

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.373/2019

Date of Institution ... 18.03.2019

Date of Decision ... 07.12.2020

Sadam Hussain Ex-Naib Qasid Office of Director Fisheries Newly Merged Areas (Esrstwhile) FATA, Warsak Road, Peshawar.

... (Appellant)

VERSUS

1. The Secretary Agriculture, Livestock, Dairy Development & Fisheries Department Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar and three others.

... (Respondents)

Present:

Amin Ayub,
Advocate ... For appellant.

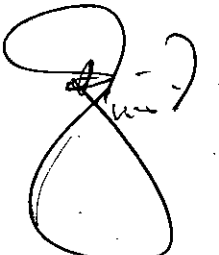
Zara Tajwar,
Deputy District Attorney ... For respondents.

ROZINA REHMAN ... MEMBER (J)

ATIQU-UR-REHMAN WAZIR ... MEMBER (E)


JUDGMENT

ROZINA REHMAN, MEMBER: Appellant Sadam Hussain was a Class-IV employee in the office of erstwhile Director Fisheries FATA. He was terminated from service vide order dated 15.11.2018. It is the legality and validity of this order which has been challenged by him in the present service appeal filed U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.


07/12/20

2. Brief facts of the case are that appellant being eligible and qualified, applied for the post of Naib Qasid through Employment Exchange, who was selected by the Departmental Selection Committee and was then appointed as Naib Qasid on 18.01.2018 in the office of erstwhile Director Fisheries FATA. He then submitted his arrival report according to law and started performing his duties. It was on 30.01.2018 when his appointment order was withdrawn by the then Director without assigning any reason. He preferred departmental appeal on 22.02.2018 which was allowed and the appellant was reinstated into service with all back benefits vide order dated 12.03.2018. It was on 15.11.2018 when his services were terminated again without observing mandatory provisions. Being aggrieved from the said order, he filed departmental appeal on 26.11.2018 which was not responded to, hence, the present service appeal.

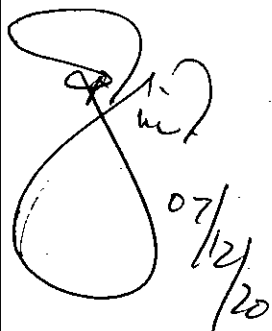
3. Learned counsel for appellant contends that the appellant was not treated in accordance with law, rules and policy on the subject and he was dealt with in violation of Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He submitted that he was appointed on the recommendation of Departmental Selection Committee properly constituted by the competent authority after observing all the codal formalities. He argued that no irregularity was pinpointed in the process of selection of the appellant in the office order dated 10.04.2018. He argued that he was terminated from service on the same set of allegations on which the appointment order of the appellant had earlier been withdrawn and lastly, he submitted that where major penalty is proposed then a regular inquiry is to be conducted but in the instant case, no inquiry was conducted and he was not afforded an opportunity of cross-examining the witness. In the case in


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hand, a summary inquiry was concluded in an irregular manner and the appellant was illegally terminated from service.

4. Conversely, learned D.D.A submitted that some Class-IV posts were lying vacant in the office of respondent department and proper approval for constitution of Departmental Selection Committee was taken but Departmental Selection Committee neither interviewed nor carried out any test. She submitted that no one appeared before the committee and no one qualified any test/interview, therefore, the appointment order of the appellant being illegal, was withdrawn/cancelled. She submitted that as the reinstatement order was illegal, therefore, appointment order was withdrawn on the recommendation of inquiry officer and that termination orders dated 15.11.2018 were under the light of inquiry conducted by the inquiry committee constituted by Additional Chief Secretary FATA and as the case was not related to the inefficiency and misconduct of the appellant rather it was related to illegal initial appointment as irregularities made in the appointment of appellant, therefore, inquiry officer found appointment process irregular and unlawful, against merit and transparency. She, therefore, requested for dismissal of the instant service appeal.

5. It is an admitted fact that initial recruitment to a post which does not fall within the purview of the Commission, shall be made on the recommendation of Departmental Selection Committee as per Rule-10 (2) of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. It is the case of the appellant that he was appointed as Naib Qasid (BPS-03) on the proper recommendation of Departmental Selection Committee vide order dated 18.01.2018. As per record, a proper Departmental Selection Committee was constituted by the competent authority but minutes of

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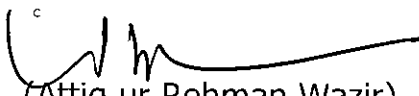
Departmental Selection Committee were not produced by the appellant in order to show his appointment in accordance with rules and regulation. As per record, his appointment order was cancelled on 30.01.2018 where-after he filed departmental appeal which was accepted and he was reinstated from the date of cancelation of his appointment order with all back benefits on 10.04.2018 and his services were once again terminated being irregular, illegal and void ab-initio on 15.11.2018 in pursuance of recommendation of inquiry officer on account of non-observance of proper procedure and non-fulfillment of codal formalities during recruitment process. From the record, it is evident that one Muhammad Shafi Marwat was nominated as Chairman of the Departmental Selection Committee for appointment of vacant post of Class-IV employees and as per record, a letter was issued to the Manager Employment Exchange Peshawar on 08.01.2018 to do the needful under the Government policy. A letter received from Manger Employment Exchange Peshawar whereupon it was advised to the concerned to advertise these posts but that advice was not taken into consideration and the present appellant alongwith others were directly appointed without any advertisement in the leading newspaper as well as without recording minutes of the Departmental Selection Committee, therefore, the appointment orders were cancelled but departmental appeal was filed before the Secretary and as per record, all appointments including the appointment of appellant had been allegedly made on the directions of the appellate authority, therefore, appeals filed before that authority were accepted and the appellant alongwith others were reinstated into service but again that order was cancelled after conducting proper inquiry and record shows that the Chairman of the D.S.C had been pressurized for reinstatement of the appellant but that order was not complied with. In the instant case, codal

2
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formalities were not complied with. The Manager Employment Exchange was right on giving advice to the concerned authority for advertisement in the leading newspaper. The Departmental Selection Committee never interviewed the appellant and minutes were not recorded. The present appellant alongwith others were issued appointment letter just on the direction and pressure of high-ups, which is evident from the record available on file. As the appointment was not made in accordance with law and there were irregularities in the process of appointment, therefore, his service was rightly terminated. The instant case is a fit case of nepotism and favoritism where just few persons were obliged against the public at large by not advertising the relevant post in the leading newspaper or by requisitioning the relevant record from the office of Manager of Employment Exchange.

6. In view of above, the present service appeal is dismissed. With no order as to costs. File be consigned to the record room.

ANNOUNCED.
07.12.2020


(Attiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

07.12.2020

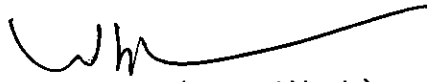
Appellant present in person.

Zara Tajwar learned Deputy District Attorney for respondents present.

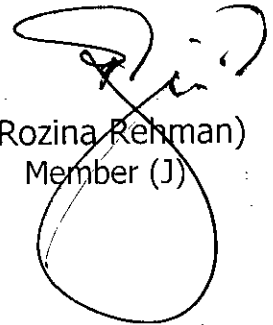
Vide detailed judgment of today of this Tribunal placed on file, instant service appeal is dismissed. With no order as to costs. File be consigned to the record room.

ANNOUNCED.

07.12.2020



(Atiq-ur-Rehman Wazir)
Member (E)




(Rozina Rehman)
Member (J)

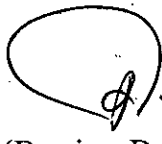
16.09.2020

Junior counsel for appellant present.

Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment as senior counsel is busy in meeting. Adjourned. To come up for arguments on 19.11.2020 before D.B.


(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

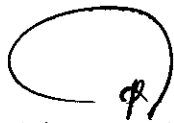
19.11.2020

Appellant with counsel present.

Zara Tajwar learned Deputy District Attorney alongwith Amin Jan A.D for respondents present.

Arguments heard. To come up for order on 07.12.2020 before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

6-5.2020

Due to COVID19, the case is adjourned to

17/7/2020 for the same as before.

Reader

17.07.2020

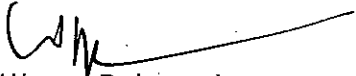
Due to COVID-19, the case is adjourned to 22.07.2020
for the same.

Reader

22.07.2020

Counsel for the appellant and Mr. Ziaullah, DDA alongwith
Amin Jan, A.D for the respondents present.

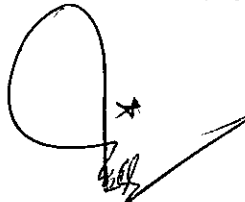
To come up for arguments alongwith connected appeal
No. 521/2019 on 16.09.2020. before the D.B.


(Attiq-ur-Rehman)
Member


Chairman

06.03.2020

Counsel for the appellant present. Addl: AG
alongwith Mr. Amin Jan, Assistant Director for
respondents present. Learned counsel for the appellant
seeks adjournment. Adjourned. To come up for
arguments on 06.05.2020 before D.B.



Member



Member

20.11.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Rejoinder is placed on record. Case to come up for arguments on 24.12.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.12.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 13.02.2020 before D.B.


Member


Member

13.02.2020

Appellant alongwith his counsel and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Adjournment requested. Adjourned to 24.02.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.02.2020

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Amin Jan A.D present. Learned Additional Advocate General requested for adjournment. Adjourn. To come up for arguments on 06.03.2020 before D.B.


Member


Member

2.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Asif Superintendent for the respondents present and seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 28.08.2019 before S.B.



Member

28.08.2019

Junior to counsel for the appellant and Addl. AG alongwith Muhammad Asif, Superintendent for the respondents present.

The representative of the respondents requests for further time to submit written reply. Last opportunity is granted to the respondents for submission of requisite reply/comments on 25.09.2019 before S.B.



Chairman

25.09.2019

Counsel for the appellant and Addl. AG alongwith Amin Jan, AD for the respondents present.

Parawise comments on behalf of respondents furnished which are placed on record. The appeal is assigned to D.B for arguments on 20.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

05.04.2019

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was appointed as Naib Qassid after fulfillment of codal formalities vide order dated 18.01.2018. However, the said order was withdrawn on 30.01.2018 without any justification. He filed departmental appeal on 22.02.2018, which was accepted and reinstated in service with all back benefits vide order dated 12.03.2018. Upon reinstatement, he continued to perform duty. Again vide order dated 15.11.2018, services of the appellant were terminated, which again forced him to file departmental appeal on 26.11.2018, which remained unanswered, hence, the present service appeal. Action of the respondents is arbitrary, illegal and unlawful. It is also hit by Article-13 of the Constitution, that no person shall be prosecuted or punished for the same offence more than once.

P/18/2019

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 20.05.2019 before S.B.

(AHMAD HASSAN)
MEMBER

20.05.2019

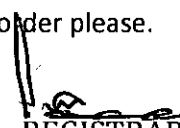

Clerk to counsel for the appellant present. Written reply not submitted. Ibrar Ahmad Assistant representative of respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 02.07.2019 before S.B.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 373/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/03/2019	<p>The appeal of Mr. Saddam Hussain presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 18/3/19</p>
2-	20/03/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/04/19</u>.</p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. ³⁷³ /2019

Sadam Hussain..... Appellant
 Versus
 The Secretary Agriculture an anotherRespondents

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5.	Letter regarding constitution of Departmental Selection Committee	08.01.2018	D	9
6.	Appointment order of Petitioner	18.01.2018	E	10
7.	Medical Fitness Certificate		F	11
8.	Arrival Report		G	-12
9.	Extracts from Service Book		H	13 - 16
10.	Order thereby appointment order of Petitioner was withdrawn	30.01.2018	I	17
11.	Departmental Appeal	22.02.2018	J	18
12.	Order of Petitioner's reinstatement into service	12.03.2018	K	19 - 22
13.	Reinstatement order issued by the Department	10.04.2018	L	23
14.	Impugned order	15.11.2018	M	24
15.	Departmental Appeal	26.11.2018	N	25 - 26
16.	Wakalat Nama			

Through ^{Sadman}
 Appellant
 Khaled Rahman
 Advocate, ^{llr}
 Supreme Court of Pakistan
 4-B, Haroon Mansion
 Khyber Bazar, Peshawar
 Off: Tel: 091-2592458
 Cell # 0345-9337312

Dated: 13 /03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 373 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 346

Dated 18/3/2019

Mr. Sadam Hussain

Ex-Naib Qasid

Office of Director Fisheries

Newly Merged Areas (Erstwhile) FATA,

Warsak Road, Peshawar..... **Appellant**

Versus

1. **The Secretary**

Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Dairy,
Development and Fisheries Department,
Civil Secretariat, Peshawar.

✓

2. **The Secretary,**

Production and Livelihood,
(Erstwhile) FATA, Warsak Road, Peshawar.

3. **The Additional Chief Secretary**

The (erstwhile) FATA, Warsak Road, Peshawar.

✓

4. **The Director**

Directorate of Fisheries,
Newly Merged Area Warsak Road, Peshawar..... **Respondents**

Filed to-day

Registrar
18/3/19

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 15.11.2018 PASSED BY RESPONDENT NO.4 WHEREBY THE SERVICES OF THE APPELLANT WERE TERMINATED AGAINST WHICH HE PREFERRED A DEPARTMENTAL APPEAL TO RESPONDENT NO.1 ON 26.11.2018 BUT THE SAME WAS NOT DECIDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned office order dated 15.11.2018 may graciously be set aside and appellant be reinstated into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. **That** appellant is a bonafide resident of District Peshawar vide Domicile Certificate (*Annex:-A*) and also literate person. Appellant possesses the Employment Registration Card (*Annex:-B*) which has been acquired from the concerned quarter after observing all the codal formalities.
2. **That** some posts of Class-IV in the office of Respondent No.4 were lying vacant, therefore approval was sought from the competent authority for initial recruitment from amongst the deserving candidates vide letter dated 03.01.2018 (*Annex:-C*). Later on, after obtaining the same proper Departmental Selection Committee was constituted for the purpose vide letter dated 08.01.2018 (*Annex:-D*).
3. **That** appellant applied for the post of the Naib Qasid and went through selection process and successfully qualified the same and was appointed against the post of Naib Qasid on 18.01.2018 (*Annex:-E*).
4. **That** pursuant to the appointment order appellant was medically examined by the authorized Medical Officer and was found fit vide Certificate (*Annex:-F*) and submitted Arrival Report (*Annex:-G*) and started performing duties to the entire satisfaction of the high-ups. During this period no complaint has ever been received on performance of Petitioner. It is significant to add here that proper Service Book (*Annex:-H*) of the appellant was maintained wherein requisite entries were made.
5. **That** after just one month all of sudden vide order dated 30.01.2018 (*Annex:-I*) the appointment order of the appellant was withdrawn by the Respondent No.4 without assigning any reasons muchless lawful. Appellant aggrieved from the same availed the remedy of Departmental Appeal dated 22.02.2018 (*Annex:-J*) before the Respondent No.2 which was accepted and appellant was re-instated into service alongwith others with all back benefits vide detailed appellate order dated 12.03.2018 (*Annex:-K*) pursuant to which the Department also issued reinstatement order of the appellant alongwith others dated 10.04.2018 (*Annex:-L*).

6. **That** appellant again started performing his duties but after 8/9 months vide impugned order dated 15.11.2018 (*Annex:-M*) the Respondent No.4 once again terminated services of appellant without observing mandatory provisions/ formalities as laid down under the law/rules.
7. **That** appellant being aggrieved of the impugned order dated 15.11.2018 *ibid*, preferred departmental appeal on 26.11.2018 (*Annex:-N*) before the Respondent No.1 but the same was not disposed of within the stipulated period of ninety days, hence this appeal inter-alia on the following grounds:-

Grounds:

- A. **That** appellant has not been treated in accordance with law, rules and policy on the subject and dealt with in violation of Articles 4&25 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully terminated from service, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** the appellant was properly appointed in accordance with law on the recommendation of the properly constituted Selection Committee by the competent authority after observing all the codal formalities. His appointment order was acted upon, carried into effect and now valuable rights have been accrued in favour of appellant which cannot be taken away under the principle of locus poenitentiae and for that matter principle of promissory estoppel.
- C. **That** the appointment process of the appellant was conducted according to the rules by the competent authority and no irregularity whatsoever in the process of selection of appellant was pinpointed even in the office order dated 10.04.2018. It is also added that earlier in response to the departmental appeal of the appellant against his withdrawal of appointment order, the Appellate Authority was pleased to reinstate appellant alongwith others into service with all back benefits. Appellant was performing his duties but the then Competent Authority again terminated appellant from service on the same set of allegations on which earlier the appointment

order of the appellant was withdrawn, however, the fact remains that during the appointment of appellant no irregularity was committed.

- D. **That** besides, it is a settled law that if any irregularity in the process of selection is committed by the competent authority then it is the competent authority who is to be held responsible and for that lapse the poor employees cannot be made to suffer. However, in the case in hand no illegality was found.
- E. **That** as per Article-13 of the Constitution of the Islamic Republic of Pakistan 1973 “**No person shall be prosecuted or punished for the offence more than once,**” therefore, appellant was terminated from service on the same set of allegations on which the appointment order of the appellant had earlier been withdrawn hence, the same amounts to *double jeopardy* and is thus ultra vires of the Constitutional mandate and as such is liable to be struck down.
- F. That it is a settled legal principle that where major penalty is proposed then only a regular/formal enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand a summary enquiry was concluded in an irregular manner and appellant was illegally terminated from service. Thus the impugned enquiry being irregular and the impugned orders based thereupon are nullity in the eye of law and hence liable to be set aside.
- G. That appellant was rendered defenseless in an illegal manner. Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 has been violated and appellant was not given a chance of fair trial.
- H. **That** appellant being a civil servant was required to be proceeded in accordance with law as per the mandate of Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with the enabling provisions of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 but the law was not followed while issuing the impugned order which is resultantly void and hence liable to be set aside.

- I. **That** neither Charge Sheet and Statement of allegations were issued to appellant nor was he provided opportunity of defence or Show Cause Notice or opportunity of personal hearing which are the mandatory requirements of law and in absence whereof the impugned termination order is nullity in the eye of law and liable to be set aside.
- J. **That** appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Appellant

Salam
Khaled Rahman,
Advocate

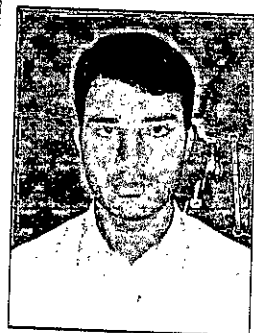
Supreme Court of Pakistan

Dated: 13 /03/2019

S.No. 025930
0311-8802443



- 6
Annex 'A'



CERTIFICATE OF DOMICILE

The Pakistan Citizenship Act, 1951 (Act, II of 1951)
Rules made throunder (vido Rule No. 23)

I Saddam Hussain Son/Daughter/Wife of Atta Ullah
Declare that I was born of parents who are permanently domiciled in Khyber
Pakhtunkhwa, Province having belonged to it by birth/settled in it.

I belong to Village / Mohallah Muslimabad
Tehsil Peshawar District Peshawar

Signature/Thumb Impression of Applicant Saddam
Name in Block Letter SADDAM HUSSAIN
Dated 05-12-2017

Pursuance to the declaration dated 05-12-2017 filled by
Mr./Mrs./Miss Saddam Hussain S/o, D/o, W/o Atta Ullah
CNIC No 12301-6227535-7 domiciled in the Khyber Pakhtunkhwa
Province. It is hereby certified that the said Saddam Hussain
is born of parents who are permanent residents of Khyber Pakhtunkhwa Province
having belonged to it by birth / settled in it. I have satisfied myself personally / through
my relevant sources that the above declaration is true and duly certified overleaf.

This 05 Day of Dec 2017
No 262606 Date 05/12 2017

DEPUTY COMMISSIONER ASSISTANT COMMISSIONER
Peshawar

میں اس بات کی تصدیق کرتا کرتی ہوں کہ اس سے پہلے میں نے کسی بھی ڈسٹرکٹ ایف آرا قبائلی ایجنسی کا ڈومیسائل سرٹیفکیٹ حاصل نہیں کیا۔

دستخط نشان انگوٹھا
Saddam

تصدیق کی جاتی ہے کہ مہمی اسماءہ _____ ولد اختر عطا اللہ
ساکن محلہ مسلم آباد چارسدہ روڈ نچھتی پل گاؤں اشہر مسلم آباد نچھتی پل
ضلع پشاور کا رہائشی و پیدائشی ہے اور اس کے والدین اشہر بھی علاقہ مذکورہ کے رہائشی و پیدائشی باشندگان ہیں اور اچھے پاکستانی ہیں
میں ان کو ذاتی طور پر جانتا جانتی ہوں۔

نام قیدمیر خاں فاروقی

عہدہ ناظم

17301-3060315-3

03334161617

دستخط

Nazim

Qaiser Khan Farooqi

VC 262 Muslim Abad UIC 77 Haryana

تاریخ 05-12-2017

ڈومیسائل سرٹیفکیٹ کے حصول کیلئے ضروری ہدایات

- 1: ڈومیسائل سرٹیفکیٹ حاصل کرنے کیلئے عمر کی کوئی قید نہیں بلکہ امیدوار کسی بھی وقت اور کسی بھی کلاس میں زیر تعلیم کیوں نہ ہو، ڈومیسائل سرٹیفکیٹ حاصل کر سکتا ہے۔
 - 2: والدین کو چاہئے کہ وہ اپنے بچوں کے ڈومیسائل بروقت بنوائے۔
 - 3: ایک امیدوار ایک وقت میں صرف ایک ڈومیسائل بنوانے کا حقدار ہے۔
 - 4: ایک سے زیادہ ڈومیسائل رکھنا قانوناً جرم ہے۔
 - 5: جن امیدواروں کے پاس ایک سے زیادہ ڈومیسائل سرٹیفکیٹ موجود ہوں ان کو چاہئے کہ وہ فوری طور پر ان میں سے صرف ایک اپنے پاس رکھیں جس کا وہ قانونی طور پر حقدار ہوں۔ بالفاظ دیگر جس امیدوار کا حقیقی طور پر جس ضلع سے تعلق ہو اسی ضلع کا وہ ڈومیسائل سرٹیفکیٹ اپنے پاس رکھنے کا مجاز ہے۔
 - 6: ایک سے زیادہ جعلی ڈومیسائل سرٹیفکیٹ رکھنا قانونی جرم ہے۔
 - 7: اگر کوئی امیدوار ایک سے زیادہ یا جعلی ڈومیسائل رکھنے کے الزام میں پایا گیا۔ تو نہ صرف اس امیدوار کے خلاف، بلکہ اس کے والدین اور تصدیق کنندہ کے خلاف بھی قانونی کارروائی کی جائیگی۔
 - 8: ڈومیسائل سرٹیفکیٹ فارم میں دیئے گئے کوائف کی تصدیق مندرجہ ذیل مجاز افسروں اشخاص میں سے کسی ایک سے کروانا لازمی ہے۔
- (i) سینیئر
 - (ii) زکن قومی اسمبلی (حلقہ این اے _____ ضلع _____)
 - (iii) صوبائی اسمبلی (حلقہ پی کے _____ ضلع _____)
 - (iv) گزیٹڈ آفیسر (BPS-17 / BPS-16)
 - (v) سیکرٹری یونین کونسل
 - (vi) جنرل کونسلر
 - (vii) مستند محلہ دار
 - (viii) مستند علاقہ نمبر دار
 - 9: امیدوار کو چاہئے کہ اپنا قیمتی وقت بچانے کیلئے جلد از جلد ڈومیسائل سرٹیفکیٹ حاصل کرے تاکہ میٹرک کا امتحان پاس کرنے کے بعد انہیں ڈومیسائل کے حصول کیلئے انتظار اور رش کا سامنا نہ کرنا پڑے۔
 - 10: امیدوار کی سہولت کی خاطر ڈومیسائل سرٹیفکیٹ کی تصدیق کیلئے حکومت (9) مجاز حکام تعین کر دیئے ہیں جن میں کسی ایک سے بھی تصدیق کی جاسکتی ہے۔

7
B

Annex

آئی جی ایو (آر) ۲۴

ایمپلائمنٹ رجسٹریشن کارڈ



جن انسید اداروں کے پاس تھانوی کارڈ (X-3) موجود نہیں ہو۔
ان کو دفتر روزگار کا نام لکھ کر تھانوی کارڈ کی جائے۔

رجسٹریشن نمبر ۱۱۷/۱۱۷/۹۵/۱۱۷/۹۵-۹۹-۹۹

بڈیٹ از اجیت علی احمد خان

پتہ: سولہ سولہ سولہ سولہ سولہ سولہ سولہ سولہ سولہ

شناختی کارڈ نمبر ۱۱۷-۹۹-۹۹-۱۱۷

18 DEC 2017

تاریخ آئی جی ایو (آر) ۲۴

Munagur

۱۷/۱۶/۹۵/۹۹

مخبر ذریعہ اطلاع برائے امیدوار

جب آپ کو بلاز مستعمل جائے تو فوراً نکل کر جو ای کارڈ پوزیشن روزگار
کو اطلاع کر کریں۔ اس کارڈ پر ڈاک ٹکٹ لگانے کی ضرورت نہیں۔

O.P.S.S.



خدمت جناب منبج صاحب

دفتر روزگار

ATTESTED

B

امیدواروں کے لئے ہدایات

- 1۔ عہدہ تجزیہ کی صورت میں آپ کا رجسٹریشن منسوخ سمجھا جائیگا۔ جب تک کہ آپ رجسٹر روڈ کارڈ میں رجسٹریشن کی ضرورت کے سلسلہ میں ملاقات کے لئے آئیں تو کارڈ فراہم ضرور ہر ماہ لائیں۔
- 2۔ جلد خط و کتابت میں رجسٹریشن نمبر اور آکوشن کوڈ نمبر کا حوالہ ضرور دیں۔

چال چلن

جبکہ برائے تصویر امیدوار

جوابی حصہ

رجسٹریشن نمبر 6199/NT/17 تاریخ 18 DEC 2017

نام امیدوار Amir Qasid
آکوشن کوڈ نمبر 5-99-47

مجھے تاریخ _____

(تاریخ معہ ملازم رکھنے والے کا نام و پتہ)

ملازمت مل گئی ہے۔

دستخط _____

تاریخ _____

APPROVAL FOR THE FILLING OF THE VACANT POST IN THE FISHERIES DEPARTMENT

The following posts of various categories are lying vacant in this Department with the following status as,

REGULAR SIDE

Name of post	BPS	NO. of Posts
Naib Qasid	02	02
Driver	04	01

DEVELOPMENTLE SIDE

Name of post	BPS	NO. of Posts
Driver	04	01
Chowkidar	02	01

This Department is going to filled up these vacant posts as per Government rules/policy.

Therefore it is requested to kindly allow this office to fill up these vacant posts.

No.16/DF Dated 03/1/18

[Signature]
3/1/18

DIRECTOR FISHERIES FATA

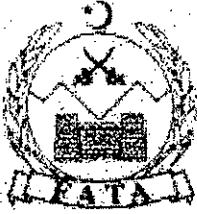
~~Secretary PLDD
FATA~~

← OK.

DF.

03/01/18

ATTESTED



-9
Annex "D"

XXIII

Subject: - CONSTITUTION OF THE DEPARTMENTAL SELECTION COMMITTEE OF THE POST OF CLASS -IV.

Dear Sir,

The following officers are hereby nominated for the appointment of the Class-IV Employees as per government policy / rules as under.

- | | |
|--|----------|
| 1. Muhammad Shafi Marwat | Chairman |
| 2. Mr. Abdul Manan Section P&LDD | Member |
| 3. Faheem Akhter Assistant Director Fisheries (HQ) | Member |

The policy letter is attached for ready reference:-

It is, therefore, requested to kindly approve the nominee of the Departmental Selection Committee for the vacant post of class-IV employees please.

Secretary P&LDD FATA

Director Fisheries FATA

NO 25 D F Dated
9/1/18

LS

DF

ok

8/1/18

09/1/18

ATTESTED

D

Amna "E"



DIRECTORATE OF FISHERIES. - 10

FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 44-50/DF Dated Peshawar the 18/01/2018.

OFFICE ORDER.

Mr. Saddam Hussain S/O Atta Ullah Khan r/o Ram Kushan Muslim Abad Baksheesh Pull Peshawar is hereby appointed as Naib Qasid BPS-03 (Rs. 9610-390-21310) with usual allowances as admissible under the rules in the Directorate of Fisheries FATA with immediate effect, in the best interest of public service.

The Terms and conditions would be as under:-

- 1 The Terms and conditions of his appointment to the post will be applicable as per the instruction issued by the Govt: of Khyber Pakhtun Khwa, from time to time.
- 2 The appointment is purely on temporary basis initially for a period of one year probation, further extendable upto two years, and his services can be terminated without assigning any reason thereof before the expiry of the period of probation/extended period of probation, if his work during this period is not found satisfactory. In such an event, he will be given a month's notice of termination from service or one month's pay in lieu thereof.
- 3 In case he wishes to resign at any time one month notice will be necessary, otherwise in lieu thereof a month pay shall be forfeited or deposited to Government treasury.
- 4 He shall be entitled to all facilities relating to pay, T.A and Medical attendance etc. as may be issued by the Government for the status of the Government Servant to which he belongs.
- 5 He shall be liable to and Governed by the Government of Khyber Pakhtun Khwa Government servant (Conduct) Rules, 1987 Khyber Pakhtun Khwa Government- Servant (Efficiency & Disciplinary) Rules, 2011 and all others orders/instructions of the Government in this behalf.
- 6 He will be regular contributor of GP Fund as per Government instructions.
- 7 He will produce medical fitness certificate from the medical authorities.
- 8 If the appointee is agreed upon to the above TOR, he may report for his duty to the concerned authority within 15 days. In case of failure, his appointment shall stand cancel automatically.
- 9 He can be transferred on any class – IV vacancy/post in the Khyber Pakhtun Khwa Fisheries Department or Directorate of Fisheries Department FATA

SD/-

(MUHAMMAD SHAFI MARWAT)

DIRECTOR FISHERIES

FATA

Copy forwarded for information to:-

- 1- The PS to Additional Chief Secretary FATA.
- 2- The PS to Secretary Production Livelihood and Development Department FATA.
- 3- The Accountant General (PR) Sub Office Peshawar.
- 4- The Director General Fisheries Khyber Pakhtun Khwa Peshawar.
- 5- The Assistant Director Fisheries FATA Secretariat Peshawar.
- ✓ 6- The Official Concerned.

ATTESTED

(MUHAMMAD SHAFI MARWAT)

DIRECTOR FISHERIES

FATA

MEDICAL CERTIFICATE

Annex "F"

Name of official Saddam Hussain ✓
 Caste or race Muslim
 Father's name Attaullah Khan ✓
 Residence Mahalia Dukkana Bakhshwa Muslim
abad Peshawar ✓
 Date of birth 04-04-1992 ✓
 Exact height by measurement 5.9 = ✓
 Personal mark of identification NIL ✓
 Signature of the official Saddam ✓
 Signature of head of office _____

Seal of office _____

I do hereby certify that I have examined Mr. Saddam Hussain a candidate
 for employment in the Office of the Fisheries Department
 and cannot discover that he had any disease communicable or other constitutional affection or bodily
 infirmity except nil

I do not consider this as disqualification for employment in the office of the AS Abani
 His age according to his own statement 26 year and by appearance at
 year Twenty six

[Signature]
 22/11/2018
 MEDICAL SUPERINTENDENT,
 CIVIL HOSPITAL Medical Superintendent
Police Hospital
Peshawar.

LEFT HAND THUMB AND FINGER IMPRESSIONS

ATTESTED

[Signature]
22/10/18

-12

Annea G^o 2)

Dated: 22/01/2018.

To,

The Director Fisheries,
Directorate of Fisheries,
FATA Secretariat, Peshawar.

Subject:

ARRIVAL REPORT

Dear Sir,

In pursuance of Director Fisheries FATA, Peshawar Office Order No. 44-50/DF dated 18.01.2018, I hereby assume the charge of the Post of Naib Qasid (BPS-03), today i.e. 22.01.2018.

Sadelem
Mr. Saddam Hussain
S/O Atta Ullah Khan
Village Ram Kushan
Muslimabad Bakhshi Pull,
Peshawar

ATTESTED

9

61

Area H²

-13

SERVICE BOOK

OF

Mr. Sadam Hussain جسٹس

S/o Atta Ullah میلبر

Designation N/Qasid میلبر

Department Fata Fisheries Department.

Resub

Price : Rs. 75/-

ATTESTED

14
48

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

1. Name: Mr. SADDAM HUSSAIN سید سید حسین

2. Race: _____

3. Residence: Ram Kushan Muslim Abad Baksheesh Pull Peshawar
رام کوشن مسلم آباد - بخش پیلی - پشاور

4. Father's name and residence: Attaullah Khan As Above عطاء اللہ خان

5. Date of birth by Christian era as nearly as can be ascertained: 04-04-1992
Four April N.H. 2 Ninety Two

6. Exact height by measurement: 5-6"

7. Personal marks for identification: Nil

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

Little Finger



Ring Finger



Middle Finger



Fore Finger



Thumb



Signature of Government Servant: Saddam

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

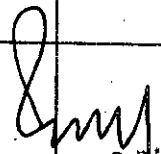

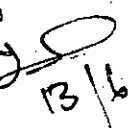
[Signature]
DRAWING & DISBURSING OFFICER
DIRECTORATE OF FISHERIES
FATA SECRETARIAT
PESHAWAR

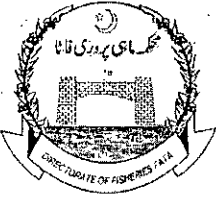
ATTESTED

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signature of Government Servant.
Naib Qaid B3			9610/18 /18/18	9610 ✓ /18/18		29/1/2018	

ATTESTED

[Signature]

9 Name and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination or appointment.	11 Reason of termination such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure or praise of the Government Servant.
				Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debit to another Government		
				Period	Government to which debit to		
							<p>Appointed as N/Asst B-3 under the Director Fisheries Dept. vide order dated 23.5.18^{10/4/2018} & joined on his arrival report on 24/12/18.</p>
				 DRAWING & INSURING OFFICER DIRECTORATE OF FISHERIES PESHAWAR SECRETARIAT PESHAWAR			
				<p>Drawn Rs 30,000/- order of pay of AO with effect from 22/1/18 to 31/5/18.</p>			
				 M. I. M. I. 13/6/18		 13/6/18	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> ATTESTED </div>							



DIRECTORATE OF FISHERIES.

FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 81-91 /DF Dated Peshawar the 30/01/2018

Subject: - Cancellation of Office Order

The following office orders are hereby withdrawn/cancelled in the best interest of public service with immediate effect.

- ① Order NO.44-50/DF Dated 18/01/2018.
- 2- Order NO.30-36/DF Dated 18/01/2018.
- 3- Order NO.58-64/DF Dated 18/01/2018.
- 4- Order NO.51-57/DF Dated 18/01/2018.
- 5- Order NO.37-43/DF Dated 18/01/2018.

PA to Secy (FATA) FATA
D No 20/18
Dated 16/2/2018

Sd/-

(MUHAMMAD SHAFI MARWAT)
DIRECTOR FISHERIES FATA

Copy forwarded for information to:-

- 1-The PS to Additional Chief Secretary FATA.
- ✓ 2-The PS to Secretary Production & Livelihood Development Department FATA.
- 3-The Accountant General (PR) Sub Office Peshawar.
- 4-The Director General Fisheries Khyber Pakhtunkhwa Peshawar.
- 5-The Assistant Director Fisheries FATA Secretariat Peshawar.
- 6-The official concerned.

pl. spk.

ps.

20/2/18.

(MUHAMMAD SHAFIQ MARWAT)
DIRECTOR FISHERIES FATA

[Signature]
ATTESTED

محمد رفعت جانا۔ سیکرٹری پروڈکشن / اینٹولی بیورو ڈیولوپمنٹ ڈیپارٹمنٹ فاٹا

عنوان :- درخواست برائے بحالی ملازمت

Annex J

18 - جانا - عالی - 1

گزارش کی حاقی ہے کہ بزدہ کو معزز ذرائع سے معلوم ہوا تھا کہ ڈائریکٹر فٹنگ آفس

فاٹا میں نائب مانیجر می ہزد آسامیاں خالی پٹری میں جس کیلئے بزدہ نے درخواست جمع کیا

ڈائریکٹر فٹنگ آفس نے جسے بحوالہ Order No. 44-50/DF, Dated, 18/11/18

آسامی پر بھرتی کیا۔ بزدہ نے تعیناتی حکیمانہ کے سٹر انٹرو وینو ایبل کا مطابق ورد پیکل سپرٹنڈنٹ

سے 22/01/2018 کو ورد پیکل سپرٹنڈنٹ بنایا۔ بزدہ نے مذکورہ دفتر میں اپنی Arrival Report

اور ورد پیکل سپرٹنڈنٹ 22/01/2018 کو جمع کیا اور باقاعدہ طور پر اپنی ڈیوٹی شروع کرے

مزد پر یہ کہ 18/11/18 کو بزدہ کی گھری پت پر ڈاک / لفافہ موصول ہوا

جس کو وصول کر معلوم ہوا کہ ڈائریکٹر فٹنگ آفس نے گھری / تعیناتی کا حکیمانہ موصول

کیا ہے اور ملازمت سے نکال دیا ہے۔ منسوخی حکیمانہ موصول ہے۔

order No. 81-91/DF, Dated 30/1/18

میں آپ کے جوابات کے ذمین میں یہ بات لانا چاہتا ہوں کہ اس

منسوخی کے پیش پر پیرانا / بھولا تاریخ ڈالا گیا ہے۔ جو کہ خلاف قانون ہے۔ اور سزا

لاہنتی پر جہتی ہے۔ مزید یہ کہ اس سے پہلے بزدہ کو نہ تو Explanaction / شہکار لٹ

دیا گیا اور نہ ذاتی طور پر سنا گیا ہے۔ جو کہ قانون کے عین خلاف ہے۔ یعنی

بزدہ کے آپس کی آرڈر پیکل (04) کے تحت سٹلوں نہیں کیا گیا۔

(P.T.O)

ATTESTED

J

بندہ مزید عرض گزار ہے کہ مذکورہ منسوخی کا حکم نامہ سپریم کورٹ

کے فیصلوں کے بائیکل خلاف ہے اور اس سلسلے میں سپریم کورٹ کے فیصلوں

SCMR (1998)/1350/2026 . SCMR 678/2008 . SCMR 598 کا حوالہ دیا جانا ہے .

ان بندوں پر بالا فیصلوں کی روشنی میں غلط تعبیراتی/بھرتی کا لوجھ تعبیراتی کرنے والے افسر کا ذمے پڑتا ہے اور غنا شرہ و لازم کو غائبہ دیا جانا ہے .

گیرزا آپ صاحبان سے استدعا کی جاتی ہے کہ بندہ کا درخواست پر

بمدرانہ طور پر منسوخی کا حکم نامہ واپس لیا جائے اور بندہ کو اپنی وزارت

پر بحال کیا جائے تاکہ بندہ مزید پریشانیوں اور عدالتی عوارض سے بچ جائے

شرعی میراثی ہوگی .

(تعبیراتی حکم نامہ ، جیڈ ایف ایس سرٹیفکیٹ ، Arrival Report اور منسوخی حکم نامہ درخواست کا سارو دستاویز)

PA to Secy (P&LDI) FAIA
ID No. 2059
Dated 22/2/18

العارض

آلیا خلیل
Siddiq

محمد حسین ولد عطاء اللہ خان

مسکنہ مسلم آباد آرام نیشن (مکھنشی دل)

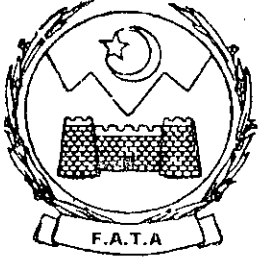
22/2/2018

بتاریخ

PA examine and PU

22/2/18

DS



ORDER:

Decision on the departmental appeals of five class IV employees submitted separately against the impugned order dated 30-01-2018 (Annex-I) passed by Mr. Muhammad Shafi Marwat, the then Director of Fisheries (OPS), wherein orders of appointment of the following five Class IV employees appointed on 18-01-2018 were withdrawn (with immediate effect):-

- | | | |
|----|----------------|------------------------|
| 1. | Umar Said | Driver |
| 2. | Saddam Hussain | Naib Qasid |
| 3. | Sadiqullah | Naib Qasid |
| 4. | Zakiullah | Chokidar. (ADP Scheme) |
| 5. | Naveed Ahmad | Driver (ADP Scheme) |

2. Through this order the undersigned in the capacity of appellate authority under the Khyber Pakhtunkhwa Civil Servant Appeal Rules 1986 intend to decide/dispose of the departmental appeals of Mr. Umar Said S/O Noor Said Driver, Mr. Saddam Hussain S/O Attaullah Khan Naib Qasid and Mr. Sadiqullah S/O Safi Ullah Naib Qasid who were appointed by the aforementioned appointing authority on regular basis and also decide the appeals of Mr. Zakiullah S/O Abdul Qahar appointed as Chowkidar on fixed pay in the ADP Scheme, "Strengthening of Fisheries Department in FATA" and that of Mr. Naveed Khan S/O Ayub on fixed pay as Driver in the said ADP Scheme as identical question of law/ facts is involved in the case of the two sets of employees. (Copies of their appointment orders are placed at Annx-II, III, IV, V and VI).

3. Facts of the case as averred from the memo of appeals of the aggrieved Civil/ Government Servants, reveal that the then Acting Director Fisheries appointed all the above officials through different orders on the same date i.e. 18-01-2018. They accordingly got medical fitness certificates from the designated/ authorized Medical Officer and submitted their arrival report for duty to the Director Fisheries FATA. The record reveals that orders of appointment of the aforementioned officials were cancelled / withdrawn vide impugned order No. 81-91/DF dated 30-01-2018 by the said appointing authority through a simple withdrawal order without mentioning therein any rhyme or reason for the said cancellation. The appellants have alleged in their appeals that cancellation order was

ATTESTED

communicated to them on 16-18th February, 2018 while date of issue on the same was recorded as 30-01-2018 giving the same back effect which they claimed to be an act of mala fide on part of the appointing authority, contending further that no one could be punished retrospectively. This claim of the appellant is endorsed from the receipt of a copy of the impugned order in the office of PS to Secretary P&LDD 16-02-2018 duly diarized as such (Ann-VII). The appellants further alleged that no inquiry was made in the case nor was any show cause issued to them before the issuance of the impugned order adding further that no personal hearing was given to them before they were condemned which was glaring violation of the law as in terms of judgment of the Supreme Court of Pakistan reported in PLD 2008 supreme Court 412 (Ann-Viii) which states that principles of natural justice require that orders adverse to the interest of a person cannot be passed without providing him an opportunity of hearing and departure from such rule may render such order illegal. They complained that they were not given opportunity of fair trial as enshrined in article 10 A of the constitution nor were they treated according to law as per Article 4 of the constitution.

4. The appeals of all the five appellants were forwarded to the Director Fisheries FATA for his comments vide letter dated 26-02-2018 and 28-02-2018 who vide letter dated 5-03-2018 in his capacity as Deputy Director Fisheries FATA furnished a sketchy reply which is placed at (Annex IX). Instead of offering comments on the appeals and advancing cogent reasons or justification in support of cancellation of the orders of the appointment of the appellants, he contended in Para 3 of his letter that the orders were issued due to the intense pressure of the secretary P&LDD FATA. This stance of the officer is baseless in view of his contention in Para 2 of the very letter where he stated that he submitted a note on 9-02-2018 seeking guidelines / directives which according to him remained unresponded till now. One fails to understand as to what guidance he needed on 9-02-2018 when he had already cancelled/ withdrawn all the five orders of appointment much earlier on 30-01-2018. It simultaneously falsifies his contention of the alleged pressure of the Secretary PL&DD for the said appointments as in the presence of such pressure the unilateral withdrawal cancellation order would not have been made by the said officer who admits having sustained pressures for doing illegal things in the first instance. It also transpires from the comments that in order to cover up his guilt and avoid the likely embarrassment, the officer back dated the impugned order dated 30-01-2018 which most probably was issued around mid-February as is evident from the statements of the appellants in their appeals, as the date of the communication to them of the impugned order is endorsed from the delivery of a copy of the said order on 16-02-2018 to the PS to Secretary P&LDD FATA (Annex-Vii).

5. From the perusal of the contents of the appeals, perusal of the comments of the Deputy Director Fisheries dated 5-03-2018, other relevant record such as letters of the appointment of the appellants, copies of their medical fitness certificates and their arrival reports for duty in the office of

ATTESTED

the appointing authority, lead me to believe that all the appellants were appointed by the Director Fisheries being competent authority under the rules and there was no illegality or fault, if any, on the part of these appointees whose appointment orders were subsequently cancelled / withdrawn by the said authority without fulfillment of the due process of law and without giving of any show cause notice and without any opportunity of personal hearing to the aggrieved government servants. These orders were given effect from back date. This being so, the reliance of the appellants on the judgment of the august supreme court of Pakistan contained in 2008 SCMR 598, 1996 SCMR 1350 and 2006 SCMR 678 (Annex-X) conform to and fits fully to the circumstances of the present appellants as they were not at fault at any stage of their recruitment, the onus of the entire process however lie on the competent authority who in the first instance appointed all the appellants on different positions, got them medically examined from the authorized Medical officer, accepted their arrival reports for duty and then without following the legal processes took a U-turn and dispensed with their services with a single stroke of pen without fulfillment of the legal requirement of conducting enquiry, issuance of show case notice and opportunity for personal hearing, as required under the law and binding under the principles natural justice.

6. In the circumstances, the undersigned in the capacity of appellate authority in terms of rule 5 of the Khyber Pakhtunkhwa Civil Servants Appeal rules 1986 by accepting the appeals of the three regular employees set aside the impugned order 30-01-2018 passed by the competent authority and reinstate these appellants as mentioned in para 1 of this order in their service from the date of cancellation of their appointment order with all back benefits of service. The competent authority shall take further necessary action in light of rule 5 (2) of the rules ibid in respect of the three officials namely Umar Said, Saddam Hussain and Sadiq ullah who were appointed against the regular positions.

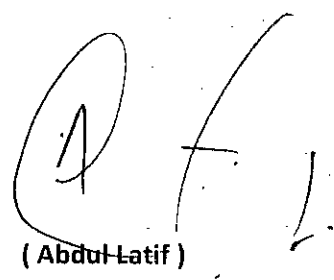
7. As for the case of the other two employees i.e. Mr. Zakiullah (Chowkidar) and Mr. Naveed (Driver) who were appointed against the project posts and who are similarly placed persons, they also deserve and are required to be treated similarly and equally. Their appeals for reinstatement are also accepted by setting aside the impugned order dated 30-01-2018. The competent authority shall reinstate them in service from the date of their removal along with all back benefits of service. In this context reliance is placed on case law contained in judgment of the Supreme Court of Pakistan titled Hameed Akhtar Niazi VS The Secretary Establishment Division Government of Pakistan and other, relevant portion whereof is reproduced. If the service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/

ATTESTED

Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

8. It is also relevant to place on record that in furtherance of the case of Good governance and, for reduction of litigations for and against the government, the Government of Khyber Pakhtunkhwa has taken a very good/ positive initiative by constitution of committees at provincial and department level (Annex-XII) to review the service cases pending in different courts and decide the same at the department level. My this decision would be in line with the said policy and save the government and the individuals from unnecessary litigations.

Dated 12-03-2018



(Abdul Latif)

Secretary Production & Livelihood
Development Department.
(Appellate Authority)

ATTESTED



Annex 2nd -23



DIRECTORATE OF FISHERIES

FATA SECRETARIAT PESHAWAR

Phone: (091) 9211799 | Fax: (091) 9211799

2351-57
No. _____ /DF

Dated Peshawar the 10/04/2018

OFFICE ORDER

The undersigned in the capacity of Appellate Authority in terms of rules 5 of the Khyber Pakhtunkhwa Civil Servants Appeal rules 1986, by accepting the appeal of the following employees, set aside the impugned order passed by the Director Fisheries FATA vide No.81-96/DF dated 30/01/2018 and reinstate these appellants in their service from the date of cancellation of their appointment order with all back benefits in the best interest of public service.

1. Mr. Umer Said S/O Noor Said Driver (BPS-04). (Regular Base)
2. Mr. Sadam Hussain S/O Atta Ullah Khan Naib Qasid (BPS-03) (Regular Base)
3. Mr. Sadiq Ullah S/O Safi Ullah Naib Qasid (BPS-03). (Regular Base)
4. Mohammad Naveed S/O Mohammad Ayub Driver (PPS-01) on Fixed Pay @16000 per month) under the project "Strengthening of Fisheries Department in FATA"
5. Mr. Zaki Ullah S/O Abdul Qahar Chowkidar (PPS-01) on Fixed Pay @16000 per month) under the project "Strengthening of Fisheries Department in FATA"

--Sd--

(ABDUL LATIF)

**SECRETARY PRODUCTION & LIVELIHOOD
DEVELOPMENT DEPARTMENT FATA
(APPELLATE AUTHORITY)**

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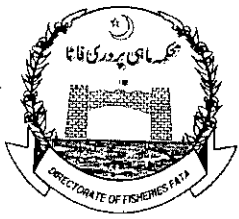
1. Additional Accountant General (PR) Sub Office Peshawar.
2. PS to Additional Chief Secretary FATA.
3. PS to Secretary Production & Livelihood Development Department FATA with reference to his detail order dated 12/03/2018 and subsequently orders on Note Sheet dated 06/04/2018.
4. Director General Fisheries Department Khyber Pakhtunkhwa.
5. Section Officer P&LDD FATA with reference to his office letter No.SO/P&LDD/FS/Fisheries/1-9/13/715-16 dated 13/03/2018.
6. Deputy Director Fisheries (H/Q) FATA/ Superintendent Fisheries FATA
7. Incharge B&A Section and Disburser (H/Q) FATA & Official concerned

ATTESTED

**DIRECTOR FISHERIES
FATA**

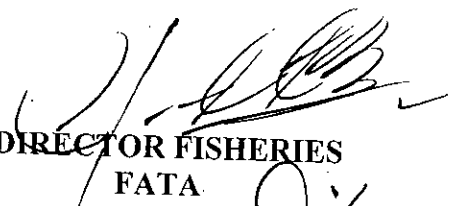
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Annex M² - 24

	<p>DIRECTORATE OF FISHERIES. FATA SECRETARIAT PESHAWAR. Phone: (091) 9211799 Fax: (091) 9211799 No. <u>3607</u>¹⁴ DF Dated Peshawar the <u>15</u> /11/2018.</p>
---	---

OFFICE ORDER

In pursuance of the findings / recommendations of the report of the enquiry into the illegal appointments, on account of non-observance of proper procedure & non-fulfillment of codal formalities during recruitment process of Class IV staff, communicated to the Production & Livelihood Development Department FATA, vide the AI&C Department FATA Secretariat letter No.FS/E/100-62(ul-6)6649-51 dated 04-09-2018, the services of Mr. Saddam Hussain working as Naib Qasid (BPS-3) are hereby terminated with immediate effect for being irregular, illegal and void ab initio.


DIRECTOR FISHERIES
FATA
2/15/11

Copy forwarded for information to:-

1. AG.PR Sub office Peshawar
2. PS to Additional Chief Secretary FATA
3. PS to Secretary AI&C FATA
4. PS to Secretary P&LDD FATA
5. Section Officer-II P&LDD FATA with reference to instructions contained in his letter No. SO (P&LDD)/FS/Fisheries/1-9/18/2668-69 dated 14-11-2018,
6. Deputy Director Fisheries H/Q FATA
7. Drawing & Disbursing Officer Fisheries H/Q FATA for further necessary action.
8. Mr. Saddam Hussain S/O Atta Ullah Khan R/O Ram Kushan Muslin Abad Bakhshie Pull Peshawar

ATTESTED

M

10
10
Dy No- 8627 /
dated 26-11-18.

The Secretary,
Agriculture, Livestock &
Dairy Development, Fisheries Department,
Civil Secretariat, Peshawar.

Annex N^o - 25

Subject: Departmental Appeal against the order dated 15.11.2018 passed by the Director Fisheries (FATA) whereby appellant was terminated from service on the ground of irregular appointment.

Respected Sir,

With due respect I have the honour to submit this departmental appeal for your kind consideration and favourable action on the following facts and grounds:

1. That appellant is a bonafide resident of District Peshawar vide Domicile Certificate (*Annex:-A*) and also literate person. Appellant possesses the Employment Registration Card (*Annex:-B*) which has been acquired from the concerned quarter after observing all the codal formalities.
2. That some posts of Class-IV in the office of the Director Fisheries FATA were lying vacant, therefore approval was sought from the competent authority for initial recruitment from amongst the deserving candidates vide letter dated 03.01.2018 (*Annex:-C*). Later on, after obtaining the same proper Departmental Selection Committee was constituted for the purpose vide letter dated 08.01.2018 (*Annex:-D*).
3. That appellant applied for the post of the Naib Qasid and went through selection process and successfully qualified the same and was appointed against the post of Naib Qasid on 18.01.2018 (*Annex:-E*).
4. That pursuant to the appointment order appellant was medically examined by the authorized Medical Officer and was found fit vide Certificate (*Annex:-F*) and submitted Arrival Report (*Annex:-G*) and started performing duties to the entire satisfaction of the high-ups, there is no stigma on the service career of the appellant even in the shape of minor penalty. It is significant to add here that proper Service Book (*Annex:-H*) was maintained wherein requisite entries were made.
5. That after just one month all of sudden vide order dated 30.01.2018 (*Annex:-I*) the appointment order of the appellant was withdrawn by the Director Fisheries without assigning any reasons muchless lawful. Appellant being aggrieved of the same availed the remedy of Departmental Appeal dated 22.02.2018 (*Annex:-J*) which was accepted and appellant was re-instated into service alongwith others with all back benefits in comprehensive detailed combined order dated 12.03.2018 (*Annex:-K*) pursuant to which the Department also issued reinstatement order of the appellant alongwith others dated 10.04.2018 (*Annex:-L*).
6. That appellant again started performing his duties but after 8/9 months vide impugned order dated 15.11.2018 (*Annex:-M*) the Director Fisheries FATA terminated service of appellant again without observing mandatory provisions/ formalities.
7. That against the above-mentioned order dated 15.11.2018, appellant now prefers this departmental appeal to your good-self for favorable considerations inter-alia on the following grounds:-

GROUNDS

- A. That appellant was not treated in accordance with law, rules and policy on subject and dealt with in violation of Articles 4&25 of the Constitution of Islamic Republic of

ATTESTED

Pakistan, 1973 and unlawfully terminated from service, which is unjust, unfair and hence not sustainable in the eye of law.

- B. That the appellant was properly appointed in accordance with law on the recommendation of the properly constituted Selection Committee by the competent authority after observing all the codal formalities. His appointment order was acted upon, carried into effect and now valuable rights have been accrued in favour of appellant which cannot be taken away under the principle of locus poenitentiae and for that matter principle of promissory estoppel.
- C. That the appointment process of the appellant was conducted according to the rules by the competent authority and no irregularity whatsoever in the process of selection of appellant was pinpointed even in the office order dated 10.04.2018. It is also added that earlier in response to the departmental appeal of the appellant against his withdrawal of appointment order the Appellate Authority was pleased to reinstate appellant along with others with all back benefits. Appellant was performing his duties but the then Competent Authority again terminated appellant from service on the same set of allegations on which earlier the appointment order of the appellant was withdrawn, however, the fact remains that during the appointment of appellant no irregularity was committed.
- D. That besides, it is a settled law that if any irregularity in the process of selection is committed by the competent authority then it is the competent authority who is to be held responsible and for that lapse the poor employees cannot be made to suffer. However, in the case in hand no illegality was found.
- E. That as per Article-13 of the Constitution of the Islamic Republic of Pakistan 1973 "No person shall be prosecuted or punished for the offence more than once," therefore, appellant was terminated from service on the same set of allegations on which the appointment order of the appellant had earlier been withdrawn hence, the same amounts to *double jeopardy* and is thus ultra vires of the Constitutional mandate and as such is liable to be struck down.
- F. That it is a settled legal principle that where major penalty is proposed then only a regular enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. In the case in hand a summary enquiry was concluded in an irregular manner and appellant was illegally terminated from service. Thus the impugned enquiry being irregular and the impugned orders based thereupon are nullity in the eye of law and hence liable to be set aside.
- G. That appellant was rendered defenseless in an illegal manner. Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 has been violated and appellant was not given a chance of fair trial.

It is, therefore, humbly requested that on acceptance of this departmental appeal, the impugned order dated 15.11.2018 passed by the Director Fisheries, FATA may kindly be set aside and the appellant may be reinstated into service with all back benefits.

ATTESTED
ATTESTED

Yours faithfully

Sadam

Sadam Hussain,
Ex- Naib Qasid
Agriculture, Livestock &
Dairy Development,
Fisheries Department,
Civil Secretariat, Peshawar.

Dated: 26 /11/2018

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Sadam Husain

Appeal No. 373/2019

Appellant(s)/Petitioner(s)

VERSUS

Govt and others

Respondent(s)

I/We Appellant do hereby appoint **Mr. Khaled Rehman, Advocate** in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate, Peshawar.

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

Sadam
Signature of Executants

M. Ameen Akbar
Advocate

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR**

Service Appeal No.373/2019

**Sadam Hussain Verses Govt of kpk Agriculture Livestock Department
& Others**

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.373/2019

- 1. Sadam Hussain S/O Atta Ullah R/O Muslim Abad Chrssada Road Bakhshi Pull PeshawarAppellant.

Verses

- 1. Secretary Agriculture, Livestock & Dairy Development and Fisheries Department Khyber PakhtunkhwaRespondent
- 2. Director Fisheries Newly Merged Area Warsak Road Peshawar..... Respondent.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.01 & 04

Respectfully Sheweth:

PRELIMINARY OBJECTIVES

- 1. That the appellant has got no cause of action to file instant appeal.
- 2. That the appellant has not come to honorable Tribunal with clean hands.
- 3. That the appellant has concealed material facts from the honorable Tribunal.
- 4. That the appellant is estopped by his won conduct to bring the present appeal.
- 5. That the appeal is bad due to misjoinder and non joinder of necessary parties.
- 6. The appeal has badly time barred

FACTS.

- 1. No Comments.
- 2. Correct to the extent that some Class-IV posts were lying vacant in this office and approval was granted by the competent authority to fill the posts but the departmental selection committee has neither conducted test or interview nor selected any body.
- 3. Incorrect, the appellant application was handed over by the then Secretary P&LDD Ex-FATA being his close relative and thereafter the process of appointment was remained incomplete as neither Departmental Selection committee was notified nor interview etc was conducted.
- 4. Incorrect. Neither medical certificate and arrival report etc, were submitted to the then Director Fisheries by the appellant nor he performed any duty. His alleged appointment order /cancellation order is attached (Annex-A). The applicant submitted his arrival report and medical certificate when he was reinstated by the Secretary Production & Livelihood Development Department. The statement of the then Director Fisheries is attached for ready reference (Annex-B)

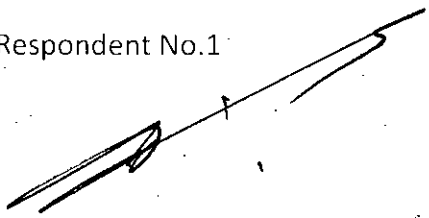
- ②
5. Incorrect. As stated by the then Director Fisheries, He issued appointment orders under the pressure of the Secretary Production & Livelihood Development Department, but soon after realizing that the appointment orders is illegal then, He issued cancellation order of the official **(Annex-C)**. The appellant neither arrived the Directorate nor performed any duties. Subsequently the officials submitted appeals to the Secretary Production & Livelihood Development Department who accepted his request for reinstatement and official was reinstated **(Annex-D)**.
 6. An inquiry was ordered by the Additional Chief Secretary FATA and the inquiry officer submitted his report **(Annex-E)** which clearly stated that the appointment order of the official was illegal and unlawful and against Merit, transparency & fair competition. Therefore in the light of findings of the inquiry report the Directorate of Fisheries Ex- FATA issued termination orders of the official **(Annex-F)**.
 7. No Comments.

GROUND

- A. The appellant were treated under the laws.
- B. Incorrect. The appointment was made on the pressure of the then Secretary Production & Livelihood Development Department without fulfillment of codal formalities as the applications of appellant was personally handed over by the then Secretary Production & Livelihood Development Department FATA. Thereafter no selection process was completed i.e (No Advertisement of Posts, selection committee notified, No interview of official conducted by the selection committee which is clear from the statement of the then Director Fisheries FATA **(Annex-G)**. Due to the reason the then Director Fisheries issued cancellation order of the official.
Again on appeal of applicant to the same Secretary Production & Livelihood Development Department, he issued reinstatement order of the officials . But subsequently Additional Chief Secretary FATA conducted a inquiry who declared the appointment illegal. Irregular. ab-initio.
- C. Incorrect. As the case was not related to the in-efficiency or Misconduct of official rather the case was related to illegal initial appointment as irregularities made in appointment of the officials. Due to the reason inquiry officer found appointment process irregular and unlawful against merit and transparency.
- D. Incorrect. The orders were withdrawn due to illegal /unlawful process. The appellant, nor submitted arrival report to the competent authority neither preformed duties in the Directorate. As the appellant was close relative of the Secretary P&LDD, therefore he reinstated the office due to nepotism .

- E. The illegal appointment orders were withdrawn by the then Director Fisheries However the reinstatement was worst example of nepotism by the Secretary P&LDD FATA being his close relative.
 - F. The fact finding inquiry was legal/ under the rules and its decision for implementation was under the rules. The appellant has no right of service.
 - G. As above in "F"
 - H. The appellant was proceeded according to the laws.
 - I. There was no need for show cause or personal hearing, as the case was not pertaining to in- efficiency or misconduct but it was a case of illegal appointment without merit, fair competition, and without fulfillment of codal formalities under the rules. The appellant was appointed on the verbal direction of the secretary P&LDD FATA being his close relative and after proceeding of the inquiry his service was terminated by the ACS EX-FATA.
 - J. No comments.
- It is further humbly prayed that the instant appeal may be dismissed please.

Respondent No.1

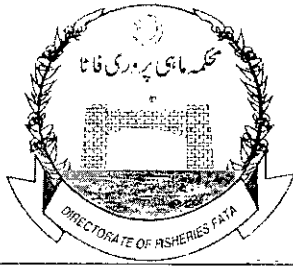


Secretary Agri Livestock Khyber Pakhtunkhwa

Respondent No.4



Director Fisheries Merged Areas



DIRECTORATE OF FISHERIES.
MERGED AREAS.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 1191-97/DF

Dated Peshawar the 17/09/2019.

To

✓ Mr. Amin Jan
Assistant Director Fisheries H.Q
Merged Districts

Subject:- **SERVICE APPEAL NO.373/2019. SADAM HUSSAIN VS DIRECTOR FISHERIES & OTHERS.**

Reference: Director General Fisheries Khyber Pakhtunkhwa Peshawar office letter No.462-64/DGF/L&S/C-05 dated 16-09-2019, on, subjected noted above (copy enclosed) which is self explanatory.

You are directed to process and complete the formalities under subject case and also hereby authorized to attend the Service Tribunal hearing on behalf of respondents till decision of the case and submit the progress regularly.


**DIRECTOR FISHERIES
MERGED DISTRICTS**

Copy to:-

1. Assistant Advocate General Khyber Pakhtunkhwa Service Tribunal.
2. Director General Fisheries Khyber Pakhtunkhwa Peshawar w.r to his letter quoted above.
3. Section Officer (Lit) Agriculture, Livestock Fisheries and Cooperative Department Khyber.
4. Section Officer (LFC) Agriculture, Livestock Fisheries and Cooperative Department Khyber.
5. Deputy Director Fisheries Merged Areas to overall supervise.
6. Mr. Ibrar Ahmad Office Assistant (Establishment). He is directed to assist.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No.373 of 2019

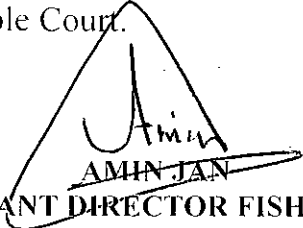
Mr.Sadam HussainAppellant

Versus

Director Fisheries Merged Areas & Others ..(Respondent)

AFFIDAVIT

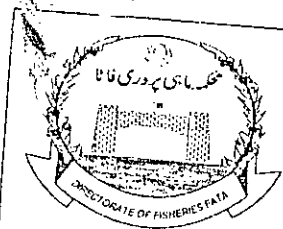
I Amin Jan Assistant Director Fisheries H.Q Merged Areas , do hereby solemnly affirm and declare that the contents of the reply at Page 01 to 20 submitted, is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Honorable Court.


AMIN JAN
ASSISTANT DIRECTOR FISHERIES
MERGED AREAS

CNIC. 17301-4487975-3

Identified by

**Advocate General
Khyber Pakhtunkhwa**



DIRECTORATE OF FISHERIES.

FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799
No. 44-50/DF Dated Peshawar the 18/01/2018.

OFFICE ORDER.

Mr. Saddam Hussain S/O Atta Ullah Khan r/o Ram Kushan Muslim Abad Baksheesh Pull Peshawar is hereby appointed as Naib Qasid BPS-03 (Rs. 9610-390-21310) with usual allowances as admissible under the rules in the Directorate of Fisheries FATA with immediate effect, in the best interest of public service.

The Terms and conditions would be as under:-

- 1 The Terms and conditions of his appointment to the post will be applicable as per the instruction issued by the Govt. of Khyber Pakhtun Khwa, from time to time.
- 2 The appointment is purely on temporary basis initially for a period of one year probation, further extendable upto two years, and his services can be terminated without assigning any reason thereof before the expiry of the period of probation/extended period of probation, if his work during this period is not found satisfactory. In such an event, he will be given a month's notice of termination from service or one month's pay in lieu thereof.
- 3 In case he wishes to resign at any time one month notice will be necessary, otherwise in lieu thereof a month pay shall be forfeited or deposited to Government treasury.
- 4 He shall be entitled to all facilities relating to pay, T.A and Medical attendance etc. as may be issued by the Government for the status of the Government Servant to which he belongs.
- 5 He shall be liable to and Governed by the Government of Khyber Pakhtun Khwa Government servant (Conduct) Rules, 1987 Khyber Pakhtun Khwa Government- Servant (Efficiency & Disciplinary) Rules, 2011 and all others orders/instructions of the Government in this behalf.
- 6 He will be regular contributor of GP Fund as per Government instructions.
- 7 He will produce medical fitness certificate from the medical authorities.
- 8 If the appointee is agreed upon to the above TOR, he may report for his duty to the concerned authority within 15 days. In case of failure, his appointment shall stand cancel automatically.
- 9 He can be transferred on any class - IV vacancy/post in the Khyber Pakhtun Khwa Fisheries Department or Directorate of Fisheries Department FATA

SD/-

(MUHAMMAD SHAFI MARWAT)

DIRECTOR FISHERIES

FATA

Copy forwarded for information to:-

- 1- The PS to Additional Chief Secretary FATA.
- 2- The PS to Secretary Production Livelihood and Development Department FATA.
- 3- The Accountant General (PR) Sub Office Peshawar.
- 4- The Director General Fisheries Khyber Pakhtun Khwa Peshawar.
- 5- The Assistant Director Fisheries FATA Secretariat Peshawar.
- ✓ 6- The Official Concerned.


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

(MUHAMMAD SHAFI MARWAT)

Annex A - (21)
Annex A (7)



DIRECTORATE OF FISHERIES.

FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 81-91 /DF Dated Peshawar the 30/01/2018

Subject: - Cancellation of Office Order

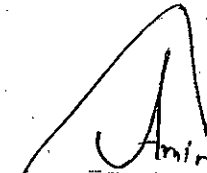
The following office orders are hereby withdrawn/cancelled in the best interest of public service with immediate effect.


- 1- Order NO.44-50/DF Dated 18/01/2018.
- 2- Order NO.30-36/DF Dated 18/01/2018.
- 3- Order NO.58-64/DF Dated 18/01/2018.
- 4- Order NO.51-57/DF Dated 18/01/2018.
- 5- Order NO.37-43/DF Dated 18/01/2018.


(MUHAMMAD SHAFI MARWAT)
DIRECTOR FISHERIES FATA

Copy forwarded for information to:-

- 1-The PS to Additional Chief Secretary FATA.
- 2-The PS to Secretary Production & Livelihood Development Department FATA.
- 3-The Accountant General (PR) Sub Office Peshawar.
- 4-The Director General Fisheries Khyber Pakhtunkhwa Peshawar.
- 5-The Assistant Director Fisheries FATA Secretariat Peshawar.
- 6-The official concerned.


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR


(MUHAMMAD SHAFI MARWA)
DIRECTOR FISHERIES FATA



FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 3142-45/DF

Dated Peshawar the 31/07/2018

A on B
Office of the Director
Margined Areas
Peshawar

8

To

The Section Officer Production & Livelihood
Development Department FATA Secretariat
Peshawar.

Subject: MINUTES OF DEPARTMENTLE SELECTION COMMITTEE

Reference your office letter NO.SO-II/PLDD/FS/Fisheries/1-9/13/1883-86 Dated the 12 July 2018 and DF Letter NO. 3037-39/DF Dated 18/07/2018., the detail of the case as,

A meeting has been held under the chairmanship of Secretary Production & Livelihood Development Department FATA on 03/01/2018, about the status/filling of the vacant posts in Directorate of Fisheries FATA. As per directives a file has been moved for approval of the filling of the vacancy (both Developmental/Regular) in the Directorate of Fisheries FATA (Annex Flag- A). The worthy Secretary Production & Livelihood Development Department FATA, approved the case and returned the file on the same date.

A letter was issued to the Manager Employment Exchange Peshawar on 08/01/2018 (Annex Flag- B). to do the needful under Government policy.

As per rules for Departmental Selection Committee was constituted and approved from the Secretary Production & Livelihood Development Department FATA (Annex Flag- C).

The worthy Manager Employment Exchange Peshawar has given no response till 18/01/2018. During this period the Secretary Production & Livelihood Development Department FATA has handed over a list of the following to the undersigned for appointment.

- 1- Mr. Sadiq Ullah S/O Safi Ullah Mohmand Agency for Naib Qasid. (Regular).
- 2- Mr. Saddam Husain S/O Atta Ullah Peshawar for Naib Qasid. (Regular).
- 3- Mr. Mohammad Naveed S/O Mohammad Ayub Peshawar for Driver (Developmental).
- 4- Mr. Zaki Ullah S/O Abdul Qahar Peshawar for Chowkidar (Developmental)
- 5- Mr. Umar Said S/O Noor Said Peshawar for Driver. (Regular).

The undersigned like in past refused to do the same and insisted that the appointment will be done on merit but the worthy Secretary P & L D D FATA pressed the undersigned and directed that he has discussed the issue with Manager Employment Exchange Peshawar and he (Manager) will send the list of these candidates from serial NO. 1 to serial NO.5. So due to intense pressure of the Secretary Production & Livelihood Development Department FATA and non-response from the Manager Employment Exchange Peshawar the undersigned issued the appointment orders in respect of the class IV on Dated 18/01/18 as per above list.

The undersigned was directed by the Secretary Production & Livelihood Development Department FATA that Mr. Saddam Husain S/O Atta Ullah Peshawar at serial NO.2 and Mr. Zaki Ullah S/O Abdul Qahar Peshawar at serial NO.4 are his relative. While by appointing the other candidates, he (Secretary P & L D D FATA) intends to oblige some Higher ups.

After this process a letter from the manager Employment Exchange Peshawar of dated 19/01/2018 was received on 29/01/2018. Where upon it was advised to advertise these posts accordingly. (Annex Flag-D). When it was brought into the notice of Secretary Production & Livelihood Development Department FATA, he advised the undersigned that nothing would happen All is correct, do not worry and it is FATA not settled area.

After receiving cold response from Secretary Production & Livelihood Development Department FATA, the undersigned cancelled /withdrawn all the appointment orders in respect of the class IV on 30/01/2018 being issued without completing codal formalities (Annex Flag-E). The Secretary Production & Livelihood Development Department FATA were informed through the same letter and verbally. A note sheet (Annex Flag-F), moved to the Secretary Production & Livelihood Development Department FATA and requested that approval may be given to the undersigned to advertise these posts in the leading newspapers through Director-Information FATA. But the same was not returned to the undersigned for any action.

Assistant Director Fisheries
Margined Areas
Peshawar

In addition to this, it is pertinent to point out here that nobody has submitted their arrival report in the Directorate of Fisheries FATA to the appointing authority, and have not join their duties nor they have been paid for. The Secretary Production & Livelihood Development Department FATA pressurized the undersigned for reinstatement but in vain as I refused for any illegal orders. ۴

2/6/18
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On 01-03-2018, Mohammad Arshad Aziz (BS-19) took charge of the post of Director Fisheries FATA. The employees appealed to Secretary Production & Livelihood Development Department FATA for reinstatement. When the Director Fisheries FATA directed for comments in this case the undersigned submitted a letter (Annex Flag-G).

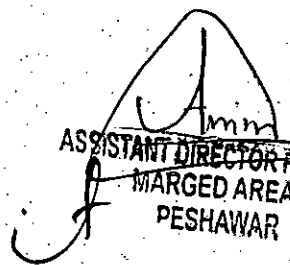
After this the undersigned have no information that who was appointed/reinstated and by whom.


MOHAMMAD SHAFI MARWAT

Deputy Director Fisheries Newly Merged Districts

Copy forwarded for information to:-

- 1- The PS to Additional Chief Secretary Newly Merged Districts.
- 2- The PS to Secretary Production & Livelihood Development Department Newly Merged Districts
- ✓ 3- The Director Fisheries Newly Merged Districts.


ASSISTANT DIRECTOR FISHERIES
MERGED AREAS
PESHAWAR


MOHAMMAD SHAFI MARWAT
Deputy Director Fisheries Newly Merged Districts

Annex C

2

10

Annex - C



DIRECTORATE OF FISHERIES.

FATA SECRETARIAT PESHAWAR.

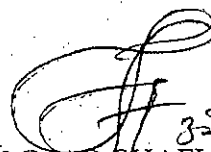
Phone: (091) 9211799 | Fax: (091) 9211799

No. 81-91 /DF Dated Peshawar the 30/01/2018

Subject: - Cancellation of Office Order

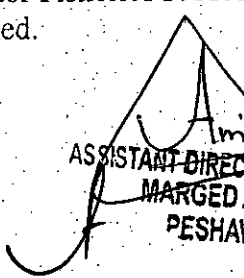
The following office orders are hereby withdrawn/cancelled in the best interest of public service with immediate effect.

- 1- Order NO.44-50/DF Dated 18/01/2018.
- 2- Order NO.30-36/DF Dated 18/01/2018.
- 3- Order NO.58-64/DF Dated 18/01/2018.
- 4- Order NO.51-57/DF Dated 18/01/2018.
- 5- Order NO.37-43/DF Dated 18/01/2018.


(MUHAMMAD SHAFI MARWAT)
DIRECTOR FISHERIES FATA

Copy forwarded for information to:-

- 1-The PS to Additional Chief Secretary FATA.
- 2-The PS to Secretary Production & Livelihood Development Department FATA.
- 3-The Accountant General (PR) Sub Office Peshawar.
- 4-The Director General Fisheries Khyber Pakhtunkhwa Peshawar.
- 5-The Assistant Director Fisheries FATA Secretariat Peshawar.
- 6-The official concerned.


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR


(MUHAMMAD SHAFI MARWA)
DIRECTOR FISHERIES FATA



ORDER:

Decision on the departmental appeals of five class IV employees submitted separately against the impugned order dated 30-01-2018 (Annex-I) passed by Mr. Muhammad Shafi Marwat, the then Director of Fisheries (OPS), wherein orders of appointment of the following five Class IV employees appointed on 18-01-2018 were withdrawn (with immediate effect):-

- | | | |
|----|----------------|-----------------------|
| 1. | Umar Said | Driver |
| 2. | Saddam Hussain | Naib Qasid |
| 3. | Sadiqullah | Naib Qasid |
| 4. | Zakiullah | Chokidar (ADP Scheme) |
| 5. | Naveed Ahmad | Driver (ADP Scheme) |

2. Through this order the undersigned in the capacity of appellate authority under the Khyber Pakhtunkhwa Civil Servant Appeal Rules 1986 intend to decide/dispose of the departmental appeals of Mr. Umar Said S/O Noor Said Driver, Mr. Saddam Hussain S/O Attaullah Khan Naib Qasid and Mr. Sadiqullah S/O Safi Ullah Naib Qasid who were appointed by the aforementioned appointing authority on regular basis and also decide the appeals of Mr. Zakiullah S/O Abdul Qahar appointed as Chowkidar on fixed pay in the ADP Scheme, "Strengthening of Fisheries Department in FATA" and that of Mr. Naveed Khan S/O Ayub on fixed pay as Driver in the said ADP Scheme as identical question of law/ facts is involved in the case of the two sets of employees. (Copies of their appointment orders are placed at Annx-II, III, IV, V and VI).

3. Facts of the case as averred from the memo of appeals of the aggrieved Civil/ Government Servants, reveal that the then Acting Director Fisheries appointed all the above officials through different orders on the same date i.e. 18-01-2018. They accordingly got medical fitness certificates from the designated/ authorized Medical Officer and submitted their arrival report for duty to the Director Fisheries FATA. The record reveals that orders of appointment of the aforementioned officials were cancelled / withdrawn vide impugned order No. 81-91/DF dated 30-01-2018 by the said appointing authority through a simple withdrawal order without mentioning therein any rhyme or reason for the said cancellation. The appellants have alleged in their appeals that cancellation order was

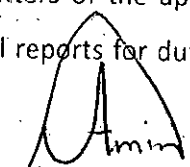
ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

18

communicated to them on 16-18th February, 2018 while date of issue on the same was recoded as 30-01-2018 giving the same back effect which they claimed to be an act of mala fide on part of the appointing authority, contending further that no one could be punished retrospectively. This claim of the appellant is endorsed from the receipt of a copy of the impugned order in the office of PS to Secretary P&LDD 16-02-2018 duly diarized as such (Ann-VII). The appellants further alleged that no inquiry was made in the case nor was any show cause issued to them before the issuance of the impugned order adding further that no personal hearing was given to them before they were condemned which was glaring violation of the law as in terms of judgment of the Supreme Court of Pakistan reported in PLD 2008 supreme Court 412 (Ann-Viii) which states that principles of natural justice require that orders adverse to the interest of a person cannot be passed without providing him an opportunity of hearing and departure from such rule may render such order illegal. They complained that they were not given opportunity of fair trial as enshrined in article 10 A of the constitution nor were they treated according to law as per Article 4 of the constitution.

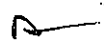
4. The appeals of all the five appellants were forwarded to the Director Fisheries FATA for his comments vide letter dated 26-02-2018 and 28-02-2018 who vide letter dated 5-03-2018 in his capacity as Deputy Director Fisheries FATA furnished a sketchy reply which is placed at (Annex IX). Instead of offering comments on the appeals and advancing cogent reasons or justification in support of cancellation of the orders of the appointment of the appellants, he contended in Para 3 of his letter that the orders were issued due to the intense pressure of the secretary P&LDD FATA. This stance of the officer is baseless in view of his contention in Para 2 of the very letter where he stated that he submitted a note on 9-02-2018 seeking guidelines / directives which according to him remained un-responded till now. One fails to understand as to what guidance he needed on 9-02-2018 when he had already cancelled/ withdrawn all the five orders of appointment much earlier on 30-01-2018. It simultaneously falsifies his contention of the alleged pressure of the Secretary PL&DD for the said appointments as in the presence of such pressure the unilateral withdrawal cancellation order would not have been made by the said officer who admits having sustained pressures for doing illegal things in the first instance. It also transpires from the comments that in order to cover up his guilt and avoid the likely embarrassment, the officer back dated the impugned order dated 30-01-2018 which most probably was issued around mid-February as is evident from the statements of the appellants in their appeals, as the date of the communication to them of the impugned order is endorsed from the delivery of a copy of the said order on 16-02-2018 to the PS to Secretary P&LDD FATA (Annex-VII).

5. From the perusal of the contents of the appeals, perusal of the comments of the Deputy Director Fisheries dated 5-03-2018, other relevant record such as letters of the appointment of the appellants, copies of their medical fitness certificates and their arrival reports for duty in the office of


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR



the appointing authority, lead me to believe that all the appellants were appointed by the Director Fisheries being competent authority under the rules and there was no illegality or fault, if any, on the part of these appointees whose appointment orders were subsequently cancelled / withdrawn by the said authority without fulfillment of the due process of law and without giving of any show cause notice and without any opportunity of personal hearing to the aggrieved government servants. These orders were given effect from back date. This being so, the reliance of the appellants on the judgment of the august supreme court of Pakistan contained in 2008 SCMR 598, 1996 SCMR 1350 and 2006 SCMR 678 (Annex-X) conform to and fits fully to the circumstances of the present appellants as they were not at fault at any stage of their recruitment, the onus of the entire process however lie on the competent authority who in the first instance appointed all the appellants on different positions, got them medically examined from the authorized Medical officer, accepted their arrival reports for duty and then without following the legal processes took a U-turn and dispensed with their services with a single stroke of pen without fulfillment of the legal requirement of conducting enquiry, issuance of show case notice and opportunity for personal hearing, as required under the law and binding under the principles natural justice.



6. In the circumstances, the undersigned in the capacity of appellate authority in terms of rule 5 of the Khyber Pakhtunkhwa Civil Servants Appeal rules 1986 by accepting the appeals of the three regular employees set aside the impugned order 30-01-2018 passed by the competent authority and reinstate these appellants, as mentioned in para 1 of this order in their service from the date of cancellation of their appointment order with all back benefits of service. The competent authority shall take further necessary action in light of rule 5 (2) of the rules ibid in respect of the three officials namely Umar Said, Saddam Hussain and Sadiq ullah who were appointed against the regular positions.

follows

Director Fisheries

7. As for the case of the other two employees i.e. Mr. Zakiullah (Chowkidar) and Mr. Naveed (Driver) who were appointed against the project posts and who are similarly placed persons, they also deserve and are required to be treated similarly and equally. Their appeals for reinstatement are also accepted by setting aside the impugned order dated 30-01-2018. The competent authority shall reinstate them in service from the date of their removal along with all back benefits of service. In this context reliance is placed on case law contained in judgment of the Supreme Court of Pakistan titled Hameed Akhtar Niazi VS The Secretary Establishment Division Government of Pakistan and other, relevant portion whereof is reproduced. If the service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/

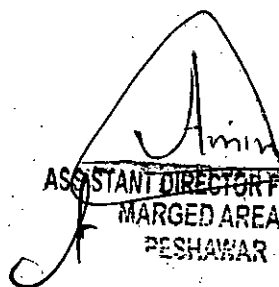
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 ASSISTANT DIRECTOR FISHERIES
 MARGED AREAS
 PESHAWAR

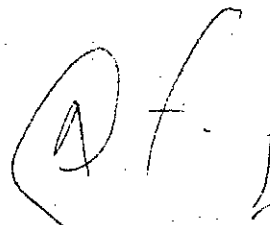
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Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach tire Service Tribunal or any other forum.

8. It is also relevant to place on record that in furtherance of the case of Good governance and, for reduction of litigations for and against the government, the Government of Khyber Pakhtunkhwa has taken a very good/ positive initiative by constitution of committees at provincial and department level (Annex-XII) to review the service cases pending in different courts and decide the same at the department level. My this decision would be in line with the said policy and save the government and the individuals from unnecessary litigations.

Dated 12-03-2018


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

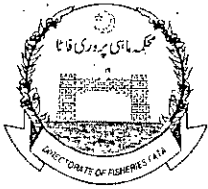


(Abdul-Latif)

Secretary Production & Livelihood
Development Department.
(Appellate Authority)

TO BE SUBSTITUTED WITH EVEN NUMBER AND DATE

Ann-D
Annex (7) (15)



DIRECTORATE OF FISHERIES

FATA SECRETARIAT PESHAWAR

Phone: (091) 9211799 | Fax: (091) 9211799

No. 2351-57/DF Dated Peshawar the 10/04/2018

OFFICE ORDER

The undersigned in the capacity of Appellate Authority in terms of rules 5 of the Khyber Pakhtunkhwa Civil Servants Appeal rules 1986, by accepting the appeal of the following employees, set aside the impugned order passed by the Director Fisheries FATA vide No.81-96/DF dated 30/01/2018 and reinstate these appellants in their service from the date of cancellation of their appointment order with all back benefits in the best interest of public service.

1. Mr. Umer Said S/O Noor Said Driver (BPS-04). (Regular Base)
- √ 2. Mr. Sadam Hussain S/O Atta Ullah Khan Naib Qasid (BPS-03) (Regular Base)
3. Mr. Sadiq Ullah S/O Safi Ullah Naib Qasid (BPS-03). (Regular Base)
4. Mohammad Naveed S/O Mohammad Ayub Driver (PPS-01) on Fixed Pay @16000 per month) under the project "Strengthening of Fisheries Department in FATA"
5. Mr. Zaki Ullah S/O Abdul Qahar Chowkidar (PPS-01) on Fixed Pay @16000 per month) under the project "Strengthening of Fisheries Department in FATA"

Re-instatement order in respect of S.No#1 is subject to age relaxation by the competent authority under the rules.

--Sd--

(ABDUL LATIF)

**SECRETARY PRODUCTION & LIVELIHOOD
DEVELOPMENT DEPARTMENT FATA
(APPELLATE AUTHORITY)**

Copy for information to:

1. Additional Accountant General (PR) Sub Office Peshawar.
2. PS to Additional Chief Secretary FATA.
3. PS to Secretary Production & Livelihood Development Department FATA with reference to his detail order dated 12/03/2018 and subsequently orders on Note Sheet dated 06/04/2018.
4. Director General Fisheries Department Khyber Pakhtunkhwa.
5. Section Officer P&LDD FATA with reference to his office letter No.SO/P&LDD/FS/Fisheries/1-9/13/715-16 dated 13/03/2018.
6. Deputy Director Fisheries (H/Q) FATA/ Superintendent Fisheries FATA
7. Incharge B&A Section and Disburser (H/Q) FATA & Official concerned

Amin
ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

[Signature]
DIRECTOR FISHERIES
FATA

FATA SECRETARIAT

WARSAK ROAD PESHAWAR

No. FS/E/100-62 (Vol-6) 6449-S1
Date: 04/09/2018

Ann-13
Annex-E
16

CONFIDENTIAL

To

Secretary P&LDD, FATA Secretariat.

SUBJECT: ENQUIRY REPORT REGARDING RECRUITMENT OF CLASS-IV IN DIRECTORATE OF FISHERIES.

R/Sir,

I am directed to refer to this department Notification No.FS/E/100-62(Vol-6)/ dated 17-08-2018 and to say that the Enquiry Officer submitted the report on 31-08-2018, with the following findings / recommendations:-

- a) District Employment Exchange Peshawar letter dated 19/01/2017 says. "This office (Employment Exchange, Peshawar) registers only those persons who are residing in District Peshawar. Therefore, you may please advertise these posts in the Daily Newspaper as per Rules (Annex-III)."
- b) This proves that in first place, the posts needed to be advertised, and the fact that registration of the employees with employment exchange claimed by Directorate of Fisheries turned out to be fake as per letter of Employment Exchange Peshawar.
- c) The recruitment was made without observing laid down procedure and therefore, minutes of the Departmental Selection Committee (DSC) meeting itself were not recorded.
- d) As per procedure, appointment cannot be made without recording minutes of DSC and approval thereof. The appointments were cancelled/terminated by Director Fisheries. Surprisingly however, the appointees were re-instated by the Secretary Livestock in the capacity of an appellant authority vide letter No.2351-57/DF dated 10-04-2018.
- e) Owing to the above, it is crystal clear that order of the Secretary PLDD, re-instating appointees who in first place are not appointed, is illegal and thus needs cancellation. In fact the whole procedure of recruitment from the very beginning seems dubious, when the District Employment Exchange, Peshawar letter clearly stated to advertise the posts.

Pl. Review
PU
DS/5072
A
06/9/18

On submission of the enquiry report, the Competent Authority (ACS FATA) has been pleased to direct

to be cancelled ab-initio issue instructions to implement



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ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

17

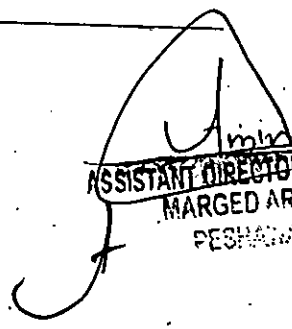
You are, therefore, requested that findings/recommendations of Enquiry Officer, as per approval of ACS (FATA) may kindly be implemented and compliance report submitted to this department, please.

Yours faithfully,

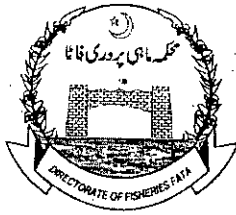

Section Officer (Estab.) 
AI&C
1859

Copy to:-

1. PS to Additional Chief Secretary FATA.
2. PS to Secretary AI&C.


ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

Annex - F
Annex F (18)



DIRECTORATE OF FISHERIES.

FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 3607-14/DF

Dated Peshawar the 15/11/2018.

OFFICE ORDER

In pursuance of the findings / recommendations of the report of the enquiry into the illegal appointments, on account of non-observance of proper procedure & non-fulfillment of codal formalities during recruitment process of Class IV staff, communicated to the Production & Livelihood Development Department FATA, vide the AI&C Department FATA Secretariat letter No.FS/E/100-62(ul-6)6649-51 dated 04-09-2018, the services of Mr. Saddam Hussain working as Naib Qasid (BPS-3) are hereby terminated with immediate effect for being irregular, illegal and void ab initio.

[Handwritten Signature]
DIRECTOR FISHERIES
FATA
[Handwritten Initials]

Copy forwarded for information to:-

1. AG.PR Sub office Peshawar
2. PS to Additional Chief Secretary FATA
3. PS to Secretary AI&C FATA
4. PS to Secretary P&LDD FATA
5. Section Officer-II P&LDD FATA with reference to instructions contained in his letter No. SO (P&LDD)/FS/Fisheries/1-9/18/2668-69 dated 14-11-2018.
6. Deputy Director Fisheries H/Q FATA
7. Drawing & Disbursing Officer Fisheries H/Q FATA for further necessary action.
8. Mr. Saddam Hussain S/O Atta Ullah Khan R/O Ram Kushan Muslin Abad Bakhshee Pull Peshawar

[Handwritten Signature]

[Handwritten Signature]
ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR



FATA SECRETARIAT PESHAWAR.

Phone: (091) 9211799 | Fax: (091) 9211799

No. 3142-45/DF

Dated Peshawar the 31/07/2018

Annex-9
Annex 9
19
Office of the Director Fisheries
Peshawar

To

The Section Officer Production & Livelihood
Development Department FATA Secretariat
Peshawar.

Subject: MINUTES OF DEPARTMENTLE SELECTION COMMITTEE

Reference your office letter NO.SO-II/PLDD/FS/Fisheries/1-9/13/1883-86 Dated the 12 July 2018 and DF Letter NO. 3037-39/DF Dated 18/07/2018., the detail of the case as,

A meeting has been held under the chairmanship of Secretary Production & Livelihood Development Department FATA on 03/01/2018, about the status/filling of the vacant posts in Directorate of Fisheries FATA. As per directives a file has been moved for approval of the filling of the vacancy (both Developmental/Regular) in the Directorate of Fisheries FATA (Annex Flag- A). The worthy Secretary Production & Livelihood Development Department FATA, approved the case and returned the file on the same date.

A letter was issued to the Manager Employment Exchange Peshawar on 08/01/2018 (Annex Flag- B) to do the needful under Government policy.

As per rules for Departmental Selection Committee was constituted and approved from the Secretary Production & Livelihood Development Department FATA (Annex Flag- C).

The worthy Manager Employment Exchange Peshawar has given no response till 18/01/2018. During this period the Secretary Production & Livelihood Development Department FATA has handed over a list of the following to the undersigned for appointment.

- 1- Mr. Sadiq Ullah S/O Safi Ullah Mohmand Agency for Naib Qasid. (Regular).
- 2- Mr. Saddam Husain S/O Atta Ullah Peshawar for Naib Qasid. (Regular).
- 3- Mr. Mohammad Naveed S/O Mohammad Ayub Peshawar for Driver (Developmental).
- 4- Mr. Zaki Ullah S/O Abdul Qahar Peshawar for Chowkidar (Developmental)
- 5- Mr. Umar Said S/O Noor Said Peshawar for Driver. (Regular).

The undersigned like in past refused to do the same and insisted that the appointment will be done on merit but the worthy Secretary P & L D D FATA pressed the undersigned and directed that he has discussed the issue with Manager Employment Exchange Peshawar and he (Manager) will send the list of these candidates from serial NO. 1 to serial NO.5. So due to intense pressure of the Secretary Production & Livelihood Development Department FATA and non-response from the Manager Employment Exchange Peshawar the undersigned issued the appointment orders in respect of the class IV on Dated 18/01/18 as per above list.

The undersigned was directed by the Secretary Production & Livelihood Development Department FATA that Mr. Saddam Husain S/O Atta Ullah Peshawar at serial NO.2 and Mr. Zaki Ullah S/O Abdul Qahar Peshawar at serial NO.4 are his relative. While by appointing the other candidates, he (Secretary P & L D D FATA) intends to oblige some Higher ups.

After this process a letter from the manager Employment Exchange Peshawar of dated 19/01/2018 was received on 29/01/2018. Where upon it was advised to advertise these posts accordingly. (Annex Flag-D). When it was brought into the notice of Secretary Production & Livelihood Development Department FATA, he advised the undersigned that nothing would happen All is correct, do not worry and it is FATA not settled area.

After receiving cold response from Secretary Production & Livelihood Development Department FATA, the undersigned cancelled /withdrawn all the appointment orders in respect of the class IV on 30/01/2018 being issued without completing codal formalities (Annex Flag-E). The Secretary Production & Livelihood Development Department FATA were informed through the same letter and verbally. A note sheet (Annex Flag-F), moved to the Secretary Production & Livelihood Development Department FATA and requested that approval may be given to the undersigned to advertise these posts in the leading newspapers through Director. Information FATA. But the same was not returned to the undersigned for any action.

ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

In addition to this, it is pertinent to point out here that nobody has submitted their arrival report in the Directorate of Fisheries FATA to the appointing authority, and have not join their duties nor they have been paid for. The Secretary Production & Livelihood Development Department FATA pressurized the undersigned for reinstatement but in vain as I refused for any illegal orders.

On 01-03-2018, Mohammad Arshad Aziz (BS-19) took charge of the post of Director Fisheries FATA The employees appealed to Secretary Production & Livelihood Development Department FATA for reinstatement When the Director Fisheries FATA directed for comments in this case the undersigned submitted a letter (Annex Flag-G).

After this the undersigned have no information that who was appointed/reinstated and by whom.

MOHAMMAD SHAFI MARWAT

Deputy Director Fisheries Newly Merged Districts

Copy forwarded for information to:-

- 1- The PS to Additional Chief Secretary Newly Merged Districts.
- 2- The PS to Secretary Production & Livelihood Development Department Newly Merged Districts
- ✓ 3- The Director Fisheries Newly Merged Districts.

MOHAMMAD SHAFI MARWAT

Deputy Director Fisheries Newly Merged Districts

Assistant
ASSISTANT DIRECTOR FISHERIES
MARGED AREAS
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 373 /2019

Sadam Hussain.....Appellant

Versus

The Govt of KPK AgricultureRespondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS NO. 1 & 4.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got strong cause of action. All the relevant facts have been incorporated in the memo of the appeal and nothing has been concealed from this Hon'ble Tribunal. All the necessary parties have been arrayed as Respondents. The appeal is well within time.

Facts:

1. Needs no Rejoinder.
2. Incorrect hence denied. Appellant was appointed by the Selection Committee against the post of Naib Qasid on 18.01.2018 after observing all the codal formalities.
3. Misconceived hence not admitted.
4. Denied as submitted by the answering Respondents. Petitioner was medically examined by the authorized Medical Officer, thereafter he joined the service of the Respondents, proper Service Book was also maintained wherein necessary entries were made from time to time.

5. Incorrect hence vehemently denied. After termination, Departmental Appeal of the appellant before the appellate authority was accepted with all back benefits. Pursuant to the same, appellant was reinstated into service vide office order dated 10.04.2018.
6. Regarding Para-6 of the reply it is averred that after the reinstatement of the appellant, Respondent No.4 became revengeful towards him and irrespective of the fact that on the same ground of allegation for which appellant had earlier been terminated from service, once again on the same set of allegations he was tried and resultantly again terminated from service without observing mandatory provisions/formalities as laid down under the law. It is worth mentioning that similar nature question of law was brought before the Hon'ble Peshawar High Court in a Writ Petition wherein referred Petitioner was issued Show Cause Notice in the same set of allegations for which he had already been tried and awarded minor penalty, therefore, the Hon'ble High Court was pleased to declare the second Show Cause Notice on the same allegations as in clear violation of Article-13 of the Constitution of the Islamic Republic of Pakistan, 1973: ~~penance is placed on ~~2018/10/04~~, No. ~~2018/10/04~~~~
7. Being not replied hence admitted.

Grounds:

- A. Incorrect. The appellant has not been treated according to law and was unlawfully terminated from service.
- B. Incorrect hence not admitted. Appellant was appointed on the recommendation of the properly constituted Selection Committee after observing all the codal formalities hence his appointment order was acted upon, carried into effect and valuable rights have been accrued in his favour which cannot be taken away under the principle of locus poenitentiae.
- C. As already explained hereinabove that in response to the Departmental Appeal of the appellant the appellate authority found

no irregularity whatsoever in the selection process of appellant, therefore, appellant was reinstated into service with all back benefits.

D&E. Misconceived. It is a settled law that in case of any irregularity in the process of selection is committed by the competent authority then the authority will be responsible and poor employees cannot be made to suffer. Moreover, clear violation of Article-13 of the Constitution has been made and on the same set of allegation he has been again terminated from service. Hence the same amounts to double jeopardy.

F-I. Incorrect hence not admitted. It is well settled legal principle of law that in case of major penalty regular enquiry is to be conducted wherein the delinquent civil servant is to be associated with all stages of the enquiry proceedings. Furthermore, appellant was condemned unheard by infringement of Article-10A of the Constitution of Islamic Republic of Pakistan 1973. Neither Charge Sheet and Statements of allegation were issued to appellant nor was he provided opportunity of personal hearing.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar

Dated: ____/11/2019

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Saddam
Appellant