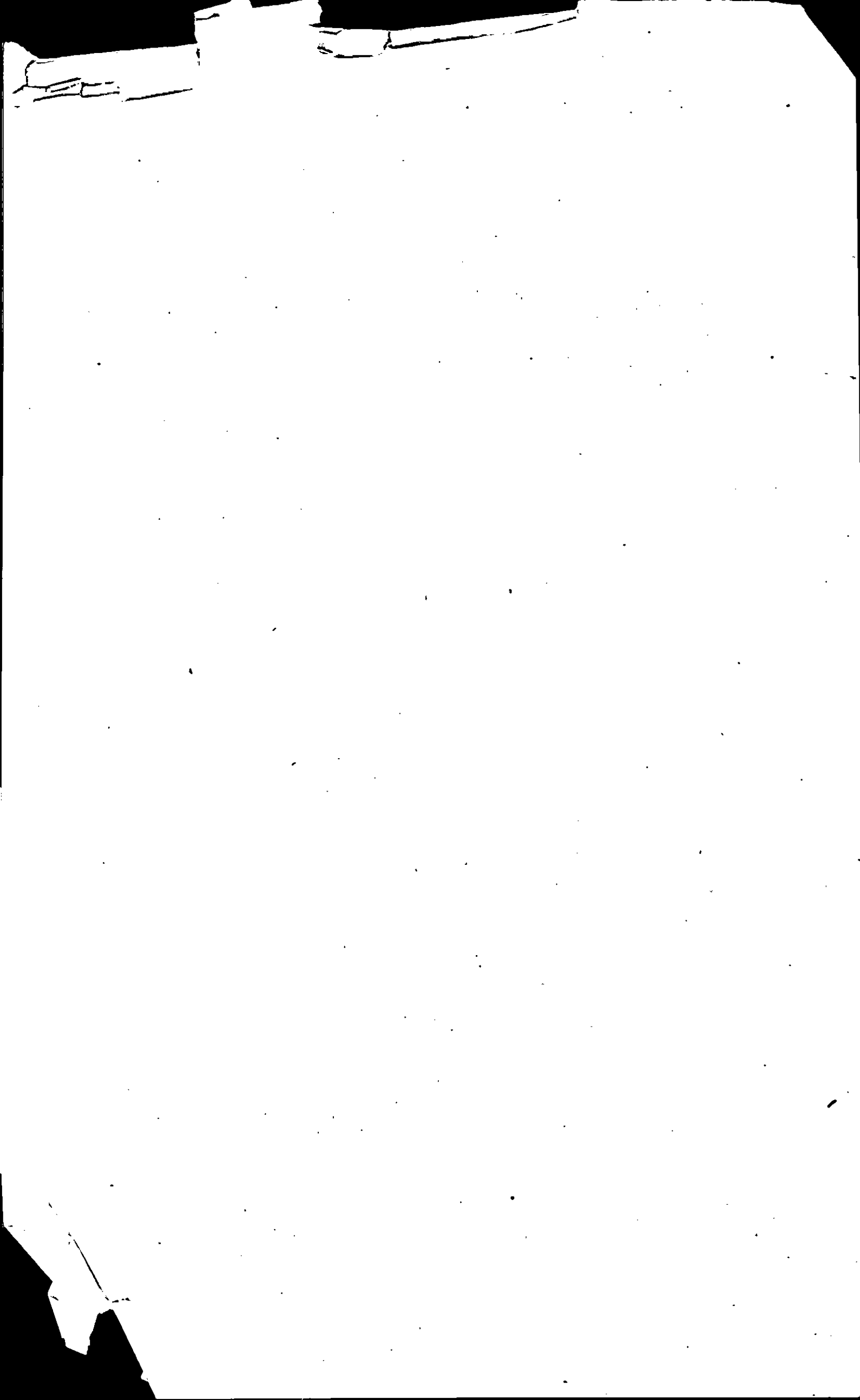
Syed Nomen Ali Bukhari

TAIMUR ALI Khan

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240



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

Service Appeal No

329/2016

Mr. Farman Ali S/O Juma Gul

Ex-Data Entry Operator PHE SE Circle, Swat.

..... (Appellant)

Versus

1. Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. Chief Engineer (South) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. Superintending Engineer PHE Circle Swat.Respondent

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 TO 3

Respectfully stated

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

PRELIMINARY OBJECTIONS.

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

BRIEF HISTORY

A writ petition bearing No W.P 271-3 2013 was filed by Mr. Mushtaq Ahmad, etc, for extending benefits of regularization, before the Peshawar High Court order, Peshawar and the same was declined by the Peshawar High Court, (Copy of the judgment dated 2.10.2013 is annexed as **(Annexure-I)**). The said petitioners then moved a Civil Petition No 2026 and 2029 of 2013 before the August Supreme Court of Pakistan. Though the August Supreme Court of Pakistan dismissed the same and directed the department to finalize the action against the illegal appointees within one month, vide judgment dated 15.1.2014 (**Annexure-II**) and subsequent reminder dated 07.02.2014 (**Annexure-III**). The appellant was appointed from a list submitted by Political Secretary to then Chief Minister Khyber Pakhtunkhwa (**Annexure-IV**). Upon completion of the legal formalities i.e. issuance of Show Cause Notice etc, the action was taken against the appellant.

ON THE FACTS.

1-2). Denied as drafted as one wrong or any number of wrongs cannot be made bases to justify an illegal action. The post of Data Entry Operator BPS-11 comes within the purview of Public Service Commission according to the Public Service Commission Ordinance and ESTA Code, (Copy of the Public Service Commission Ordinance and the concerned rules of the ESTA code is attached as **(Annexure V & VI)**, therefore, the then Chief Engineer was not competent to appoint the Appellant. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgement dated 30/05/2016 (**Annexure-VII**).

Upon the direction of the August Supreme Court and on completion of legal formalities, the appellant was removed from service. It is pertinent to mention that the department had already initiated proceedings against the then Chief Engineer and other DSC members (Copy of letters in this respect are attached as **(Annexure-VIII)**).

3) Pertain to record. The appellant except that he has not applied for the post of Data Entry Operator (DEO) and wrongly appointed as DEO. The appellant was unlawfully appointed against the post of DEO which comes within the purview of Public Service Commission the appellant has also not been recommended by competent forum for appointment as Junior Clerk.

- 4) Pertain to record. The appellant has neither recommended by the competent forum as Junior Clerk and has illegally been appointed as Data Entry Operator by unlawful authority. One wrong cannot be justified for another wrong.
- 5). Denied as drafted as one wrong or any number of wrongs cannot be made bases to justify an illegal action. The post of Data Entry Operator BPS-11 comes within the purview of Public Service Commission according to the Public Service Commission Ordinance and ESTA Code, (Copy of the Public Service Commission Ordinance and the concerned rules of the ESTA code, therefore, the then Chief Engineer was not competent to appoint the Appellant.

Upon the direction of the August Supreme Court and on completion of legal formalities, the appellant was removed from service. It is pertinent to mention that the department had already initiated proceedings against the then Chief Engineer and other DSC members.

- 6). Incorrect proper show cause notice was issued.
- 7). Incorrect. The appellant failed to produce recommendation letter issue by Public Service Commission regarding his selection for the post of Sub Engineer and also failed to produce sanction accorded by the competent authority regarding condonation of violation of codal formalities in his appointment. Therefore his reply was not considered.
- 8) Incorrect. The Apex court directed for finalizing action against all such illegal appointees on 15.1.2014. As the appellant was illegally appointed therefore he was terminated from service. There was no weight-age in his departmental appeal.
- 9). Pertains to court record, hence needs no comments.
- 10). Correct. However the respondents implemented the order of honourable Service Tribunal.

11). Incorrect. The appellant was given an opportunity to submit departmental appeal and personal hearing. Accordingly the appellant has submitted departmental appeal and heard personally by appellant authority. The appellant was illegally appointed contrary to all relevant rules without fulfillment of codal formalities i.e. without recommendation of Public Service Commission and advertisement, test and interview. Hence there was no weight-age in his departmental appeal and therefore the appellant authority dismissed his departmental appeal.

GROUNDS

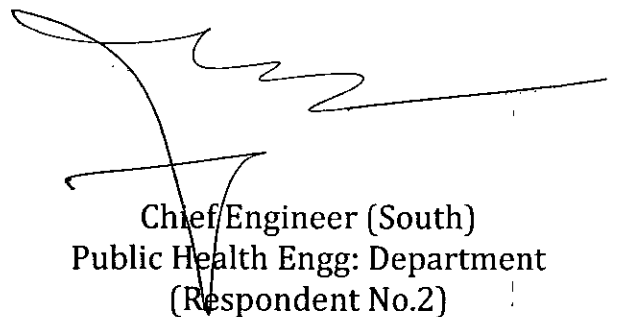
- A). Incorrect. The appellant was illegally appointed without fulfillment of requisite codal formalities. There was no weight-age in his departmental appeal. Hence his departmental was liable to be dismissed.
- B). Incorrect. The appellant was treated accordingly to law. In light of judgment of Service Tribunal dated 30.12.2015 the appellant was given opportunity of department appeal and personal hearing. The appellant failed to produce any legal documents in his defense, as he was appointed illegally without recommendation of Public Service Commission, advertisement contrary to Public Service Commission ordinance, ESTA Code and recruitment policy.
- C). Incorrect. The appellant was given full opportunity according to judgment of service tribunal dated 30.12.2015 but the appellant failed to produce documentary proof regarding the legality of his appointment. As the appellant was illegal appointed violating all codal formalities, hence his department appeal was rejected by the appellant authority having no weight-age.
- (D) Incorrect. The appellant was given full opportunity of Departmental appeal and personal hearing in the light of Service Tribunal Judgment dated 30.12.2015. The appellant failed to produce any legal documents in his defense. As the appellant was not appointed on the recommendation of the Public Service Commission and all requisite codal formalities has been violated in his appointment.
- (E) Incorrect. The appellant was dealt with in accordance with law.
- (F) Incorrect. All codal formalities were fulfilled.
- (G) Incorrect. The appellant was appointed without fulfillment of requisite codal formalities and without recommendation of Public Service Commission. Therefore the appellant was terminated in order to appoint nominee of Public Service Commission according to rules.

- (H) Incorrect. According to ESTA Code and Public Service Commission Ordinance the post of Data Entry Operator shall be filled on the recommendation of Public Service Commission.
- (I) Incorrect. Nomination of Public Service Commission is prerequisite for appointment as Sub Engineer in Public Health Engg: Department. The appellant was appointed without recommendation of Public Service Commission which is against standing recruitment policy of Khyber Pakhtunkhwa.
- (J) In correct. The Notification issued by Secretary Works & Service Department dated 30.4.2008 as referred by the appellant is related only for posting/transfer of officials from BPS-1 to 16 and not for recruitment (**Annexure-IX**).
- (K) Pertain to record. The appellant except that he has not applied for the post of Data Entry Operator (DEO) and wrongly appointed as DEO. The appellant was unlawfully appointed against the post of DEO which comes within the purview of Public Service Commission the appellant has also not been recommended by competent forum for appointment as Junior Clerk, one wrong cannot be justified for another wrong.
- (L) Incorrect. As per Para above. However the termination Order of the appellant is consistent with the Judgment of Supreme Court of Pakistan dated 17.3.2014 in constitution petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari versus EOBI.
- (M) The respondents seek leave of this Honourable Tribunal to raise additional grounds and proof at the time of arguments.

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



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



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

BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No

329/2016

Mr. Farman Ali S/O Juma Gul
Ex-Data Entry Operator PHE SE Circle, Swat

..... (Appellant)

Versus

- 1 Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. Chief Engineer (South) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. Superintending Engineer PHE Circle Swat.Respondent

AFFIDAVIT

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


DEPONENT

(23)

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

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

OFFER OF APPOINTMENT

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

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

TERMS & CONDITIONS

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

(Contd; on page-2)

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

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

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

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

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

(ENGR:GHULAM MUJTABA)
CHIEF ENGINEER (S)

Copy forwarded to the:-

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

CHIEF ENGINEER (S)



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

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

To

The Chief Engineer (South),
PHE Khyber Pakhtunkhwa Peshawar

Subject:

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

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

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


SECTION OFFICER (ESTT)

ENDST: NO & DATE AS ABOVE:

Copy is forwarded for information to the:-

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

COPIES Deptt: (South)
No. 2317
29/8/14
COPIES
COPIES (3)
HQ.

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


SECTION OFFICER (ESTT)



Dated: 20/8/14

To

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

Subject:

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

Dear Sir,

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

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

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

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

Upto date zonal state will be as under:-

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

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

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

Yours faithfully,

(GHULAM DASTAGIR AHMAD)
 DIRECTOR RECRUITMENT

Where these
 are posted?

INK.

~~Discusses~~
 P. Discuss.

~~Discusses~~ 22/09

DS (Ahmad) 25/8

urgent up
 but up

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ATTESTED
EXAMINER
Peshawar
20 FEB 2014

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IN THE PESHAWAR HIGH COURT, PESHAWAR

81

1

Amroze

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EXAMINER
Peshawar High Court
FEB 2014
ESTD

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

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

Respondent/
Muhammad Nisar Khan

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

Date of hearing: 2.10.2013.

JUDGMENT

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

JUDICIAL DEPARTMENT
IN THE PESHAWAR HIGH COURT, PESHAWAR

JUDGMENT SHEET



EX-107
2014
Court

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

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

RECEIVED

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

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

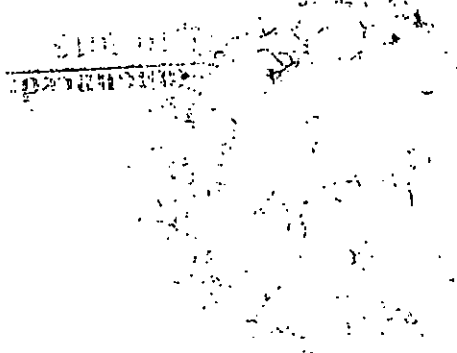
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... of recommendees of Public Service Commission. ...
 question would be for one year and on adhoc basis or till the
 mentioned that the term of appointment against the post in
 for appointment against the said posts, however, it was
 wherein applications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

learned AAG for respondents and gone through the record
 We have heard learned counsel for petitioners and

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

78-02-11
OFFICE 2014
The Court
Karnataka
High Court
Mysore
CERTIFIED TO BE TRUE COPY



Ms. Nisha Hussain
Ms. Nisha Hussain
Ms. Nisha Hussain

substantive as to the merits of the petition, hence this petition being without any legal merit a case for interference in the constitutional jurisdiction considered opinion that the petitioners have failed to make. Keeping in view the above discussion, we are of the arrival of candidates from Public Service Commission. respondents/department have also been terminated after the those employees, who were returned by the a copy of the letter dated 17.2.2013 showing that of no help to them. Moreover, the learned AAG produced which is not the case in hand, therefore, the plea taken is 11th December, 2008 or till the commencement of the Act. of those adhoc employees, who were holding the posts on Act No XVI of 2009 and can be pressed into service in case 6. The petitioners are taking the shelter behind Sub-Engineers as a stop-gap arrangement. 28.2.2012, the petitioners were re-appointed as process; they were appointed on 2nd January, 2010. On participated in the test/interview. However, after due whichever is earlier. The petitioners amongst others also

56

ANNEXURE - 17

(24)

Ph: 9082235
Fax: 9220406

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

Islamabad, dated 16/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

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

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

Dear Sir,

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

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

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

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

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

Encl: Order

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR



26

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

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

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

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

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

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

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

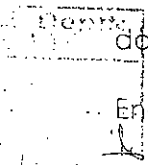
For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

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

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



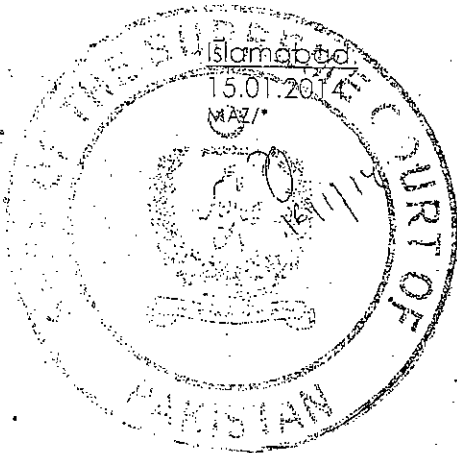
ATTESTED

[Handwritten Signature]
Superintendent
Supreme Court of Pakistan
Islamabad

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

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

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



Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal
 Date of Presentation: 15-1-14
 No. of Words: 600
 No. of Folios: 6
 Requisition Fee Rs: 51.00
 Copy Fee in: 3.72
 Court Fee stamps: 8.22
 Date of Completion of Copy: 18-1-14
 Date of delivery of Copy: 18-1-14
 Compared by: [Signature]
 Received by: Zaheer Jamali

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

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

Subject:

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

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

Dear Sir,

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

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

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

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

Contd: P/2

Kaami/***

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152


60

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

dt. 16.01.2014

Yours faithfully,

✓ to
Referring earlier
letter


(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de.



(23)

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

No. 03 G-4-A/Hc/PHE

Dated Peshawar, the 17 /02/2014

To

The Registrar,
Supreme Court of Pakistan,
Islamabad

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

Mushtaq Ahmed & another in C.P. 2026/2013

Muhammad Nasir Ali & Others in C.P. 2029/2013

Versus

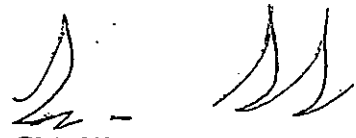
Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others

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

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

DA/As above

ok


Chief Engineer (South)

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

A. 24-Nos SUB ENGINEERS

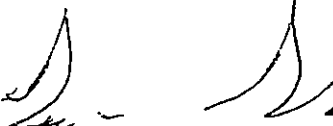
- | | |
|-------------------------------|---------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad Khan | Sub Engineer, |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub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

B. 6-Nos STENO TYPIST/STENOGRAPHERS

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

C 2-Nos DATA ENTRY OPERATOR

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


Chief Engineer (South)

Chief Minister NWFP
 Secretary to

S.No.	Name of Applicant	Name of Post
1	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu, Sub Engineer	-do-
2	Mr. Muhammad Sajjad S/O Banat Khan District D.I.Khan	-do-
3	Mr. S.M. Ihsan Shah S/O S.M. Hassan Shah District D.I.Khan	-do-
4	Mr. S.M. Ali Sajjad S/O S. Abid Hussain Shah District D.I.Khan	-do-
5	Mr. Abdul Samad S/O Abdul Mueed District Malakand	-do-
6	Mr. Shaukat Ali S/O Ghulam Qadir District Karak	-do-
7	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8	Mr. Ihsan Ehsan S/O Shah Nawaz District D.I.Khan	-do-
9	Mr. Hussain Zaman S/O Syed Zaman District Malakand	-do-
10	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan	-do-
11	Mr. S. Ashtaq Ahmad S/O S. Jamil ud Din District Malakand	-do-
12	Mr. Murtaz Ali S/O Abdul Haq District Malakand	-do-
13	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat	-do-
14	Mr. Samiullah S/O Khuda Baksh District D.I.Khan	-do-
15	Mr. Abdul Shahid Sadiqi S/O Abdul Azim District Dir Upper	-do-
16	Mr. Asfaq Ahmad S/O Muhammad Shulab District Malakand	-do-
17	Mr. Kashif Raza S/O S. Abid Hussain District D.I.KLhan	-do-
18	Mr. Waqas Ali S/O Farzad Ali District Nowshera	-do-
19	Mr. Muslim Shah S/O Mehmood Shah District Mardan	-do-
20	Mr. Ishaq Ahmad S/O Tehmeed Ullah District Charsadda	-do-
21	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan	-do-
22	Mr. S. Hassan Ali S/O S. Ajmal Shah District Charsadda	-do-
23	Mr. Mohsin Ali S/O Muhammad Pervaz District D.I.Khan	-do-
24	Mr. Muqtada S/O Afsar Ali District Peshawar	-do-
25	Mr. Itikhar S/O Chainar Gul District Mardan	-do-
26	Mr. Noor Muhammad / O Jamroz Khan District Peshawar	-do-
27	Mr. Aziz Ullah S/O Abid Ullah District Bannu	-do-
28	Mr. Farhan Ullah S/O Aziz Ullah District Bannu	-do-
29	Mr. Murtaz S/O Afsar Ali District Peshawar	-do-

separately.

It has come in to the notice of Honourable Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenotypists & DEO are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE, on more than one occasions, it was told that the posts of BPS-10 and above are to be filled through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments. In view of above, the Honourable Chief Minister NWFP, has been pleased to direct to consider the application of the following persons for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite code formalities if any will be accorded by the competent authority at due course of time

APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOYPIST & DEO

24

Amex-16

56

ANNEXURE - 11/11

Annexure 11
(11)

Ph: 9082235
Fax: 9220406

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

Islamabad, dated 16/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

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

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

Dear Sir,

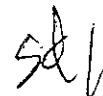
I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions with **directions** for information and further necessary action.

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

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

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

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

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

26

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

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

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

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)

(in CP. 2029/13)

...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)

...Respondents

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

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

Date of hearing: 15.01.2014.

ORDER

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

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

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

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

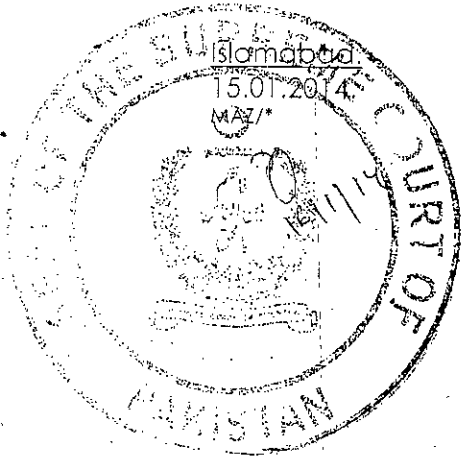
3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate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

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

Certified to be True Copy

[Handwritten Signature]
17/1/14

Superintendent
Supreme Court of Pakistan
Islamabad



GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Wards: 600

No. of Follies: 6

Requisition Fee Rs: 5.00

Copy Fee in: 3.72

Court Fee stamps: 8.28

Date of Completion of Copy: 18-1-14

Date of delivery of Copy: 18-1-14

Compared by: [Signature]

Received by: Zahid Jam

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

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

Subject:

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

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

Dear Sir,

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

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

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

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

Contd: P/2

Kaami/***

149

152

60

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

dt. 16.01.2014

Yours faithfully,

Referring *to* *earlier*
letter

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de.



(23)

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

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

Dated Peshawar, the 17 /02/2014

To

The Registrar,
Supreme Court of Pakistan,
Islamabad

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

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

Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others

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

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

DA/As above

ou
Chief Engineer (South)

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

A. 24-Nos SUB ENGINEERS


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

B. 6-Nos STENO TYPIST/STENOGRAPHERS

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

C. 2-Nos DATA ENTRY OPERATOR

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


Chief Engineer (South)

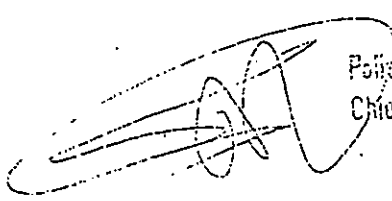
Subject:- APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOYPIST & DEO.

26

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

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

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

 Political Secretary to Chief Minister NWFP

On reading of the Ordinance, the Commission may be referred to as the North-West Frontier Province Public Service Commission in section 3.

Section 3 of the Ordinance, 1973, shall be amended to read as follows:—

3. In section 3 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

4. In section 4 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

5. In section 5 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

6. In section 6 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

7. In section 7 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

8. In section 8 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

9. In section 9 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

10. In section 10 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

11. In section 11 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

12. In section 12 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

13. In section 13 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

14. In section 14 of the Ordinance, 1973, the words 'North-West Frontier Province' shall be substituted by 'North-West Frontier Province Public Service Commission'.

11
2

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

5. Ordinance, for section 5 omitted by N.W.F.P. Ord. XI of 1978. In the said Ordinance, namely:

1A. Date of office. Before entering upon office, the Chairman and a member shall take oath in the form set out in the Schedule to this Ordinance, before the Government in the case of Chairman, and before the Chairman in case of a member.

4. Ordinance, after section 4, as so amended, the following new section 4A shall be inserted, namely:

4A. Insertion of new section 4A to N.W.F.P. Ord. XI of 1978. In the said Ordinance, after section 4, as so amended, the following new section 4A shall be inserted, namely:

Provided that a person holding office as Chairman or a member immediately before the commencement of the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002 shall cease to hold office on such date as the Government may direct.

(1) A member of the Commission shall hold office for a term of five years from the date on which he enters upon office and shall not be eligible for re-appointment.

3. Amendment of section 4 of N.W.F.P. Ord. XI of 1978. In the said Ordinance, in section 4, for sub-section (1), the following shall be substituted:

(a) in sub-section (1), the words "and has been retired in accordance with section 20 or above" shall be added after the word "years" appearing at the end of the said sub-section (1);

(b) in sub-section (4), the words "and there" shall be added after the word "years" appearing at the end of the said sub-section (4);

2. Amendment of section 1 of N.W.F.P. Ord. XI of 1978. In the North-West Frontier Province Public Service Commission Ordinance, 1978, hereinafter referred to as the said Ordinance, in section 1, the following shall be inserted:

(a) in sub-section (3), the full stop appearing at the end shall be replaced by a colon and thereafter, the following proviso shall be inserted:

(2) It shall come into force at once.

1. Short title and commencement. (3) This Ordinance may be called the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002.

35 N.W.F.P. GOVERNMENT GAZETTE, EXTRAORDINARY
9th AUGUST, 2002

2

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

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

(a) to conduct tests and examinations for recruitment of persons to—

(i) the civil services of the Province and civil posts in connection with the affairs of the Province in basic pay scales 16 and above or equivalent and

(ii) posts in basic pay scales 11 to 15 or equivalent specified in following Departments (except the District cadre posts):

- 1 Civil Secretariat (through Establishment Department)
- 2 Board of Revenue
- 3 Police Department
- 4 Prison Department
- 5 Services and Works Department
- 6 Irrigation Department
- 7 Industries, Labour and Manpower Department
- 8 Health Department
- 9 Education Department
- 10 Local Government and Rural Development Department
- 11 Excise and Taxation Department
- 12 Food Department
- 13 Physical Planning and Environment Department including Urban Development Board; and
- 14 Organizations, except autonomous bodies, under the Health and Education Departments.

(b) to advise the Government—

(i) on matters relating to qualifications for, and method of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making

(1) initial appointments to the services and posts referred to in clause (a);

(2) appointments by promotion to posts in BPS-17 and above; and

(3) transfer from one service to another; and

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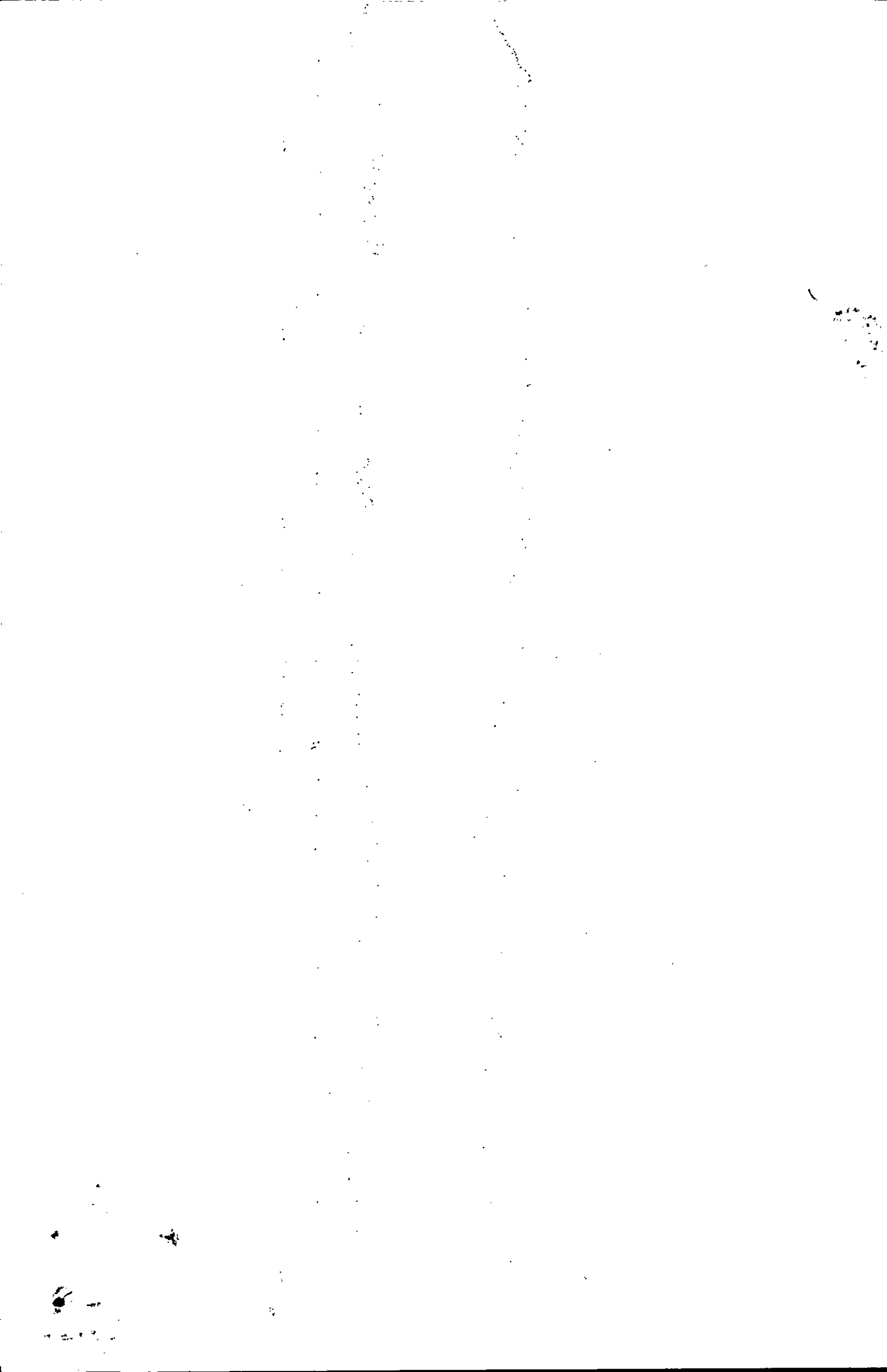
That I will not allow any personal interest to influence my official conduct or my official decisions and that in the performance of my functions, whether in the selection of persons for recruitment of appointment or in any other way, I will act without fear or favour, affection or ill-will."

Peshawar,
Dated the 6th August, 2002.

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

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

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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 329/2016

Farman Ali

VS

PHE Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-9) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1-2) Incorrect. The appellant was appointed as Data Entry Operator on the recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 15.1.2010 and proper service book of the appellant was also maintained by the respondents, however the Chief Engineer Mr. Sikandar Khan gave statement in the Supreme Court in other cases of a different nature that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one month against the illegal pending cases against the illegal appointees and on the basis of which in order to save his skin the Chief Engineer issued show-cause notice and adopted a slipshod manner for removing the appellant from service which was duly replied by the appellant in which explained the details and rebutted the objections/allegations leveled against him with full reasons and justification which were not taken in consideration at all.
- 3). Incorrect. While para 3 of the appeal is correct.
- 4). Incorrect. The appellant applied for the post of Junior Clerk, but he was appointed against the post of Data Entry Operator instead of Junior Clerk.

- 5). Incorrect. While para 5 of the appeal is correct.
- 6). Not replied according to para 6 of the appeal. Moreover para 6 of the appeal is correct.
- 7). The appellant was appointed as Data Entry Operator on the recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 15.1.2010 and as per notification 30.4.2008 herein the Chief Engineer were authorized for making appointment from BPS-1 to BPS-15 through DPC and as the appellant possess the prescribed qualification therefore he got appointment as per law and rules.
- 8). Incorrect. The Chief Engineer Mr. Sikandar Khan gave statement in the Supreme Court in other cases of a different nature that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one month against the illegal pending cases against the illegal appointees and on the basis of which in order to save his skin the Chief Engineer issued show-cause notice and adopted a slipshod manner for removing the appellant from service.
- 9). No comments.
- 10). Admitted correct by the respondents hence no comments.
- 11). Incorrect. While para 11 of the appeal is correct.

GROUNDS:

- A. Incorrect. The appellant was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 15.1.2010, as the appellant has good cause of action therefore he filed departmental appeal against order dated 15.1.2010 which was also rejected on 3.3.2016 for no good ground. Therefore the order dated 3.3.2016 is not according to the law, rules, facts, norms of justice and material on record therefore liable to be set aside.

- B. Incorrect. While para B of the appeal is correct.
- C. Incorrect. The appellant was not given opportunity of defence according the judgment of august Service Tribunal dated 30.12.2015 as the appointment of the appellant was legal as he was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 15.1.2010.
- D. Incorrect. While para D of the appeal is correct.
- E. Incorrect. The appellant was not dealt with in accordance with law.
- F. Incorrect. All codal formalities were not fulfilled no chance of personal hearing was provided to the appellant which is the violation of law and principle of AUDI ALTERAM PARTREM as reported in the case of Aneesa Rehman.
- G. Incorrect. Not replied according to para G of the appeal. Moreover para F of the appeal is correct.
- H. Incorrect. While para H of the appeal is correct.
- I. Incorrect. As per notification 30.4.2008 wherein the Chief Engineer were authorized for making appointment from BPS-1 to BPS-15 through DPC and as the appellant possess the prescribed qualification therefore he got appointment as per law and rules.
- J. Incorrect. While para I of the appeal is correct.
- K. Incorrect. While para K of the appeal is correct.
- L. Incorrect. The termination order is not consistent with the judgment of Supreme Court of Pakistan dated 17.3.2014 in Constitution Petition No.6 of 2011CMA 5216 of 2012 as the Chief Engineer Mr. Sikandar Khan gave statement in the Supreme Court in other cases of a different nature that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one

month against the illegal pending cases against the illegal appointees and on the basis of which in order to save his skin the Chief Engineer issued show-cause notice and adopted a slipshod manner for removing the appellant from service.

M. Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
&

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder & *appeal* are true and correct to the best of my knowledge and belief.

Rai
DEPONENT

ATTESTED
Oath Commissioner
Zahoor Khan Advocate
Distt: Court Peshawar

14/11/2016