


Misc Application No. 50/2016
Javed Khan

11.04.2016

Petitioner with counsel present. Learned counsel for the petitioner argued that one Azizullah Road Coolli finally disputed his appointment as Road Coolli before this Tribunal and that due to intervention of this Tribunal he was appointed as Naib Qasid by re-designating his position and in his place petitioner Javed Khan has been redesignating and adjusted as Road Coolli. That the petitioner was afforded no opportunity of hearing and the order dated 01.09.2015 as well as 22.09.2015 are the result of fraud and mis-representation and as such is liable to be set aside.

Arguments heard and record perused.

Final order of this Tribunal dated 01.09.2015 would suggest that the appellant has withdrawn his appeal from this Tribunal on the strength of an office order No. 546/5-E dated 20.5.2015 on the basis whereof post of appellant was redesignated and appellant adjusted as Naib Qasid and as such it can be safely inferred that the said office order is neither the outcome of the final order of this Tribunal nor passed by this Tribunal. Additionally the petitioner has preferred the instant application under Section 12(2) CPC instead of filing a departmental appeal/representation and thereafter preferring service appeal before this Tribunal in the prescribed manners. Since the matter pertains to terms and conditions of service of the petitioner and the petitioner is in a position to agitate his grievances in the manners prescribed by law, as such the instant application under Section 12(2) CPC is not found maintainable. The same is therefore dismissed in limine. The petitioner may seek redressal of his grievances in the prescribed manners, if so advised. File be consigned to the record room.




Chairman
11.04.16

ANNOUNCED
11.4.2016

FORM OF ORDER SHEET

Court of _____

Application No. 50/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29/03/2016	<p>The application submitted by Mr. Javed Khan through Mr. Rehman Ullah Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	30-3-16	<p>This application be put up before S. Bench on <u>11-4-16</u></p> <p style="text-align: right;"> CHAIRMAN</p>

11.04.2016

Petitioner with counsel present. Learned counsel for the petitioner argued that one Azizullah Road Cooli finally disputed his appointment as Road Cooli before this Tribunal and that due to intervention of this Tribunal he was appointed as Naib Qasid by re-designated his position and in his place petitioner Javed Khan has been redesignating and adjusted as Road Cooli. That the petitioner was afforded no opportunity of hearing and the order dated 01.09.2015 as well as 22.09.2015 are the result of fraud and mis-representation and as such is liable to be set aside.

Arguments heard and record perused.

Final order of this Tribunal dated 01.09.2015 would suggest that the appellant has withdrawn his appeal from this Tribunal on the strength of an office order No. 546/5-E dated _____ outcome of the final order of this Tribunal nor passed by this Tribunal. Additionally the petitioner has preferred the instant application under Section 12(2) CPC instead of filing a departmental appeal/representation and thereafter preferring service appeal before this Tribunal in the prescribed manners.

-1-

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Application No 50 /2016

In

Appeal no 1053/2013

**A.W.P. Province
Service Tribunal
Diary No. 239
Dated 29-3-2016**

Javeed khan S/o Sher Afzal R/o Nawab panda, maneeri P/o Sawabi District
Sawabi.....**Applicant**

-Vs-

1. The government of KPK through Secretary (C&W) Department KPK Peshawar
2. The Chief Engineer (C&W) Department, KPK Peshawar
3. The superintending Engineer (C&W) Circle Mardan
4. The Executing Engineer Buildings Division Sawabi
5. Mr.Uzairullah, Road Cooli (BPS-1) Executive Engineer Building Division Sawabi.....**Respondents**

APPLCIATION U/S 12(2) CPC AGAINST THE ORDER DATED 01-09-2015 PASSED BY THE HON,BLE TRIBUNAL WHEREBY THE HON,BLE TRIBUNAL ADJUSTED THE RESPONDENT NO 5 AS NAIB QASID (BPS-4) FROM ROAD COOLI (BPS-1) IN THE PLACE OF APPLICANT.

Prayer:

By acceptance of this Application the Hon,ble tribunal may graciously set-aside order dated 01-09-2015 and arrayed appellant in the main appeal No.1053/2013 as Respondent and then the Hon,ble Tribunal may decide the appeal according to law on the subject.

Respectfully Sheweth:

1. That appeal No. 1053/2013 was filed by Respondent No.5 against the official respondents before this Hon,ble Tribunal which was disposed of/withdrawn .(copy of appeal attached as annexure A).

- 2
2. That the order dated 01-09-2015 was obtained on the plea of Fraud and misrepresentation and concealed the material fact by Respondent No.5 at the time of passing the impugned order by this Hon,ble Tribunal which come under the definition of 12(2) CPC. (copy of order attached as annexure B).
 3. That the applicant applied for employment exchange Mardan vide registration number dated 11/12/2015 occupation code number 9-99-90, on the basis of said registration the appellant was appointed as Naib Qasid by Sub-Engineer, through selection committee meeting held on 8-1-2011.
 4. That the applicant after selection submitted arrival report and took charge of his duty as naib Qasid.
 5. That in the meanwhile one Uzair Ullah filed in appeal before the KPK Service Tribunal Peshawar regarding adjustment against the post of Naib Qasid and obtains the impugned order from the honourable service tribunal on the basis of fraud and misrepresentation.
 6. That due to order sheet no. dated 01-09-2015 the said uzair Ullah adjusted to the post of Naib Qasid and the applicant cadre was changed to the post of Road Cooly. Which was/is illegal, unlawful and no opportunity was given.
 7. That the applicant knows about the change of his cadre and nothing has been given to the applicant in black & white.
 8. That the applicant aggrieved from the said order filed this application under 12(2) CPC on the following grounds inter-alia.

GROUND:

- A. That the applicant was performed his duty to the best of his abilities and there is no complaint against him.
- B. That the applicant has not been treated in accordance with law.
- C. That the impugned order is illegal, lawful and against natural justice.
- D. That there is a maxim Audi alteram partem (No one should be condemned unheard).
- E. That no opportunity has been provided has been provided in the said appeal.
- F. That the appellant is badly affected from the impugned order dated 01-09-2015.
- G. That the Respondents not properly assisted the Hon,ble Tribunal at the time of passing the impugned order/judgment.

It is therefore humbly prayed that on acceptance of this Application the Hon,ble tribunal may set-aside order dated 01-09-2015 and arrayed appellant in the main appeal No.1053/2013 as Respondent and then the Hon,ble Tribunal may decide the appeal according to law on the subject.

Applicant

Through

Rahman

Rahmanullah

Shehryar Afridi

Muhammad Arif

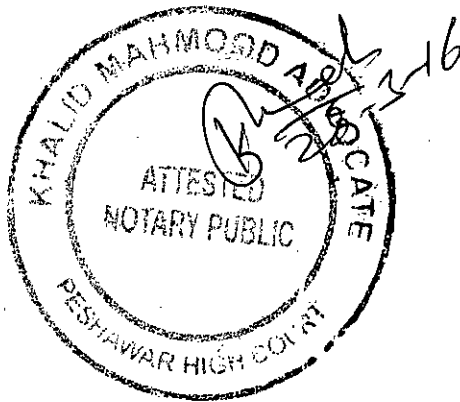
Asim Khan

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Advocates

AFFIDAVIT

AS per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE

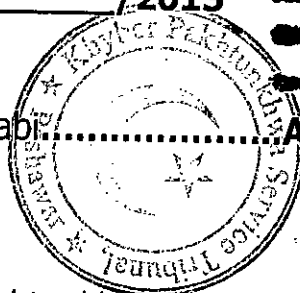
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4 - Amr-e-A

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO 1053 /2013

Mr. Uzairullah, Road Cooli (BPS-1),
Executive Engineer Building Division Swabi.....Appellant



VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary (C&W) Department, Khyber Pakhtunkhwa Peshawar.
 - 2- The Chief Engineer (C&W) Department, Khyber Pakhtunkhwa, Peshawar.
 - 3- The Superintending Engineer (C&W) Circle Mardan.
 - 4- The Executive Engineer Buildings Division Swabi.
-Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR
ADJUSTMENT OF APPELLANT ON HIS ORIGINAL POST
OF NAIB QASID (BPS-4) FROM THE POST OF ROAD
COOLI (BPS-1) AND AGAINST THE ORDER DATED
10.6.2013 WHEREBY THE DEPARTMENTAL APPEAL OF
APPELLANT HAS BEEN REJECTED ON NO GOOD
GROUNDS**

PRAYER:

That on acceptance of this appeal the impugned order dated 10.6.2013 may very kindly be set aside and the respondents may be directed to adjust the appellant on his original post of Naib Qasid (BPS-4). Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant was appointed in the respondent Department as Naib Qasid vide order dated 114.10.1993. That appellant after appointment served the respondent Department quit efficiently and upto the entire satisfaction of his superiors. (Copies of the service book and medical certificate are attached as Annexure **A & B**).

That while serving as Naib Qasid in the building Division Swabi a Notification was issued due to which building division was devolved vide order dated 27-6-2001. That then

after the services of the appellant have been sent to surplus pool and subsequently the appellant was adjusted in the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

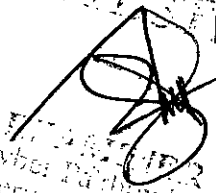
public works Department Swabi as road Cooly (BPS-1) vide order dated 27.6.2001. (Copy of the service book is already attached as annexure "A").

- 3- That during service as road Cooly the scale of appellant was upgraded from (BPS-1) to (BPS-2) vide order dated 1-7-2007. That recently when the said Department has been restored by the Government of Khyber Pakhtunkhwa. That appellant time and again requested the concerned authority for his adjustment as Naib Qasid (BPS-04) being his original post but the concerned authority is not willing to adjust the appellant on his original post of Niab Qasid (BPS-4).
- 4- That recently the appellant have come to know that some posts of Naib Qasid (BPS-4) are lying vacant at the office of XEN (C&W) Division District Swabi, therefor the appellant filed Departmental appeal before the appellate authrity but the same was rejected on no good grounds vide impugned order dated 10.6.2013. (Copy of the Department appeal is attached is Annexure C & D).

GROUND:

- A- That the impugned order dated 10.6.2013 due to which the appellant request for adjustment on his original post of Naib Qasid (BPS-4) has been regretted, therefore they same is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
 - B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated article 4 and 25 of the constitution of Islamic republic of Pakistan 1973.
 - C- That the Buildings Department has been brought into his old status, therefor the incumbent of the said Department is entitled to be restored to their original post.
 - D- That appellant is entitled to be re-adjusted on his original post of Naib Qasid (BPS-4) under the law & prevailing rules.
- That the respondent Department acted in arbitrary and malafide manner by not re-adjusting the appellant on his original post of Naib Qasid (BPS-04).
- That the appellant seeks to permission to advance other grounds and proofs at the time of hearing.

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

It is therefor humbly prayed that the appeal of the appellant may be accepted as prayed for.

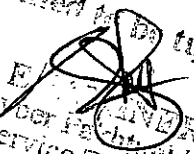
APPELLANT

UZAIR ^{21/3/16}
~~ASAD~~ ULLAH

THROUGH:

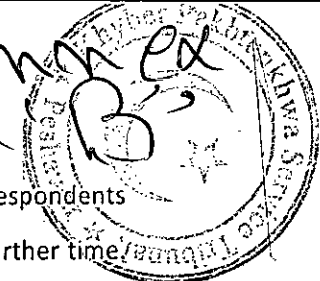
NOOR MOHAMMAD KHATTAK
ADVOCATE

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appeal 25-03-2016
 Number of Words 1200
 Copying Fee 8
 Urgent 2
 Total 10
 Name of Copyist AMJ
 Date of Completion 25-03-2016
 Date of Delivery 25-03-2016

A-No-1053/2013-7 Announced
Wzairullah



22.05.2015

Clerk of counsel for the appellant and Addl: A.G for respondents

present. Compliance report not submitted. Requested for further time

To come up for further proceedings/compliance report on 1.9.2015.

*Sd/-
Member*

03.07.15

*notice of application be issued
for the date fixed by*

01.09.2015

Appellant with counsel and Mr. Rehmanullah, SDO alongwith Mr. Kabirullah Khan Khattak, Assistant A.G for respondents present. Representative submitted copy of office order No. 456/5-E dated 20.5.2015 vide which the appellant has been re-designated and adjusted as Naib Qasid against his original post.

In view of the afore-stated development, learned counsel for the appellant informed the Tribunal that the order of the Tribunal stood implemented. Order accordingly. File be consigned to the record.

*Sd/-
Chairman*

ANNOUNCED
01.09.2015

Certified true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 25-03-2016
Number of Words 2400
Copying Fee 14/-
Urgent 2/-
Total 16/-
Name of Copyist [Signature]
Date of Completion 25-03-2016
Date of Delivery 25-03-2016

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Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1053 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/07/2013	The appeal of Mr. Uzairullah presented today by Mr. Noor Muhammad Khattak Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. <i>Registrar</i>
2	16-7-2013	This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>3-10-2013</u> <i>mi</i>
3	10.13	Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 7.11.2013. <i>Chairman</i>

The
objections
to the res...

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]
Chairman

07.11.2013

Munshi to counsel for the appellant present. Requested for adjournment to come up for preliminary hearing on 19.12.2013.

*Sd/-
Member*

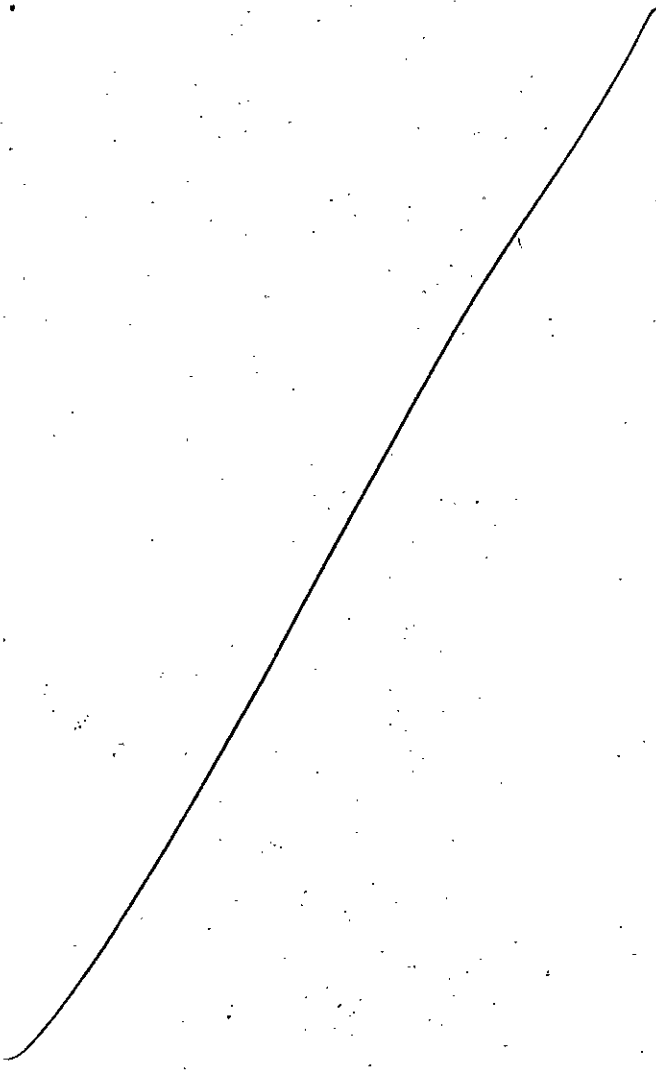
19.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 07.01.2014.

*Sd/-
Member*

ATTESTED

[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



6. 07.01.2014

Appeal No. 1053/2013. -10
Mr. Rehmanullah

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant filed the instant appeal on 08.07.2013, against the final order dated 10.06.2013 and while producing orders of Mr. Muhammad Akbar, Road Cooly and Mr. Haider Zaman, Road Cooly who have been adjusted against the post of Naib Qasid and requesting that the appellant may also be adjusted against his original post of Naib Qasid thereby setting aside the original order dated 10.06.2013. 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 on 31.03.2014.

Appellant Deposited
Security & Process Fee
Rs. 200/-
Receipt is Attached with File.
Bank

[Handwritten signature]

[Handwritten signature]
Member

7. 07.01.2014

This case be put before the Final Bench 1 for further proceedings.

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Chairman

31.3.2014 Clerk of counsel for the appellant and Mr. Rehmanullah, SDO on behalf of respondents with AAG present. Written reply has not been received. To come up for written reply/comments on 30.6.2014.

ATTESTED
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Secretary
Sd/-
Rehmanullah

[Handwritten signature]
Chairman

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30.6.2014

Counsel for the appellant and Mr. Rahmanullah, SDO, C&W Swabi on behalf of respondents with AAG present. Written reply has not been received, and request for further time on behalf of the respondents. The perusal of file revealed that this is a simple case of adjustment of the appellant against his original post of Naib Qasid (BPS-4) from the post of Road Cooly (BPS-I). The respondents are resisting the appeal on the only ground that no vacant post of Naib Qasid was available so as to adjust the appellant against that vacant post; while, on the other hand, the appellant has cited instances of appointment against the vacant posts of Naib Qasids in the meantime. The representative of the respondents also confirmed that appointments of Naib Qasids have been made in the meantime against the vacant posts. Therefore, the Executive Engineer, Building Division, Swabi (Respondent No.4) be summoned in person alongwith complete record of vacancies of Naib Qasids from the date the post of the appellant was converted into that of Road Cooly, till to-date, for further proceedings and written reply/ comments on 22.9.2014.

Sd/-
Chairman

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22.9.2014

Appellant with counsel and Mr. Imran Hussain, XEN, C&W Division Swabi (respondent No. 4) in person with Mr. Muhammad A. Jeel Butt, AAG for the respondents present. Respondent No. 4 submitted copies of appointment orders of other two persons namely Javed Khan and Tauqeer Ali as Naib Qasids in BPS-1 (placed on file of appeal No. 1072/2013) and stated that both the posts of Cooly and Naib Qasid are in BPS-1 according to current budgetary allocations. The respondent, therefore, contended that the allegation of the appellant that the post of Naib Qasid is in BPS-4 is totally misplaced. Anyhow, the respondent would look into the grievance of the appellant, as he has been appointed as Naib Qasid vide order dated 14.10.1993 and subsequently re-designated/re-adjusted as Road Cooly, and re-adjust him, like others, against his original post of Naib Qasid immediately. To come up for compliance report/further proceedings, as before, alongwith connected appeal on 23.10.2014.

ATTESTED

Sd/-
Chairman

Attested
Khaybar Pakhtunkhwa
Services Tribunal,
Peshawar

A-No. 1053/2013 - M -
Wazirullah

23.10.2014

Counsel for the appellant and Rahmanullah, SDO on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Compliance report has not been received and learned AAG requested for further time. To come up for compliance report/further proceedings, as before, alongwith connected appeal on 10.2.2015.

*Sd/-
Member*

11 10.02.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Compliance report not submitted. Requested for adjournment. Last opportunity granted. Adjourned to 13.03.2015.

*Sd/-
Chairman*

13.03.2015

Counsel for the appellant and Mr. Muhammad Hussain, XEN (respondent No. 4) alongwith Addl: A.G for respondents present. Learned Addl: A.G and respondent No. 4 informed the Court that the appellant is going to be adjusted against the post of Naib Qasid on which he was initially appointed and to be shifted from the post of Cooly to Naib Qasid. Directed to shift the said Naib Qasid, appointed later on, to the post of Cooly and adjust the appellant against the post of Naib Qasid and submit compliance report on 22.5.2015 before S.B.

*Sd/-
Chairman*

ATTESTED
[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar