## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 606/2023 Mr. Imtiaz Ali, Chowkidar, Office of the SE, PHE, Circle, Mardan

Appellant.

### VERSUS

- 1. The Secretary Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2. The Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Superintending Engineer, Public Health Engineering Department circle Mardan.

...Respondent

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Dated: 20-12-2023

9111069.

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR Khyber Pakhtukhwa Service Tribunal

Appeal No. 606/2023

Mr.Imtiaz Ali, Chowkidar, Office of the SE, PHE, Circle, Mardan Diary No. 9999

Dated 20-12-2003

..... Appellant.

#### VERSUS

- 1. The Secretary Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2. The Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Superintending Engineer, Public Health Engineering Department circleMardan.

.....Respondent

## JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDANTS NO. 1, 2 &3.

#### PRELIMINARY OBJECTIONS:

- 1. That the appellant has no cause of action / locus standi.
- 2. That the appellant has not come to this Honorable Tribunal with clean hands.
- 3. That the present appeal in hand is not maintainable in its present form and also in the present circumstances of the issue.
- 4. That the present appeal is liable to be dismissed with cost for miss joinder / non joinder of necessary parties.
- 5. That the appellant has filed the instant appeal on malafide motives.
- 6. That the instant appeal is against the prevailing laws and rules.
- 7. That the appellant is estopped by his own conduct to file the present appeal.
- 8. That the instant appeal is badly time-barred.

#### RESPECTFULLY SHEWETH,

- 1. Pertains to record. Hence no comment.
- 2. Incorrect and misconceived.It is clarified that the appellant was appointed on the post of Chowkidar(BPS-01)on 09.11.2010(Copy of appointment order is attached as Annexure-A). Superintending Engineer PHE Circle Mardan redesignated the appellant on the post of Pump Operator (BPS-04) on 06.12.2010 (Copy of order and entryin service book is attached as Annexure-B&C). The appellant at that time never raised any objection and entertained pay and



allowances of BPS-04.It is worth to mention here that the post of pump operator (BPS-04) has been upgraded by the Provincial Government of Khyber Pakhtunkhwa from BPS-04 to BPS-06. Currently the appellant is drawing his salary in BPS-06 (Copy of salary slip is attached as Annexure-D).

After scrutiny of documents and service book of the appellant his case was not considered by the competent authority, as the appellant is Pump Operator (BPS-06), as 33% promotion quota of Class-IV under existing service rules of PHED is reserved for office staff and the appellant is currently operational staff and does not come under the ambit of promotion.

- 3. Incorrect and misconceived. The appellant is misleading this Honorable Tribunal and concealed material facts. It is clarified that as per existing Service Rules of PHED vide notification No.SO(Estt)/PHED/1-9/2019-20 dated 14.12.2020: in pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, PHE Department in consultation with Establishment Department and Finance Department, further amended Notification No.SO(Estt)/PHED/1-9/2010, dated 06.03.2010.
  - ⇒ Thirty three (33) percent quota is reserved for promotion, on the basis of seniority-cum-fitness from amongst the Daftaries, Record Lifter, Barkandazs, Daffadars, NaibQasids and Chowkidars including holder of the equivalent post who possesses at least 2<sup>nd</sup> division intermediate certificate or its equivalent qualification from a recognized board with at least two years' service as such; and a speed of 30 words per minute in English typing (Copy of existing service rules of PHED are attached as Annexure-E).
  - ⇒ It is worth mentioning that the respondent department also included those Class-IV who passed their Secondary School Certificate(SSC/Matric) and the existing service rules allow intermediate Certificate (F.A/F.Sc) with thirty (30) words per minute typing test. The competent authority of the respondent department decided that after July 2023 and onwards only intermediate passed Class-IV with at least 2<sup>nd</sup> division will be eligible for the promotion to Junior Clerk (BPS-11) after qualifying typing test.

The respondent department conducted typing test in December 2022 and another typing test was conducted in March 2023. It is worth mentioning that since 2010, 01 No Class-IV was promoted on 17.05.2012,14 Nos Class-IV were promoted on 28.11.2017, 44 Nos Class-IV were promoted on 05.10.2018 and 31 Nos Class-IV were promoted on 27.07.2023. The appellant did not challenge those DPC meetings and never filed departmental appeal before the competent authority except the last one and now he instituted the

instant service appeal before this Honorable Tribunal for the sake of his benefit despite the fact that till date the appellant entertains pay and allowances in BPS-06 and the appellant also receives his salary slip via pifra, wherein, designation, scale, pay and allowances are clearly mentioned and at this stage the appellant claims that he is unaware of his re-designation to the post of pump operator (BPS-06).

#### **GROUNDS: -**

- A. Incorrect and misconceived. It is important to mention here that the appellant being educated person and was well aware from his re-designation to the post of pump operator, at that time he never raised objection and entertained pay and allowances of BPS-04. It is worth to mention here that the post of pump operator (BPS-04) has been upgraded by the Provincial Government of Khyber Pakhtunkhwa from BPS-04 to BPS-06. Currently the appellant is drawing his salary in BPS-06 and now after almost thirteen (13) years he filed the instant service appeal before this honorable Tribunal for re-designation to the post of Chowkidar for the sake of promotion to the post of Junior Clerk (BPS-11) for which he is not entitled as per existing service rules of PHED.
- B. Incorrect and misconceived. The respondent department follows rules and regulations in the discharge of official business. There is no violation of article 4, 25 & 38 of the constitution of the Islamic Republic of Pakistan, 1973, keeping in view the factual position as mentioned above.
- C. Incorrect and misconceived. It is clarified that the appellant receives his salary slip via email in every month from the Accountant General Office/ District Accounts Office Mardan, Khyber Pakhtunkhwa, wherein, his post/designation, BPS, pay and allowances are mentioned and at this stage the appellant claimed that he was not informed about his designation of Pump Operator. The respondent department also annexed his servicebook, salary slip and other relevant documents.
- D. Incorrect and misconceived. As discussed in the preceding paras.
- E. Incorrect and misconceived. As discussed in the preceding paras.
- F. Incorrect and misconceived. As discussed in the preceding paras.
- G. Incorrect and misconceived. As discussed in the preceding paras.
- H. Incorrect and misconceived. As discussed in the preceding paras.
- 1. Incorrect and misconceived. As discussed in the preceding paras.
- J. The respondent department seeks permission from this honorable Tribunal to raise additional grounds at the time of arguments, please.



## PRAYERS: -

In view of the aforementioned facts, it is, therefore, most humbly prayed before this honorable Tribunal that the present appeal being vexatious and devoid of merit may please be dismissed with cost.

Respondent No.2 & 3

Muhammad Yousaf Khan
Chief Engineer (Center)
Dic Health Engg: Departmen

Public Health Engg: Department
Peshawar

Respondent/No.1 Shahid Sohail

Secretary

Public Health Engg: Department Khyber Pakhtunkhwa

Peshawa'r



## OFFICE OF THE CHIEF ENGINEER (CENTER)

PUBLIC HEALTH ENGG: DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Ph: 091-9217528 E-mail:centrephed@gmail.com, Plot No. 40, Sector B-II, Phase-V, Hayatabad, Peshawar

No. <u>03</u>/<u>C6-J</u>/PHE,

Dated Peshawar, The <u>04</u>/<u>12</u>/2023.

## **AUTHORITY LETTER**

It is certified that Mr. Kamran Shahid, Assistant Social Organizer of Public Health Engineering Division Peshawar is hereby authorized to attend the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.606/2023 titled "Imtiaz Ali VS Government of Khyber Pakhtunkhwa through Secretary PHED &(02) Others" on behalf of all the respondents of Public Health Engineering Department.

Chief Engineer (Center)



## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 606/2023 Mr.Imtiaz Ali, Chowkidar, Office of the SE, PHE, Circle, Mardan

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	 Ap	pel	lla	nt.

#### VERSUS

- 1. The Secretary Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2. The Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Superintending Engineer, Public Health Engineering Department circle Mardan.

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 .Res	nor	ident
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## **AFFIDAVIT**

I, Kamran Shahid, Assistant Social Organizer, Office of the Chief Engineer (Center), Public Health Engineering Department Peshawar do hereby solemnly affirm and declare on oath that the contents of accompanying <u>Para wise comments</u> on behalf of <u>respondents No. 1,2&3</u> are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

DEPONENT

ENIC # 16101-6850506-9

OFFICE OF THE SUPERINTENDING ENGINEER, PUBLIC HEALTH ENGG: CIRCLE DIVISIONAL SECTRIATE MARDAN.

NO. <u>0</u>/E-4 DATED MARDAN THE 09/11/2010.

## OFFICE ORDER

On the recommendation of the Department Selection Committee as per its meeting held on 09-11-2010, the competent authority is pleased to offer a post of Chowkidar (BPS-01) to Mr. Imtiaz Ali S/O Nazeer Mohammad R/O Ittehad Colony Distt: Mardan on the following terms & conditions:

1) He will get pay at the minimum of BPS-01 (Rs.2970-90-5670) 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 Servant and LRules 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 shll be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) along with 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, Mardan before reporting himself for duty to the Superintending Engineer PHE Circle Mardan, as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the conditions of this post, he should report for futy to the Superintending Engineer PHE Circle Mardan within 14 days of the receipt of this offer and produce original certificates in connection with his qualification, domicile and age.

SUPERINTENDING ENGINEER.

Copy to the:-

- 1. The Chief Engineer(South) Public Health Engg:Department Peshaw
- District Accounts Officer Mardan.
- 3. Mr. Imtiaz Ali S/O Nazeer Mohammad R/O Ittehad Colony Mardan.

SUPERINTENDING ENGINEER.

Administrative Officer O/O he Chief Engineer (Center) Public Health Engineering Deptt: Khyber Pakhtunkhwa, Peshawar **OFFICE OF THE** SUPERINTENDING ENGINEER. PUBLIC HEALTH ENGG: CIRCLE DIVISIONAL SECTRIA FE MARDAN.

NO. 04 /E-4 DATED MARDAN THE 06 /12/2010.

### OFFICE ORDER

Mr. Imtiaz Ali Chowkidar (BPS-1) of this Circle is hereby transferred and redesignated as Pump Operator on AM &R Water Supply Scheme Baghicha Dheri on the existing vacancy with effect from 10-11-2010 in the public interest.

SUPERINTENDING ENGINEER

## Copy to :-

- 1. The Executive Engineer, Public Health Engg: Division, Mardan.
- 2. The District Accounts Officer, Mardan.
- 3. The Sub-Divisional Officer P.H.E Mardan.
- 4. Mr. Imtiaz Ali Pump Operator.

SUPERINTENDING ENGINEER.

Imministrative Officer O/O the Chief Engineer (Center)

Public/Health Engineering Deptt:

Khyther Pakhtunkhwa, Peshawar

Annexure-D

## Government of Khyber Pakhtunkhwa District Accounts Office Mardan Monthly Salary Statement (August-2023)



## Personal Information of Mr INFFIAZ ALI d/w/s of NAZEF MUHAMMAD

CNIC: 1610111177551

Date of Birth: 04.03.1081

Entry into Govt. Service: 69,11 2610

80689497-GOVERNMENT OF KHYBER PAKIF

Length of Service, 12 Years 09 Months 62 (12).

Employment Category: Active Temporary

Designation: PUMP OPERATOR

DDO Code: MR7023-

GPF Section: 011

Cash Center:

Payroll Section: 002 GPF ArC Not 555238-66/2

GPF Interest applied

GPF Balance:

116,246.00 (provisional)

Vendor Number: -Pay and Allowances:

Pay scale: BPS For - 2022

Pay Scale Type: Civil

BPS: 06

Pav Stage: 12

Wage type	Amount		Wage type	Amount
0001 Basic Pay	25,840.00	1001	House Rent Allowance 45%	2,316.00
210 Convey Allowance 2005	1,932.00		Medical Allowance	1,500.00
2148 15% Adhoc Relief All-2013	306.00		Adhoc Relief Allow @10%	206,00
2311 Dress Allowance - 2021	1.000,00		Washing Allowance 2021	1,000,00
2313 Integrated Allowance 2021	600,00		Dispr. Red All 15% 2022KP	2.517 (80
2347 Adhoc Rel Al 15% 22(P\$17)	2.517.00		Adhoc Relief All 2023 35%	9,04-1,00

### Deductions - General

Wage type	Amount		Wage type	Amount
3006 GPF Subscription	-1.420.00	3501	Benevolent Fund	-1,200,00
4004 R. Benefits & Death Comp:	-450.00			0.00

#### Deductions - Loans and Advances

L.oan	Description	Principal amount	Deduction '	Balance
6505	GPF Loan Principal Instal	00,000,08	-4.000.00	60,000,00

**Deductions - Income Tax** 

Payable:

0.00

Recovered till AUG-2023:

0.00

Exempted: 0.00

Recoverable.

() ()()

Gross Pay (Rs.):

48,778.00

Deductions: (Rs.):

-7,070.00

Net Pay: (Rs.):

41,708,00

Pavee Name: IMTIAZ ALI Account Number: 4164709862

Bank Details: NATIONAL BANK OF PAKISTAN, 230365 MARDAN MAIN BRCH MARDAN MAIN BRCH, MARDAN

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address:

City: MARDAN.

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

Email: alikhan.mrd07@gmail.com

City:

System generated document in accordance with APPM 4.6.12.9(130096.24.08.2023 v3.0)

System generated accument in accordance \* All amounts are in Pak Rupees \* Errors & omissions excepted (SERVICES:01/09/2023/18/47:44)

Adm/inistrative Officer O/O the Chief Engineer (Center) Public Health Engineering Deptt: Khyber Pakhtunkhyra, Peshawar





## GOVERNMENT OF KHYBER PAKHTUNKHWA PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the 14 / 12 / 2020

## NOTIFICATION A

No.SO(Estt)/PHED/1-9/2019-20: In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Public Health Engineering Department, in consultation with the Establishment Department and Finance Department, hereby directs that in this Department's Notification No.SO(Estt)/PHED/1-9/2010, dated 06-03-2010, the following further amendments shall be made, namely:

## <u>AMENDMENTS</u>

In the APPENDIX:-

- (1) Under the heading "Engineering Cadre":
  - (i) against Serial No.4, in Column No.5 in clause (b), after the brackets and word "(Civil)", the oblique and word "/Electronics" shall be inserted; and
  - against Serial No.5, in Column No.3 and 5 for the existing entries the following shall respectively be substituted namely;

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- (a) At least Second Division Diploma of Associate Engineering in Civil Technology, from a recognized Board of Technical Education; or
- (b) At least Second Division Diploma of Associate Engineering in Mechanical Technology, from a recognized Board of Technical Education; or
- (c) At least Second Division Diploma of Associate Engineering in Electrical or Electronics Technology, from a recognized Board of Technical Education.
- (a) Five Percent, by promotion, on the basis of seniority-cum-fitness, from amongst the Draftsmen having qualification mentioned in clause (a) of Column No.3 with five years service as such;
- (b) one percent, by promotion, on the basis of seniority-cum-fitness from amongst the Works Superintendents, having any of the qualification prescribed for initial recruitment in Column No.3, with five years' service as such;
- (c) eighty-eight percent by initial recruitment having qualification reflected at clause (a) of Column No.3;
- (d) three percent by initial recruitment having qualification reflected at clause(b) of Column No.3;
- (e) three percent by initial recruitment having qualification reflected at clause (c) of Column No.3;

**Note:** For the purpose of promotion the seniority of Works Superintendents shall be reckoned from the date of their regular appointment as Works Superintendent.

- (2) Under the heading "Ministerial Establishment".
  - (i) against Serial No.6, in column No.5, for the words "five years", the words "three years" shall be substituted; and

against serial No.13, for the existing entries, the following shall be substituted, (ii) namely:-

1	2	3		5
"13	Junior Clerk	(a) At least second division Intermediate Certificate or its equivalent qualification from a recognized Board; and	4 18 to 30 years	(a) Thirty-three percent by promotion, on the basis of seniority-cum-fitness from amongst the Daftaris, Record Lifters, Barkandazs, Daffadars, Naib Qasids and Chowkidars including holder of equivalent posts who possess at least second division Intermediate Certificate or its equivalent qualification from a recognized Board with at least two years' service as such; and
		words per minute in English typing."		(b) sixty-seven percent by initial recruitment  Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaris, Daffadars, Record Lifters, Barkandazs, Naib Qasids and Chowkidars including holder of equivalent posts with reference to the date of their acquiring the Intermediate Certificate or its equivalent qualification from a recognized Board.
				Provided that:
				(a) if two or more officials have acquired the Intermediate Certificate or its equivalent qualification in the same session, the inter-sesenlority in the lower post shall be maintained for the purpose of determining seniority in the higher post; and
	11. 11. 11. 11. 11. 11. 11. 11. 11. 11.		-	(b) where a senior official does not possess the requisite qualification at the time of filling up a vacancy the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official.
	·			Provided further that the condition of Intermediate Certificate or its equivalent qualification from a recognized Board as laid down at clause (a) above shall not apply till the expiration of a period specified in the Establishment Department Notification No.SOE-IV/(E&AD)/1-35/2014 dated 18 <sup>th</sup> July, 2019 to the existing matriculate incumbents of the posts of Daftaris, Record Lifters, Daffadars, Barkandazs, Naib
				Qasids and Chowkidars for promotion to the post of Junior Clerk."

SECRETARY TO **GOVT: OF KHYBER PAKHTUNKHWA** PUBLIC HEALTH ENGG: DEPARTMENT

#### Dated Peshawar, the 14 / 12 / 2020 No.SO(Estt)/PHED/1-9/2019-20:

Copy forwarded to the:-

All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.

Secretary to Governor Khyber Pakhtunkhwa.

Principal Secretary to Chief Minister Khyber Pakhtunkhwa.

Accountant General Knyber Pakhtunkhwa.

Chief Engineer (North/South/Merged Areas/SRU) PHE Khyber Pakhtunkhwa Peshawar.

Secretary Public Service Commission Khyber Pakhtunkhwa Peshawar

12) Office Order File.

SECTION OFFICER (E

Scanned with CamScanner

Adminimous (Cexper Registrar Peshawar High Court / Service Tribunal Peshawar.

Olo the Chief Engineer (Cexper Registrar Peshawar High Court / Service Tribunal Peshawar.

Olo the Chief Engineering (Service Tribunal Peshawar.

Public Health Engineering (Service Tribunal Peshawar.

Public Pakhtunkhwa, Peshawar High Court / Service Tribunal Peshawar.

Research (Service Tribunal Peshawar.

Public Health Engineering (Service Tribunal Peshawar.

Public Pakhtunkhwa, Peshawar.

11) PS to Secretary PHE Department Khyber Pakhtunkhwa.

Administrative Office Registrar Peshawar High Court / Service Tribunal Peshawar.

Olo the Engineer (Cealer Registrar Peshawar High Court / Service Tribunal Peshawar.

Olo the Chief Engineering (Service Commission Khyber Pakhtunkhwa Peshawar.

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