

Appeal No. 353/2016
Irshad Ilahi vs Govt

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

24.05.2017


Clerk of the counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG AG for respondent present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.

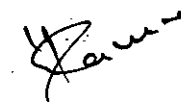

(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

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

11.04.2017

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




(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

8.05.2017

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



Member



Chairman

27.09.2016

Counsel for the appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Learned counsel for the appellant stated that he does not want to file rejoinder and requested that the appeal may be fixed for arguments. To come up for arguments on 26.12.2016 before D.B at Camp Court D.I.Khan

Member
Camp Court D.I.Khan

26.12.2016

Mr. Tehsin Alamdar, Advocate for appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.03.2017 before D.B at Camp Court D.I.Khan.

ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

31.03.2017

Counsel for the appellant submitted application for hearing of the appeal alongwith connected appeals on 11.4.2017 at Principal Seat at Peshawar instead of 24.07.2017 at camp court D.I.Khan. Application accepted. To come up for final hearing before the D.B alongwith connected appeals on 11.4.2017 at Peshawar instead of 24.07.2017 at camp court, D.I.Khan. Notices be issued to the respondents.


Chairman

26.04.2016

Mr. Rustam Khan Kundi, Advocate, for the appellant present and submitted that without giving any opportunity of defense and personal hearing to the appellant, he has been sacked. He further submitted that this service appeal is maintainable for the reason that departmental appeal of the appellant has been decided against him. He also asserted that the respondent-department fulfilled codal formalities and thus the impugned order is not lawful and in violation of law of natural justice. He also argued that the appeal is within time.

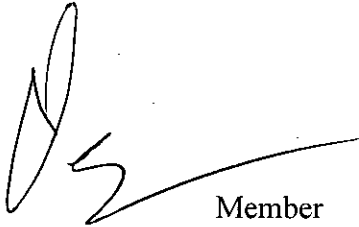
Appellant Deposited
Security & Process Fee

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 30.08.2016 before S.B. *at camp court D.I Khan*


Member
Camp court D.I Khan

30.08.2016



Appellant in person and Mr. Muhammad Yaseen, Supdt alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply/comments submitted, copy of which is placed on file. To come up for rejoinder on 27.09.2016 before S.B at camp court D.I Khan.


Member
Camp court D.I Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 353/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.04.2016	<p style="text-align: center;">The appeal of Mr. Irshad Ilahi presented today by Mr. Rustam Khan Kundi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-04-2016	<p style="text-align: center;">This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up thereon <u>26.4.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL K.P.K
PESHAWAR

S.T.A No. 353 2016.

Irshad Elahi.....Appellant

VERSUS

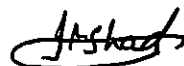
Government of KPK etc.....Respondents

INDEX

S.No	Description	Annexure	Page No.
1	Memorandum of Appeal		1-3
2	Copy of Appointment Order Dated 02.03.2009	I	4
3	Copy of Show Cause Notice Dated 21.01.2014	II	5-6
4	Copy of termination order No.43/E-4/PHE Dated 14.02.2014	III	7
5	Copy of Reply Dated 18.02.2014	IV	8-9
6	Copy of Departmental Appeal Dated 25.02.2014	V	10-15
7	Copy of Decision/order Dated 30.12.2015	VI	16-23
8	Copy of Impugned Order No. SO(Estt)/PHED/1-90/2013-14.VOI-II Dated Peshawar the, 03.03.2016	VII	24
9	Vakalat Nama		25

Dated 01.04.2016

Yours Humble Appellant



Irshad Elahi
Through Counsel


Rustam Khan Kundi
Advocate High Court

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBR PAKHTUNKHWA PROVINCE
PESHAWAR.

S.T.A No. 353 2016

Irshad Elahi,

S/o Shahnawaz,

R/O, Village Hisam Tehsil & District,

D.I.Khan.....**APPELLANT.**

G.W.F. Province
Service Tribunal
Diary No 334
Dated 04-4-2016

VERSUS

1. The Govt of Khyber Pakhtunkhwar through:-
The Secretary, Public Health Engineering Deptt:
Peshawar.

2. The Chief Engineer (South) Khyber Pakhtunkhwa
Public Health Engineering Deptt:
Peshawar.....**RESPONDENTS.**

Further Representation (Appeal) under S-4 of Khyber Pakhtunkhwa Service Tribunal (Act-I) 1974 against order dated 03.03.2016 (Passed at Peshawar in the Absence of Appellant at Peshawar on 03.03.2016) whereby Appeal No. 729/2014 dated 25.02.2014 (remitted by the Honorable Tribunal on 30.12.2015) against the impugned order No. 43/E-4/ PHE dated 14.02.2014 by the respondent No.2 has been dismissed, concurring on variant or dissimilar grounds (vide para 5 of the impugned order dated 03.03.2016) with the original, Impugned order dated 14..02.2014 of the Respondent No.2.

PRAAYER.

On acceptance of the instant Appeal, to set aside the two impugned orders dated. 03.03.2016 and 14.02.2014 passed by the respondent No.1 & 2 respectively and to re-instate the Appellant in his incumbency of BPS-11 (Sub Engineer) with all Back benefits since 14.02.2014.

Date of communication impugned order dated 01.03.2016 at Dera Ismail Khan

12.03.2016.

The Appellant, amongst other grounds, respectfully submits as follows.

1. The Appellant was appointed on the recommendation of the Departmental Selection Committee (Constituted by the Respondent No.2 without any objection or exception from the respondent No.1)
2. The Appellant was allowed all fringe benefits and perks of a regular employee since 02.03.2009 and the appointing authority (now substituted by C.E (S) PHED) did not indicate any cause of complaint before the issuance of Show Cause notice (Copy enclosed as Annexure-II) dated 21.01.2014.
3. The Appellant submitted reply on 18.02.2014, but before 18.02.2014, the services of the Appellant were terminated vide order No. 43-E/4/PHE dated 14.02.2014 (Copy enclosed as Annexure -III) and copy of reply dated 18.02.2014 is enclosed as Annexure -IV.
4. The Appellant was relieved off on 14.02.2014 (Copy is enclosed as Annexure-V)
5. The Respondent No.1, declined to pass order within the prescribed bout of period of limitation.
6. The Appellant was obliged to prefer S.T.A No.729 on 22.05.2014 copy is enclosed as Annexure-VI.
7. The Honourable Tribunal on 30.12.2015 passed its appellate order and remitted the S.T.A No.729 of 2014 and the Departmental appeal dated 25.02.2014 to the Respondent No.1
8. The Respondent No.1 afforded opportunity of personal hearing on 08.02.2016 in the absence of prosecution agent (thence after Defence agent before him) and did not give opportunity of oral cross-examination of the agent of the Respondent No.2 and did not hear the parties under article 161 of the Q.S.O 1984 and passed the impugned order on 03.03.2016. Copy enclosed as Annexure-VII.
9. There is no other adequate remedy under Civil Servant Act (XVIII) 1973. Hence the instant Appeal which is well within time under S-22 of the Act Ibid r/w Appeal Rules, 1986.

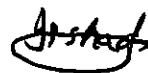
Handwritten signature
11/4/16

GROUND OF THE APPEAL.

- i). The grounds narrated in S.T.A No.729 of 2014 vide its Para No.i to iv , vii are reiterated and further grounds are urged as under:-
- ii). The devolution of power to the Distt: Co-Ordination officer of the Distt: Govt and the exclusion of incumbencies of BPS 11 to 15 from the jurisdiction of the Public Services Commission had caused confounded situation and due to such imbroglio, the selection through Public Service Commission could not be made and there was thus no reference to P.S.C by 31.12.2009.
- iii). In case of some anomaly or irregularity in the appointments, that is curable under the rule of locus paeonitentiae & the remedial provisions of S-21 of the Contract act (IX) 1872 when employment of a qualified candidate is not unlawful fiat. (Reference is made to PLJ-2012-P/64-NLR2005CC-P31-NLR 2005 CC SC-44)
- iv). There is no adverse consequences of a selection for initial recruitment without advertisement and there are incumbencies of BPS 20 and above under Govt which are filled up without press advertisement and the sacked employees under the promulgations of Re-instatement of Sacked Employees Act 2010 and 2012 were re-instated which provide sufficient anchor for sustention of appointment order dated 02.03.2009. ;moreso; when Termination simpliciter after expiry of probation period is not valid fiat.
- v). The Appellant's Counsel may be permitted to urge further grounds in the contexts of various Acts of Regularization of Contract and Adhoc employees.

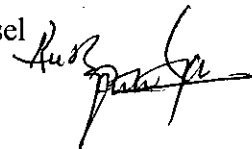
It is therefore PRAYED that the instant Appeal may graciously be Accepted.

Yours Humble Applicant,



Irshad Elahi

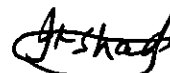
Through Counsel



Dated 01.04.2016.

VERIFICATION.

It is solemnly affirmed that the contents of the Appeal are true and correct to the best of my knowledge and belief.



APPELLANT.

Annex I

OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG: DEPARTMENT

No. 06 / E-4/PH/II

Dated Pesh: the 2 / 03 / 2009.

OFFICE ORDER.

On the recommendation of the Department Selection Committee as per its meeting held on 13/08/2008, the competent authority is pleased to offer a post of Sub Engineer (BPS-11) to Mr. Irshad Elahi S/O Shah Nawaz R/O Village Hissam Tehsil & District D.I.Khan 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, District HQ Hospital Chitral before reporting himself for duty to the Deputy District Officer WS&S Chitral, as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Deputy District Officer WS&S Chitral 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) Deputy District Officer WS&S Chitral.
- 2) District Accounts Officer Chitral.
- 3) Mr. Irshad Elahi S/O Shah Nawaz R/O Village Hissam Tehsil & District D.I.Khan

Irshad

CHIEF ENGINEER

1
w

●
—

←

2



5

Annex II

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 Shah | 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. Istikhar | 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 appointee's are being taken immediately. As such you are hereby served with this show cause notice regarding your appointment as under:

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

Irshad



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-parte action will be taken against you under the E&D rules which will entail your termination from service.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. The Chief Engineer (North) Public Health Engg: Department Peshawar.
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)

Arshad



7

Annexure III

7

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

No. 43 / E-4 / PHE,
Dated Peshawar, the 14 /02/2014

To

Mr. Irshad Elahi s/o Shah Nawaz
Sub Engineer P.H.Engg Division
Tank

Subject: TERMINATION FROM SERVICE

Your recruitment in PHED made vide this office letter No.06/E-4 /PHE dated 02.03.2009 was illegal and unlawful due to non-fulfillment of codal formalities.

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

1. Vacancies/posts of Sub Engineers were not advertized through news paper.
2. Initial recruitment of Sub Engineers will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-I (S&GAD)I-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 with in stipulated period.
6. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Sub Engineer with immediate effect.

Irshad

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.

Chief Engineer (South)

8

Annexure IV

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

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PHE dated 21-01-2014 received by me on 6/02/2014 which shows that the same has un-lawfully and mala-fidely been issued by you in the back date.

Para wise explanation is submitted as under:-

1. In this connection your attention is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-I to B-15 in W&S Department (i.e. C&W and PHE) 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 withdrawn (Annexure-II). In the circumstances, the recommendation of P.S.C. for appointment against such posts, were uncalled for.
2. My appointment against 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 PHE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover, my appointment 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 Year 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,

Irohad Ehaqi

PHE Department Tank.

Dated 18/02/2014.

Arshad

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 & apportunity of hearing etc; as required under the law/ natural justice.

3. PS to Secretary PHE Department Peshawar.

Dated: 18 /02/2014

Irshad elahi

Tank.
PHE Department Peshawar.

Irshad

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 Sub Engineer so he applied for the existed vacancies of Sub Engineers 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 Sub Engineer (BPS-11) 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 employce 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 regularisation under the Khyber

Arshad

Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition NOs.271-P/2013 and 663-P/2013 which were dismissed by common judgment passed on 02.10.2013.

5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also dismissed on 15.01.2014. However during the proceedings, Mr. Sikandar Khan Chief Engineer, Public Health Engineering Department, Khyber 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.

Arshad

- B. That it is pertinent to mention that by notification vide No.SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt:)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.
- C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of Sub Engineers (B-11) 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, mala fide 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

Arshad

than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without lawful authority.

- E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.
- F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.
- G. That Chief Engineer has mala fide 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.

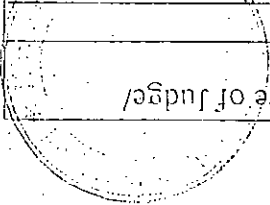
G. Shad

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

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned order dated 14.02.2014 thereby the services of appellant

Arshad

VI



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

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

1. 665/2014, Farhanullah (Khalid Rahman, Adv)

2. 723/2014, S. M. Ahsan Shah (Rustam Khan Kund)

3. 724/2014, Saleem Nawaz

4. 725/2014, Mohsin Ali

5. 726/2014, Kashif Raza

6. 727/2014, Syed Muhammad Ali Sajjad

7. 728/2014, Muhammad Ali Noor

8. 729/2014, Irshad Elahi

9. 750/2014, Muraza Qureshi, (Isaac Ali Qazi, Adv)

10. 783/2014, Syed Ishaq Ahmad, (M. Asif Yousofzai)

11. 784/2014, Ishaq Ahmad

12. 785/2014, Muraza Ali

13. 786/2014, Amir Muqatada Qureshi

14. 787/2014, Abdus Samad

15. 788/2014, Hussain Zaman

16. 789/2014, Abdul Shahid

17. 790/2014, Waqas Ali

18. 791/2014, Muhammad Ihtikar, (Isaac Ali Qazi, Adv)

19. 792/2014, Ishaq Ahmad

20. 793/2014, Shaukat Ali

21. 794/2014, Muhammad Sajjad

22. 795/2014, Tariq Nawaz

23. 796/2014, Ishaq Ahmad

24. 797/2014, Noman Ullah

25. 803/2014, Aziz Ullah

26. 810/2014, Mushim Shah

27. 811/2014, Syed Hassan Ali

28. 812/2014, Zohab Khan

29. 829/2014, Qaiser Khan

30. 867/2014, Farman Ali

31. 868/2014, Shah Khalid

Versus

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

JUDGMENT

PIR BAKHSH SHAH, MEMBER:- Counsels for

the appellants and Sr. Government Pleader (Mr. Usman

Ghani) with Muhammad Siddique Admn. Officer for the

respondents present

30.12.2015

ATTACHED

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 follows:-

2. So far as some other illegals 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

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)1-117/91C 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

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


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

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

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

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

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

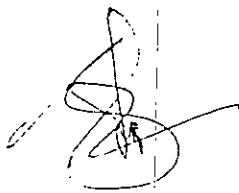
ATTORNEY


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

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




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

Sett- P/s Baskhsh Shah,
Members-

Sett- Abdul Latif,
Members-

Corpus

 Secretary, Tribunal,
 Reshwar

01-01-2016

Date of 30.12.15

18

18
 06-01-2016
 06-01-2016

Date



Amended VII 24

**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. Irshad Ilahi
S/o Shah Nawaz
R/o Hissam Tehsil and
District Dera Ismail Khan

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No.43/E-4/PHE DATED 14-02-2014.**

WHEREAS, you managed to get yourself appointed as Sub Engineer (BPS-11) in PHED vide Chief Engineer PHE Office Order No.06/E-4/PHE dated 02-03-2009.

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.

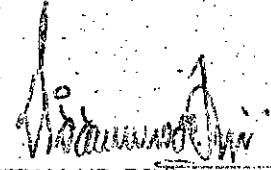
4. AND WHEREAS, you also filed Service Appeal No.729/2014 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was also disposed off vide its judgment dated 30-12-2015, with the direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each 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 Sub Engineer was effected as a consequence of production of a politically motivated list by the then Political Secretary to Chief Minister and that too, in sheer violation of the provisions contained in the K.P Civil Servants Act, 1973 and the rules made there-under.

[Handwritten signature]

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 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 Sub Engineer 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.

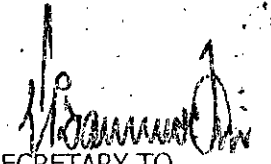
6. NOW WHEREFORE, after having considered the material on record & your explanation during personal hearing held on 08-02-2016, your facts appealed against the C.E (South) PHE Office Order dated 14-02-2014 have not been established and in exercise of the powers as Appellate Authority, conferred under 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) 03/05
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 Fleader, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.(SR.GP)E&AD/1-5/Lit/Appeal/2013/492-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.


SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)