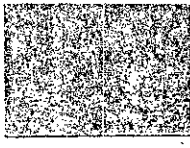


07/04



BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO.2569/2021

Nadir Shah and two others..... **Petitioners**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others **Respondents**

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Section Officer (Litigation)

Home & TAs Department, Khyber Pakhtunkhwa

①

BEFORE HE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal NO.2569/2021

Nadir shah S/O Iqbal Shah

(Petitioner)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary , Khyber Pakhtunkhwa Peshawar & others (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2

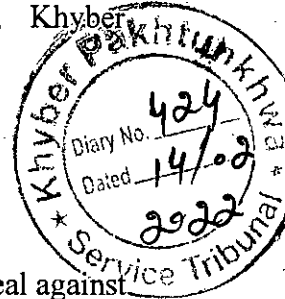
Respectfully sheweth,

PRELIMINARY OBJECTION:

1. That the appellant has no cause of action/locus standi to the file the instant appeal against the respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitle him for any relief whatsoever.
4. That the appeal is barred by law and limitation.
5. That the appellant has suppressed material facts from the Tribunal.
6. That the appellant has not come to the Court with clean hands.
7. That the appellant is estopped to file and instant appeal due to his own conduct.
8. That the appeal is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties.

Facts:

1. Incorrect, the appellant was appointed as Junior Clerk (BPS-11) on daily wages from July 2017 to February 2019. However vide PO Box 131 various posts including 04 No Junior Clerk were advertised dated 09.01.2019.
2. Correct to the extent that the appellant applied for the said post but he was not eligible as he himself was a member of the Selection Committee.
3. Incorrect, it is worth to mention here that an inquiry was conducted against Mr. Sajjad – Ur- Rahman Ex- Registrar FATA Tribunal under Rule- 10 of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules-2021, wherein the inquiry report held that the said selection committee was constituted without any lawful authority. The said committee comprised of temporary/contract/ daily wages employees of FATA Tribunal who themselves were candidates against these post. The inquiry proceedings further revealed that there were exists no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. The said departmental committee unlawfully increased the number of post from 23 to 24 illegally issued 24 appointment order without any recommendation of legitimate departmental selection committee. That the inquiry committee has termed all the 24 appointments illegal without lawful authority and recommended to be cancelled/withdrawn.



4. Incorrect. The inquiry committee held the selection process of all 24 appointments including the posts of appellant as illegal, without lawful authority and recommended to be cancelled/withdraw. Furthermore, that there was only 23 advertised posts instead of 24.
5. Pertains to record.
6. Correct to extent that appellant was appointed on "Daily Wages" since from March 2017 to February 2019.
7. That after receipt of recommendation of the inquiry report the Competent Authority has issued Show-Cause notice to the appellant dated 02/09/2020 vide which appellant was asked to submit his reply.
8. Correct, pertains to record.
9. Correct to the extent that the appellant was appointed on "Daily Wages" However, the appellant was appointed as Junior Clerk (BPS-11) in FATA Tribunal without through an illegal process, without approval of Competent Authority including the process/provision of Age relaxation or any NOC granted to him in this regard.
10. As explained above, there is no orders of the Competent Authority regarding age relaxation certificate in respect of appellant.
11. Incorrect. The appellant's reply to Show Cause provided no proof and evidence in support hence, the Competent Authority has imposed major penalty of "Removal from Service" on the appellant under the rules/law.
12. Correct to the extent the appellant's Departmental Appeal dated 18/11/2020 received which was processed found unsatisfactory and rejected vide order dated 20/01/2020.
13. Incorrect, the appellant has got no cause of action to file appeal against the respondents.

GROUND:

- A. Incorrect. The appellant has been treated in accordance with law & rules hence, no violation to the constitution.
- B. Incorrect. In pursuance of recommendation of inquiry the appellant has properly been served with Show-Cause Notice and opportunity of personal hearing was also granted and all codal formalities fulfilled by the respondent.
- C. Incorrect. The appellant was equally held responsible by the Inquiry Committee in the omission/commission of misconduct as evident that he remained member of the so-called Departmental Selection Committed and also a candidate for the post of Junior Clerk (BPS-11) in the same appointment process which tantamount to conflict of interest.
- D. Incorrect. Proper procedure has been followed detail has already been given in preceding para.
- E. Incorrect. As per record the appellant was made a member of the Scrutiny Committee as well as candidate for the post of Junior Clerk (BPS-11).
- F. Incorrect. Opportunity of personal hearing was given to the appellant vide Home Department letter No. HD/L&O/B&A/55/619-23 dated 06/10/2020.
- G. Incorrect. Detail reply given in the preceding paras.
- H. Incorrect. No order regarding relaxation of age limit in respect of appellant issued by Competent Authority.

- I. Incorrect. The penalty has been imposed upon the accused after proving allegation against him.
- J. Incorrect. The appellant has been awarded punishment after fulfilment of all codal formalities in accordance with law/rules.
- K. Incorrect. The appellant has not provided any no evidence in support both in the written statements as well as personal hearing, hence found guilty of the charge.
- L. In correct. Each and every case has his own circumstances.
- M. Incorrect. As explained above.
- N. Incorrect, detail reply as above.
- O. No Comments.
- P. No Comments.

The respondent requested for permission of the Hon'ble Tribunal for further arguments/points at the time of arguments. It is therefore, most humbly prayed that on acceptance of the above para-wise comments the instant appeal may graciously be dismissed with cost.

JJ
8/2/2022

Secretary
Home & Tribal Affairs
Government of Khyber Pakhtunkhwa

SERVICE APPEAL NO.2568/2021

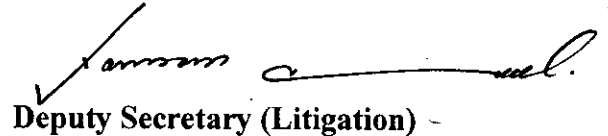
Nadir Shah and others.....Petitioners.

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others.....Respondents.

AUTHORITY

Mr. Shah Wali Khan Section Officer (Litigation) Home & TAs Department Peshawar do hereby authorized to submit reply in Service appeal No. 2569/2021 title Nadir Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others on behalf of respondent No.2 in the Service Tribunal Peshawar.



Deputy Secretary (Litigation)

**Deputy Secretary (Litigation)
Home & TA's Deptt:
Khyber Pakhtunkhwa**

SERVICE APPEAL NO.2569/2021

Nadir Shah and others.....Petitioners.


VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa and others.....Respondents.

AFFIDAVIT

Mr. Shah Wali Khan Section Officer (Litigation) Home & TAs Department Peshawar do here by solemnly affirm and declares on oath that the contents of reply Service Appeal No. 2569/2021 titled Nadir Shah and others Versus Government of Khyber Pakhtunkhwa and others on behalf of (Respondent No. 2 are true and correct as per record provided to me and to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT



Section Officer (Litigation)

CNIC NO. 15360-6304697-9

Identified by

Advocate General

Khyber Pakhtunkhwa