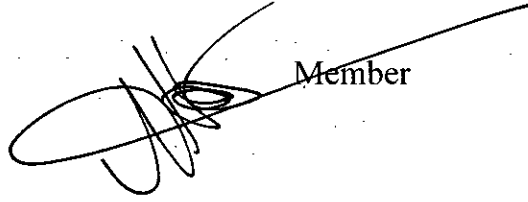


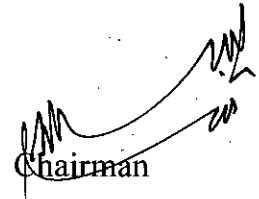
No. 349/2016

18.08.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Muhammad Siddique, Administrative Officer for the respondents present. Arguments heard and record perused.

As per detailed judgment of today in connected service appeal No. 341/2016, entitled "Farhanullah Versus the Government of Khyber Pakhtunkhwa through Secretary, PHE Department, Peshawar and another", this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
18.08.2017

12.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saddique, Administrative Officer for present. Arguments heard. To come up for order on 24.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

12. 24.07.2017


Clerk of the counsel for appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondent present. Some point need further consideration. To come up for final order on 27.07.2017 ~~27.09.2017~~ before D.B.

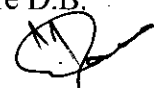

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

27.07.2017

Appellant in person and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saddique, A.O for respondents present. Some points needs further consideration. Learned counsel for the appellant not available. Adjourned. To come up for arguments on 18.08.2017 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

11.04.2017

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


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

8.05.2017

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


Member


Chairman

24.05.2017

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


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

14.11.2016

Counsel for the appellant and Addl: AG along with
Mr. M. Yaseen, Supdt for respondents present. Rejoinder

24.05.2017

Submitted to counsel for appellants and 28.03.2017 Muhammad
Adeel Butt, Additional AG AG for respondent present. Clerk of
the counsel for appellant requested for adjournment. Adjourned.
To come up for arguments on 12.07.2017 before (BAKHSI SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

(Muhammad Amin Khan Kundi)

28.03.2017

Counsel for the appellant, Additional AG and Senior Government
(Gul Zeb Khan) Member
Pleader along with M/S Aftab Ahmed, A.O & Muhammad Yasin,
Superintendent for the respondents present. Arguments partially heard. To
come up for remaining arguments on 29.03.2017 before this D.B.

MA
Member

Chairman

29.03.2017

Counsel for appellant, Additional AG & Senior Government
Pleader along with Mr. Aftab Ahmed, A.O & Mr. Muhammad Yasin,
Superintendent for respondents present. Learned Additional AG requested
for adjournment. Adjourned for remaining arguments to 11.04.2017 before
D.B.

MA
Member

Chairman

13.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that Identical appeals No: 290, 291, 292 of 2016 have already been admitted to regular hearing and requested that this appeal may also be admitted to regular hearing.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 01.06.2016 before S.B.


Chairman

01.06.2016

Counsel for the appellant, M/S Muhammad Yaseen, Supdt. Muhammad Ali Supdt and Kamran Shahid, Asstt. alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 10.08.2016 before S.B.


Chairman

10.08.2016



Clerk to counsel for the appellant and Mr. Muhammad Yaseen, Supdt alongwith Addl. AG for respondents present. Written reply submitted on behalf of respondents No.2 and 3. The learned Addl. AG relied on the same on behalf of respondent No.1. The appeal is assigned to D.B for rejoinder and final hearing on 14.11.2016.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 349 /2016


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.04.2016	<p>The appeal of Mr. Muhammad Iftikhar resubmitted 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</p>
2	11-04-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13.4.16</u></p> <p> CHAIRMAN</p>

The appeal of Mr. Muhammad Iftikhar Ex-Steno Typist PHE Department received to-day i.e. on 29.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of show cause notice and its reply mentioned in the memo of appeal are not attached with appeal which may be placed on it.
- 2- Copy of impugned termination order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 5- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

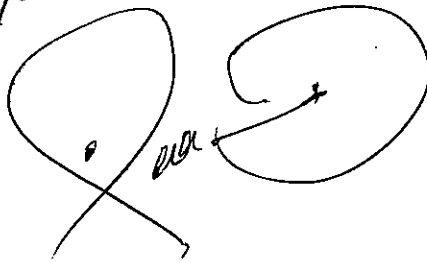
No. 506 /S.T,

Dt. 30/3 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

Sir
Resubmitted after removal
your objection.



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Handwritten characters, possibly "CP".

Handwritten characters, possibly "1027".

Vertical handwritten characters.



Printed text, possibly a date or reference number, located in the lower right area.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 349 /2016

Muhammad Iftikhar

.....Appellant

Versus

The Govt. of KPK and
others

.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-5
2.	Advertisements	27.08.2009	A	6-7
3.	Interview call letter	14.11.2009	B	0-8
4.	Appointment order	11.12.2009	C	0-9
5.	Extracts from the Service Book		D	10-15
6.	Show Cause Notice	21.01.2014	E	16-17
7.	Reply to Show Cause Notice		F	18-19
8.	Impugned original order	14.02.2014	G	20-0
9.	Departmental appeal	28.02.2014	H	21-23
10.	Judgment of the Service Tribunal	30.12.2015	I	24-31
11.	Fresh appeal		J	32-33
12.	Impugned appellate order	03.03.2016	K	34-35
13.	Wakalat Nama			

Through

Appellant

Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion,
Khyber Bazar, Peshawar.
Tel: Ph: 091-2592458
Cell # 0345-9337312

Dated: /03/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 349 /2016

G.W.P. Province
Service Tribunal
Diary No. 292
Dated 29-03-2016

Muhammad Iftikhar

Ex-Steno Typist,
S/o Chinar Gul,
R/o Village New Charsadda Adda,
Mohallah Gul Bahar, Tehsil & District Mardan **Appellant**

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
through Secretary,
Public Health Engineering Department,
Civil Secretariat, Peshawar.
2. **The Chief Engineer (South)**
Public Health Engineering Department,
Khyber Pakhtunkhwa, Peshawar **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORIGINAL ORDER DATED 14.02.2014 ISSUED BY RESPONDENT NO.2 WHEREBY THE SERVICES OF THE APPELLANT WERE UNLAWFULLY TERMINATED AGAINST WHICH DEPARTMENTAL APPEAL WAS ALSO REJECTED VIDE IMPUGNED APPELLATE ORDER COMMUNICATED THROUGH LETTER DATED 03.03.2016.

PRAYER:

On acceptance of the instant appeal, the impugned original order dated 14.02.2014 passed by Respondent No.2 and that of the appellate authority dated 03.03.2016 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 the permanent resident of District Mardan and qualified for the post of Steno Typist. On 27.08.2009 multiple vacancies were advertised (**Annex:- A**) by Respondent No.2 and applications were invited for inter-alia the posts of

Steno Typist. Since the appellant was eligible for the same post, therefore, he applied for the post of Steno Typist.

2. **That** appellant was then called for the test/interview vide letter dated 14.11.2009 (**Annex:-B**) and subsequently after going through the selection process, the Departmental Selection Committee recommended the appellant for the post of Steno Typist and on consequently on its recommendations appellant was appointed as Steno-Typist (BPS-12) vide office order dated 11.12.2009 (**Annex:-C**) after observing all the codal formalities.
3. **That** after his appointment appellant was examined by the Medical Officer and was found fit. The Department has also prepared the Service Book (**Annex:-D**) wherein all the necessary entries have been made from time to time. Meanwhile the post of Steno-Typist (BPS-12) was upgraded to BPS-14.
4. **That** certain Sub-Engineers of the PHE Department earlier approached the Hon'ble Peshawar High Court, Peshawar in Writ Petitions No.271-P/2013 & No.663-P/2013 claiming regularization of their services , however, the writ petitions were dismissed on 02.10.2013 against which they preferred C.Ps No.2026 & 2029 before the Apex Court but the same too were dismissed vide Judgment dated 15.01.2014. During the hearing of the case before the Apex Court, Respondent No.2 brought into the notice of the Court that the Department had also taken action against the illegally appointed employees upon which the Hon'ble Court directed him to finalize the action within one month and submit report.
5. **That** the appellant was at a loss when he came to know that a joint Show Cause Notice dated 21.01.2014 (**Annex:-E**) was issued to as many as 34 employees including the appellant although his appointment order was perfectly in accordance with law and rules. The appellant submitted reply (**Annex:-F**) to the Show Cause Notice *ibid* and explained his position to the competent authority.
6. **That** vide impugned original order dated 14.02.2014 (**Annex:-G**), the services of the appellant were terminated on false and ill-founded grounds, against which appellant preferred Departmental appeal (**Annex:-H**) on 28.02.2014 but the same was not disposed of within the statutory period. Thereafter, appellant alongwith others approached the Hon'ble Peshawar High Court, Peshawar in W.P.No.615-P/2014 for the redressal of their grievances but the same was dismissed vide Judgment dated 26.02.2014 on the ground of lack of jurisdiction which was

upheld by the Apex Court vide order dated 28.04.2014. Finally, appellant filed Service Appeal No.791/2014 before this Hon'ble Tribunal which was finally decided vide Judgment dated 30.12.2015 (*Annex:-I*), and the case was remitted to the appellate authority for decision within a period of two months from the receipt of the Judgment.

7. **That** the appellant was then directed to file fresh appeal which was so filed (*Annex:-J*) but the same was rejected vide impugned appellate order communicated through letter dated 03.03.2016 (*Annex:-K*), hence this appeal, inter alia, on the following grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders which are unjust, unfair and hence not sustainable in the eye of law.
- B. **That** it is wrongful assumption on the part of Respondents that the disputed post was to be filled in on the recommendation of Khyber Pakhtunkhwa Public Service Commission. After the introduction of Local Government System in the Province way back in the year 2001, the Local Governments were granted autonomy including power of appointments of the District Cadres and in this respect the Khyber Pakhtunkhwa Public Service Commission (Functions) Rules, 1983 were amended vide notification dated 02.11.2012 while posts of Works & Services Department from BPS-1 to BPS-15 were declared as District Cadre posts vide Notification dated 22.03.2005, affirmed by the Establishment Department vide letter dated 08.04.2006, therefore, the objection of the Respondents is without any legal substance and consequently the impugned orders are void ab-initio and hence not maintainable.
- C. **That** appellant was appointed on 11.12.2009 and after successfully completing his period of probation he had become a permanent regular employee of the Department having at his credit more than 5 years service, therefore, the sudden termination order in haphazard manner is highly unjust, unreasonable, result of abusive exercise of power, therefore, has no legal authority but inspite of the same, the appellate authority failed to appreciate this important aspect and rejected the appeal in an illegal manner which is not tenable under the law.

- D. **That** being a regular civil servant under Section-16 of the Khyber Pakhtunkhwa Civil Servants Act, 1974 appellant was required to be proceeded against in the prescribed manner for the alleged irregular appointment but no rules and law were followed and the impugned termination order was passed whereby the services of the appellant were terminated in a fill-in-the-blank manner and in violation of the law.
- E. **That** no enquiry muchless regular was conducted into the allegations which is the essential requirement of law and by now it has become a trite law that no major penalty can be imposed without holding regular enquiry.
- F. **That** the Hon'ble Tribunal has directed the appellate authority to provide opportunity of personal hearing and decide the issue in accordance with law but the appellate authority failed to provide a meaningful opportunity of personal hearing to the appellant nor decided the appeal in accordance with law but rejected the appeal in highly illegal and fill-in-the-blank manner in violation of not only the direction of the Hon'ble Tribunal but also Rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeals) Rules-1986, therefore, the impugned original order as well as the appellate order are nullity in the eyes of law and thus liable to be brushed aside.
- G. **That** the Respondents have misinterpreted the direction of the Hon'ble Apex Court which was only in respect of the illegal appointments and that too in accordance with the prescribed Rules. The Hon'ble Apex Court had never directed for the action against those whose appointment orders were in accordance with law nor to violate the prescribed rules for termination of services.
- H. **That** the appellant was appointed in the prescribed manner after observing all the codal formalities and has successfully completed the period of probation and put in more than 5 years service efficiently, dedicatedly and thus valuable rights accrued in his favour, which could not be taken away under the principle of locus poenitentiae and for that matter the principle of promissory estoppel.
- I. **That** without prejudice to the grounds mentioned above and in addition thereto if there was any irregularity in the appointment order which is not even available in the case in hand then for that the competent authority is responsible and for the same the poor employee cannot be punished.
- J. **That** it is also important to add here that a writ petition No.219/2011 challenging similar appointment order was filed before the Peshawar High Court, Mingora

Bench wherein the Department submitted the Parawise Comments asserting that all the codal formalities had been fulfilled while issuing the appointment orders to the appellant and others while in the case in hand a contradictory stance was taken by the Department which is also illegal and hence not sustainable.

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.

Iqbal

Through **Appellant**
Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: ___/03/2016

THE COPY

INF (P) 9791

مستحق
مستحق
مستحق

پای اور اسٹیٹال تہہ پائی کے مطابق میں نے خبریں لکھی ہیں اور اس کے ساتھ ساتھ اس کے بارے میں بھی لکھی ہیں۔

- 1- درخواستی کا نام پر من میں نام دلانا اور اس کے ساتھ ساتھ اس کے بارے میں بھی لکھی ہیں۔
- 2- جو ان کے بارے میں میں لکھی ہیں وہ اس کے بارے میں بھی لکھی ہیں۔
- 3- بالائی عدالت میں اس کے بارے میں بھی لکھی ہیں۔
- 4- بالائی عدالت میں اس کے بارے میں بھی لکھی ہیں۔
- 5- بالائی عدالت میں اس کے بارے میں بھی لکھی ہیں۔

کے بارے میں بھی لکھی ہیں۔

تعداد

نمبر	تعداد	اس کے بارے میں	اس کے بارے میں	اس کے بارے میں
1	1	اس کے بارے میں	اس کے بارے میں	اس کے بارے میں
2	1	اس کے بارے میں	اس کے بارے میں	اس کے بارے میں
3	3	اس کے بارے میں	اس کے بارے میں	اس کے بارے میں

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اس کے بارے میں

7

Annex "B"

(53)

(8)



OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG: DEPARTMENT
NWFP, PESHAWAR

No: 04 / E-4 / PHE

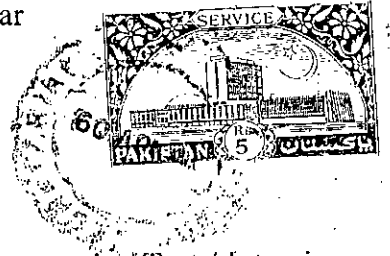
Dated Peshawar the 14 /11/2009.

2
Dispatcher
O/O Chief Engineer
PHED NWFP, Peshawar

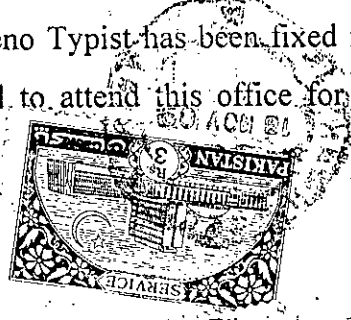
To

✓ Mr. Muhammad Iftikhar S/O Chinar Gul,
R/O Village New Charsadda Addah, Mohallah Gul Bahar
Tehsil & Distt: Mardan.

Subject: CALL-UP NOTICE FOR TEST/INTERVIEW
Reference: Your application dated Nil.



I am directed to refer to the above noted subject and to state that Test / Interview for the post of Steno Typist has been fixed in this Office on 25/11/2009 at 9.00 A.M. you are therefore, required to attend this office for the Test / Interview on the above date and time positively.



[Signature]
ADMINISTRATIVE OFFICER

Attested to be
Attested to be
True Copy

B

1000

OFFICE OF THE CHIEF ENGINEER
PUBLIC HEALTH ENGG. DEPARTMENT
NWFP, PESHAWAR.

02/12/09 / E-4/PHE

Dated Pesh: the 11 / 12 / 2009.

9

OFFICE ORDER.

Annex C

On the recommendation of the Department Selection Committee as per its meeting held on 02/12/2009, the competent authority is pleased to offer a post of Steno Typist (BPS-12) on adhoc basis for one year to Mr. Muhammad Ifikhar S/O Chainar Gul R/O New Charsadda Adah Mohallah Gulbahar District Mardan on the following terms and conditions:-

- 1) He will get pay at the minimum of BPS-12 (Rs.4355 - 310 - 13655) including usual allowances as admissible under the rule. He will also be entitled to annual increment as per existing policy.
- 2) He shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) He shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) His employment in the PHE Department is purely temporary and his services are liable to be terminated without assigning any reason at fourteen (14) days notice or on the payment of 14 days salary in lieu of the notice. In case he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- 5) He shall produce a medical certificate of fitness from Medical Superintendent, Swat before reporting himself for duty to the Deputy District Officer Water Supply & Sanitation Swat, as required under the rules.
- 6) He has to join duty at his own expenses.
- 7) If he accepts the post of these conditions, he should report for duty to the Deputy District Officer WS&S Swat within 14 days of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

CHIEF ENGINEER

Copy to the :-

- 1) Deputy District Officer WS&S Swat.
- 2) District Accounts Officer Swat.
- 3) Mr. Muhammad Ifikhar S/O Chainar Gul R/O New Charsadda Adah Mohallah Gulbahar District Mardan.

Attested to be
True Copy

C

(For use in Police Department only)

Heirs:

- 1. _____ *Home "D" (10)*
- 2. _____
- 3. _____

Verification Roll No. _____ dated _____ received back _____

Left Thumb Impression

Qualification	Date	Qualification	Date
English		First Arts	
Pushto		B.L. Or B.A.	
Urdu		Pleadership examiantion	
Plan-drawing		Training School Final examiantion	
Finger Print		Other qualification:—	
Drill Instructing		<i>Passed Matric from BISE Mardan in the year Supl. 2005 under R. no. 4956 and obtained 429 marks</i>	
Court Duties		<i>Passed FA from BISE Mardan in the year Annual 2008 under R. no. 5878 and obtained 519 marks.</i>	
Reserve Duties			

Requested to be True Copy

APPLY DISTRICT...

N.B.— Line to be drawn under the qualification possessed.

Attested to be True Copy

R. G. HAST

R. G. HAST
PM

(4355-310-13657) Advt

Steno Typist
(LB-125)

17-12
2009
(FN)

Signature

(11)

Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) nature of appointment, or (ii) whether service counts for pension under Act 371 CSR	Pay as indicated in schedule	Percentage pay for officiating	Other (including nature of the service)	Date of appointment	Signature of Government Servant in a substantive or other position of the institution
Steno Typist (LB-125)						17-12 2009 (FN)	Signature

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.

Name: Muhammad Iftikhar

Race: Muslim/Pakistan

Residence: New Adah Charsadda Chowk
Mohi Gul Bahar

Father's name and residence: Chamar Gul - do -


Date of birth by Christian era as nearly as can be ascertained: 15/05/1989


Exact height by measurement:


Personal marks for identification:


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


Little Finger 

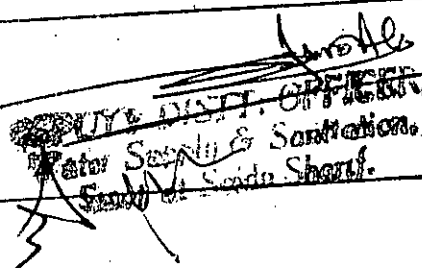
Ring Finger 

Middle Finger 

Fore Finger 

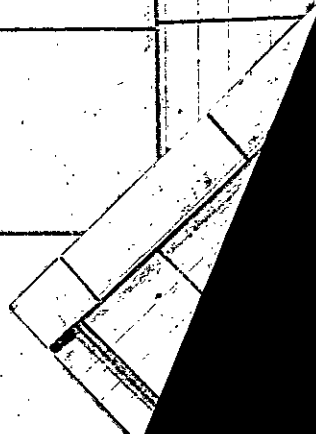
Thumb 

9. Signature of Government Servant: 

10. Signature and designation of the Head of the Office, or other Attesting Officer. 
HEAD OF THE OFFICE
Water Supply & Sanitation
Charsadda

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term "p"	7 Date of appointment	8 Signature of Government Servant	Designation of the officiating officer from 1 to 8	Date of termination of appointment
B-12 4335-310-12635)			Rs. 4335/PM				(12)		
— ds —			Rs. 4665/PM			12/2010		30/11/2010	
B-12 (7000-500-22000)			Rs. 7500/PM			I 7/II			
			Rs. 8000/PM			12/11			

Attested to be True Copy



9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitale to another Government		
Period	Government to which debitale						
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer			Signature of the head of the office or other attesting officer	Reference for any records in Government or office of the Government Servant.
				Appointed as Senior Ty Piest (B-12) on adhoc basis vide Chief Engineer PHEO, N.W.F.P., Peshawar O/O No. 04/E-4/PHE Dated 11/12/2009 and reported arrival on 17/12/2009 (FN)			
				ASST. DIST. OFFICER Water Supply & Sanitation, Sd/- Saidu Shariq.			
				ST No: 1427 dt: 12/1/09			
				pay in B-12 (Gr. 4355) allow: dt: from 17-3/12/09 to 31/12/2010 Allowed to draw pay through Punjab 12-2010 G.O. No. 1000			
				Distt. Controller of Accounts Swat.			
				Transferred to O/O XEN PHE Swabi vide CE O/O No. 07/E-3 dated 12-5-010 and reported Depa. from 14-2-09			
				Service Verified for the Period 17-12-09 To 31-5-010 from the office copy of Pay bill & acquittance Roll.			

[Handwritten signature]
Public Health Officer
Swat

[Handwritten signature]
Public Health Officer
Swat

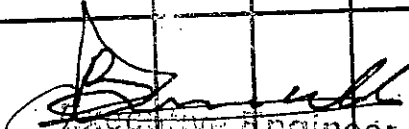
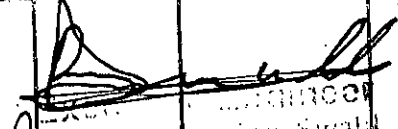
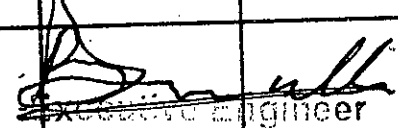
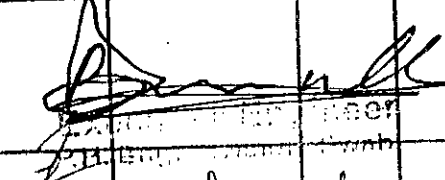
1	2	3	4	5	6	7	8
Name of post	Whether substan- tive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of Appointment	Signature Government
B-14 (8000-610-26300)			8610-PM			23 ¹² / ₁₁	13
Stein Typist BPS-14							
8000-610-26300-			B. 9220-PM			1 ¹² / ₂₀₁₂	30

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9	10	11	12	13		14	15		
Signature of Government Servant	Designation of the office attesting officer as 1 to 8	Date of termination or appointment	Reason of termination (such as Promotion, transfer, dismissal, etc)	Signature of the head of the office or other attesting officer.	Leave Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant	
					Nature and dura- tion of leave taken	Period	Government to which debitale		
<p>Transferred from XEN PHE Division Swat vide C E PHED NWFP Peshawar No. 07/E-9/PHE dated 12-05-2010 and Reported arrived on 14-05-2010.</p>									
					 Executive Engineer P.H. Eng. Division, Swabi				
30 ¹¹ / ₂₀₁₀	Annual Increment granted			Service Verified from 15-5-2010 to 31-11-2010.					
					 Executive Engineer P.H. Eng. Division, Swabi		 Executive Engineer P.H. Eng. Division, Swabi		
				Pay Revised Fixed on 01 ⁰⁷ / ₂₀₁₁					
30 ¹¹ / ₂₀₁₁	Annual Increment granted								
					 Executive Engineer P.H. Eng. Division, Swabi				

1	2	3	4	5	6	7	
Name of post Steno Typist B-14 800-610-26300	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 being under the term "p"	Date of appointment	Govt

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15	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer
14	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer
13	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government
12	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer	Signature of the head of the office or other attesting officer
11	Reason of termination or promotion, transfer, dismissal, etc.)	Reason of termination or promotion, transfer, dismissal, etc.)	Reason of termination or promotion, transfer, dismissal, etc.)
10	Date of termination or appointment	Date of termination or appointment	Date of termination or appointment
9	Nature and Designation of the head of the office or other attesting officer	Nature and Designation of the head of the office or other attesting officer	Nature and Designation of the head of the office or other attesting officer

Post applied BPS=14 vide Finance Deptt: No.FD/50(FR) 10-22-2012

[Signature]
 DISTRICT ENGINEER
 SWABI

17/8/2012
 Source - 2 year term by B2 4906/r on BPL premises from 13-14 wof 19/6/2012.

[Signature]
 DISTRICT ACCOUNTS OFFICER
 SWABI

30-11-2012

Approved & cleared
[Signature]

Service verified on 27.11.2012
 1.12.2012 to 30.11.2012

[Signature]
 DISTRICT ENGINEER
 SWABI

Transferred to KEN PHE Division from 5

Order P.F. No. 12/F.2/PHE (M) dt/16-07-2013
 Department reported on 21-07-2013

[Signature]
 DISTRICT ENGINEER
 SWABI

Service verified on 27.11.2012
 1.12.2012 to 31.12.2012

[Signature]
 DISTRICT ENGINEER
 SWABI

D.T. Huzari Divali Swabi

15

9 Name and Designation of head of the office or attesting officer (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 punish- ment 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 debitable to another Government			
					Period			Government to which debitable
<i>Reported arrival on 10/08/2013 (PND)</i>								
Executive Engineer Public Health Engineering Division Madhav								
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Annex "E"

16

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

No. 32 / E - 4 / PHE

Dated Peshawar, the 21 / 01 / 2014

To

- | | |
|-------------------------------|----------------------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad Khan | Sub Engineer, |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman | Sub Engineer, |
| 10. Mr. Salim Nawaz | Sub Engineer, |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Sahar Gul | Sub Engineer, |
| 14. Mr. Ishfaq | Sub Engineer, |
| 15. Mr. Abdul Shahid | Sub Engineer, |
| 16. Mr. Kashif Raza | Sub Engineer, |
| 17. Mr. Waqar Ali | Sub Engineer, |
| 18. Mr. Muslim Shah | Sub Engineer, |
| 19. Mr. Ishtiaq Ahmad | Sub Engineer, |
| 20. Mr. Zuhib Khan | Sub Engineer, |
| 21. Mr. S. Hassan Ali | Sub Engineer, |
| 22. Mr. Mohsin Ali | Sub Engineer, |
| 23. Mr. Muqtada Qureshi | Sub Engineer, |
| 24. Mr. Ishfaq Ahmad | Sub Engineer, |
| 25. Mr. M. Qaiser Khan | Sub Engineer, |
| 26. Mr. Nomanullah | Senior Scale Stenographer, |
| 27. Mr. M. Imran | Steno Typist, |
| 28. Mr. M. Jamil | Steno Typist, |
| 29. Mr. Istikhar | Steno Typist, |
| 30. Mr. Shah Khalid | Steno Typist, |
| 31. Mr. Aziz Ullah | Steno Typist, |
| 32. Mr. Farhan Ullah | Steno Typist, |
| 33. Mr. Farman Ali | Data E/Operator, |
| 34. Mr. Murtaza Qureshi | Data E/Operator, |

Subject: SHOW CAUSE NOTICE

In compliance of Supreme Court of Pakistan decision dated 15.1.2014 action against all illegal appointee's are being taken immediately. As such you are hereby served with this show cause notice regarding your appointment as under:

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

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3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission, of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil servant (appointment, promotion and transfer rules 1989). Codal formalities have not been fulfilled in your appointments.
4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent Authority.

Keeping in view the above, you are directed to furnish reply to the show cause notice within 15-days positively; otherwise it will be presumed that you have nothing in your defense. As such ex-party action will be taken against you under the E&D rules which will entail your termination from service.

Copy forwarded to:

Chief Engineer (South)

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. The Chief Engineer (North) Public Health Engg: Department Peshawar.
3. All Superintending Engineers/Executive Engineers in South/North/^{FATA WSS} Public Health Engg: Department. They are directed to serve the show cause noticed to the above named officials working in your office.


Chief Engineer (South)

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

Annex "F" 18

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PHE dated 21-01-2014 received by me on 10/2/2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

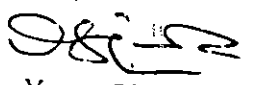
It is submitted that I am working in PHE Division MARDAN as J.S. Stenographer and is only under the controlling authority of the worthy Chief Engineer (North) PHE(D) as competent authority. Therefore, the Show Casuse Notice issued to me under your signature on that reason too is un-authorized and un-lawful. However, para wise explanation is submitted as under:-

1. In this connection your attenditon is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-1 to B-15 in W&S Department (i.e. C&W and PHE) as District Cadre Posts and outside the purview of P.S.C. Therefore, W & S Department was directed neither to place any such requisition before the P.S.C. nor the P.S.C. was required to advertise such posts (Annexure-I). The E&A Department, vide letter No.SOR-V(E&AD)/1-368/2005(SE) dated 02/5/2007 addressed to P.S.C. and copy thereof endorsed to Secretary W&S Department, further stated that the requisition made by the W&S Department, for filling in the vacant posts may be considered as withdrawn (Annexure-II). In the circumstances, the recommendation of P.S.C. for appointment against such posts, were uncalled for.
2. My appointment agasinst the post was made by the Competent Authority as I having the prescribed qualifictions for the same. Hence there involve no contravention to Govt. Policy.
3. As explained in the above paras it was not the purview of P.S.C. to make recommendation against these Posts, therefore there was no need of N.O.C etc; from them. From the above letters it reveals that requisition for the vacant posts was made, but the same was withdrawn by the E&A Department. Therefore, the Secretary W&S Department, vide his Notification No. E&A/W&S/11-23/2006 dated 30.4.08 assigned all the Establishment matters of officials from BPS-I to BPS-17 to the respective Chief Engineer of C & W and PHE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover, my appiointment was made by the competent authority through the DSC.
4. As a candidate and junior employee of the Department, I do not know about any violation of codal formalities in the process of appointment. However, if there is some lapse in procedure, that is supposed to be tackled by the concerned bands with the competent forum for rectification/regularization, rather to proceed against me without any fault of mine at this belated stage/time where I have spent the useful part of my life of about 4 years ~~Two Month~~ years and have since crossed/near to cross the upper age limit of 30 years and have been overaged.

It is added that I am not party in the case of Mushtaq Ahmad & others C.P No.2026/13 & Muhammad Nasir Ali & others CP No.2029/13, therefore, the decision of the Honourable Supreme Court of Pakistan dated 15.01.2014 is not applicable upon me.

In view of above explanation, it is very humbly prayed that the charges may be dropped.

Thanking you.


Yours Obediently.

Mohammad IFTIKHAR
J.S. STENOGRAPHER

PHE Department
MARDAN

Dated 18/02/2014.

18/2/14
Attest to be
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Copy to the:-

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1. Registrar, Supreme Court of Pakistan, Islamabad with reference to C.Ps N.2026 & 2029 of 2013.
2. Registrar, Peshwar High Court, Peshawar w/r to W.Ps No.271-P & 663-P of 2013 w/r to above.

They are requested to direct the Chief Engineer (South) PHE Peshawar to avoid from taking such drastic & one sided action i.e without proper enquiry & opportunity of hearing etc; as required under the law/ natural justice.

3. PS to Secretary PHE Department Peshawar.

Dated: 18/02/2014

Mohammad Iftikhar
J.S. Stenographer
PHE Department
M.A. Khan

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

No. 45 /E-4 /PHE.

Dated Peshawar, the 14 /02/2014

To

Mr. M. Mikhar s/o Chainar Gul
Steno Typist P.H.Engg Division
Mardan

Annex "B"

20

Subject: **TERMINATION FROM SERVICE**

Your recruitment in PHED made vide this office letter No.04/E-4 /PHE dated 11.12.2009 on adhoc basis for one year was illegal and unlawful due to non-fulfillment of codal formalities.

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

1. Initial recruitment of Steno Typist s will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-I (S&GAD)I-117 /91(c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.
2. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.
3. Departmental selection committee was not constituted by the Administrative Secretary.
4. Your reply to the show cause notice is not convincing.
5. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Steno Typist with immediate effect.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
2. PS to Minister for Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
3. The Accountant General Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer (North) Public Health Engg: Department Peshawar.
5. The Chief Engineer (FATA) Works & Services Department Peshawar.
6. All Superintending Engineers/Executive Engineers in South/North P.H.Engg: Department.
7. All District Accounts Officer in Khyber Pakhtunkhwa.

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Chief Engineer (South)

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar.

Annex "H"

91

Subject: - APPEAL FOR REINSTATEMENT INTO GOVT: SERVICE

R/Sir,

With great respect & reverence, it is submitted that I was appointed as steno Typist by the Chief Engineer PHE on 11/12/2009. After serving for about 4 years a Show Case Notice was issued to me in the back date by the Chief Engineer (South) PHE vide his No. 321E-4/PHE dated 21-01-2014. No sooner the Show Case Notice received to me, the period of 15 days given therein for reply were passed. I, therefore, requested for extension of the period for reply, which was not listened & my Termination Order was issued vide C.E. (South) PHE No. 451E-4/PHE dated 14-02-2014. Sir, all this process was completed in a speedy manner with utter dis regard to observe the codal formalities of enquiry & personal hearing etc. However necessary reply to the Show Cause Notice was submitted by me within the stipulated period. At the time of my termination I was serving at PHE MARDAN under the administrative control of Chief Engineer (North) PHE. Therefore the disciplinary proceedings and termination orders issued by the Chief Engineer (South) PHE is incompetent. However I beg to submit the following ~~the~~ few lines for your sympathetic consideration and favourable action:-

- i) The Termination Order was ~~been~~ issued in a hurry without making any enquiry and giving me an opportunity of hearing, as required under the Rules.
- ii) My appointment order was issued on regular basis on the recommendation of D.S.C as mentioned in the Appointment Order. I have also completed the prescribed probationary period, satisfactorily.
- iii) Under the Notification issued by the Finance Department Bearing No. SOR-III/FD 1/2005 dated 27-2-2013, the Provincial Assembly has passed an Act, that all Servants appointed to a Service or post on or after 1st July 2001 shall be deemed to have been appointed on regular basis and shall be eligible for Pension/ G.P. Fund.
- iv) Without prejudice, the allegation that my appointment was made against the prescribed procedure i.e. without recommendation of PSC etc. is also misconceived as evident from the Establishment & Administration Department Notification No. SOR-1/(E&AD) 99/73 (Vol-IV) dated 2-11-2002 where an official of BPS-11 to 15 of only Department, to the exclusion of PHE Departments, were subject to P.S.C. Reference also made to the Notification issued by the W&S Department vide No. SO (E) W&S/13-1/77 dated 22-3-2005 & E&A Department letter No. SOS. Pool (E&AD) 1-10/2002 dated 8-4-2006, whereby after Devolution the appointments in District cadre posts were declared outside the scope & purview of the P.S.C.

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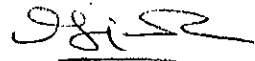
- v) The direction of the apex Supreme Court dated 15-1-2014 is not applicable in my case as it relates to the Adhoc / Contract Employees appointed on year to year basis. Moreover, neither I was a party in the case nor I have been heard by any authority or Court in this regard. The statement given by the Chief Engineer in the Court is not based on fact and the officer has also not appreciated the contents of the Court decision, in its true letter and spirit. In fact in such legal matters, opinion of the Law Department should have been sought for, instead of resorting to such drastic and unlawful action by the Chief Engineer at his own sweet will, putting about 35 individuals and their families into hardships for no apparent fault on their part. (22)
- vi) I was appointed by the Competent Authority and have rendered long and unblemished service of about 4 years to the entire satisfaction of my senior and superior officers. The authority during my services neither informed me that my services are subjected to arrival of PSC recommendees nor any such notice has been issued to me in this respect. The termination order at this belated stage, have no lawful justification where I have since overaged / near to the attainment of upper age limit, for no fault on my part, I and my family are to suffer economically & professionally, especially in these hard days of un-employment and dearness. Also due to such Termination Order my legal and lawful rights have been accrued/ infringed.
- vii) I have completed the prescribed probation period and at present under the law I may be treated as regular, confirmed and permanent Civil Servant.
- viii) The procedural lapse, if any, in the Order of my appointment should have been raised during probation periods where at this belated stage, raising of such points, manifestly smack malafide on the part of the officer concerned.
- ix) The Law, Justice and equity do not allow the action taken against me and demands withdrawal of the said Termination Order.
- x) Codel formalities of enquiry and opportunity of personal hearing etc have not been observed while terminating services of the applicant which are mandatory requirement of law as laid down in 2000 SCM 1743 that the appellant is not to be punished for the lapses of the Department as the initial objection was that the post against which the appellant was recruited was not advertised, (1996 SCMR 1350). In this judgment of Supreme Court it has been held that the employees should not be punished for the lapses of the Department.

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In view of the above it is prayed that the impugned Termination Orders being violative of Law may kindly be set aside thereby re-instating me into Govt: service with all back benefits.

Yours obediently,



Muhammad Afkhar

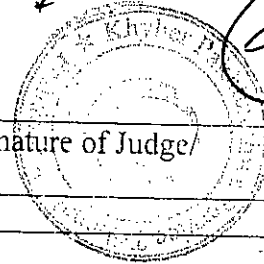
Junior scale stenographer

PHE - Merdan

Dated 28/02/2014.

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Annex 1



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
	2	3 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u> 1. 665/2014, Farhanullah (Khalid Rahman, Adv) 2. 723/2014, S. M. Ahsan Shah (Rustam Khan Kundi) 3. 724/2014, Saleem Nawaz, -do- 4. 725/2014, Mohsin Ai, -do- 5. 726/2014, Kashif Raza, -do- 6. 727/2014, Syed Muhammad Ali Sajjad, -do- 7. 728/2014, Muhammad Ali Noor, -do- 8. 729/2014, Irshad Elahi, -do- 9. 750/2014, Murtaza Qureshi, (Isaac Ali Qazi, Adv:) 10. 783/2014, Syed Ishfaq Ahmad, (M. Asif Yousafzai) 11. 784/2014, Ishfaq Ahmad, -do- 12. 785/2014, Murtaza Ali, -do- 13. 786/2014, Amir Muqtada Qureshi, -do- 14. 787/2014, Abdus Samad, -do- 15. 788/2014, Hussain Zaman, -do- 16. 789/2014, Abdul Shahid, -do- 17. 790/2014, Waqas Ali, -do- 18. 791/2014, Muhammad Iftikhar, (Isaac Ali Qazi, Adv.) 19. 792/2014, Ishtiaq Ahmad, -do- 20. 793/2014, Shaukat Ali, -do- 21. 794/2014, Muhammad Sajjad, -do- 22. 795/2014, Tariq Nawaz, -do- 23. 796/2014, Ishfaq Ahmad, -do- 24. 797/2014, Noman Ullah, -do- 25. 803/2014, Aziz Ullah, (Aslam Khan Adv.) 26. 810/2014, Muslim Shah, (M. Asif Yousfzai, Adv) 27. 811/2014, Syed Hassan Ali -do- 28. 812/2014, Zohaib Khan, -do- 29. 829/2014, Qaiser Khan, -do- 30. 867/2014, Farman Ali, -do- 31. 868/2014, Shah Khalid, (Isaac Ali Qazi, Adv) Versus Govt. of KPK Province through Secretary, Public Health Engineering Department, Peshawar & Others. <u>JUDGMENT</u> <u>PIR BAKHSH SHAH MEMBER:-</u> Counsels for the appellants and Sr. Government Pleader (Mr. Usman Ghani) with Muhammad Siddique Admn. Officer for the respondents present.
	30.12.2015	

ATTENDED

PIR BAKHSH SHAH
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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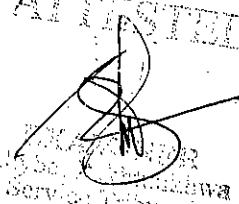
2. The above appellants, employees of the PHE Department, were terminated from service by way of impugned order dated 14.02.2014 and their departmental appeal was not decided, hence this appeal under Section 4 of the KPK Service Tribunal Act, 1974. In view of the common question of facts and law, we propose to dispose of all the above appeals by this single judgment.

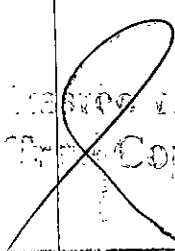
3. Relevant facts, in brief, as revealed from record are that the Hon'ble Peshawar High Court Peshawar vide its judgment dated 02.10.2013 dismissed Writ Petitions No. 271-P and 363-P both of 2013 of some of the appellants which judgment came up before the august Supreme Court of Pakistan in Civil Petitions No. 2026/13 and 2029/13. The august Supreme Court of Pakistan vide its order dated 15.01.2014 was pleased to direct as follow:-

"2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, KPK is present in Court, he states that although many other illegal appointees in his department have been removed from service, but against many others such action is in process of various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from to-day and submit his report

ATTESTED


 Peshawar
 Service Tribunal,
 Peshawar


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through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.”

In the wake of the said order of the august Supreme Court of Pakistan, a joint show cause notice was prepared and issued to the appellants followed by the impugned termination order.

4. The charges against these appellants are reproduced as follow from the show cause notice issued to them:-

1. In light of S&GAD letter No.SOR-I(S&GAD)1-117/91© dated 12.10.1993 the appointment of Sub Engineer, Steno Typist/Stenographer and DATA E/Operator continued to be made through recommendation of Public Service Commission. Whereas you have been appointed without the recommendation of Public Service Commission which is contrary to the prevailing rules. Therefore, you are directed to provide recommendation of Public Service Commission, if any.
2. Your appointment orders have been made in contravention of Govt. laid down policy vide circulated notification No.SOR-VO/EXAD/1-10/2005/Vol-VI dated 15.11.2007.
3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for

ATTESTED

[Signature]
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

[Signature]
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recruitment, no requisition submitted to Secretary Works & Services Department, no sanction/approval was obtained from Administrative Secretary, no Departmental Promotion Selection Committee constituted by the Secretary Works & Services Department, not advertised and nor the appointment are modified in terms of para-13 and 14 of N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Codal formalities have not been fulfilled in your appointment.

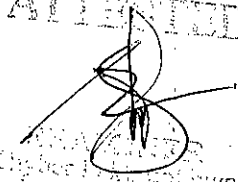
4. Necessary sanction to condonation of the violation of codal formalities have not been accorded by the competent authority."

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

5. Arguments heard ad record perused.

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

7. In support of the appellants, it was submitted that the appellants were terminated from service without observing codal formalities of the charge sheet, enquiry; that no opportunity of defence and personal hearing was provided to them. It was further submitted that the

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 Service Tribunal,
 Peshawar

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

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

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 Member Public Service Tribunal,
 Peshawar

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Supreme Court of Pakistan dated 15.01.2014 terminated the appellants therefore, this Tribunal has no jurisdiction to reinstate the appellants. Finally it was submitted that these appeals may be dismissed.

9. Order dated 15.1.2014 of the august Supreme Court of Pakistan is explicit according to which the respondent department was directed to take action against the illegal appointees. Contention advanced by the learned counsel for the appellants during the course of arguments was that appointments of the appellants were in accordance with the prescribed procedure as the posts did not fall in the purview of the Public Service Commission. Further that the appellants were not given opportunity of defence as evident from the facts that even prior to the lapse of the terminal date for reply to the show cause notice, the appellants were terminated. It was also contended for appellant Farhanullah (Data Entry Operator BPS-12), that prior to this post he was a valve-man in the department, therefore, instead of termination, he should have been reverted to his previous position.

9. On the point as to whether the Tribunal would be competent to adjudicate on these appeals, the learned counsel for the appellants submitted copy of a subsequent order dated 28.04.2014 in CP NO. 551 of 2014 according to which the Service Tribunal shall decide the appeals as

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 Member
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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mandated in law. Evidently no charge sheet has been issued to the appellants nor opportunity of personal hearing has been provided to them and instead show cause notice was served on them. It is apparent from record that the impugned order has been passed quite in haste. After the impugned order, the respondent department vide letter No. 03/G-4-A/HC/PHE dated 17.2.2014 intimated to the Registrar Supreme Court of Pakistan that in pursuance of order dated 15.1.2014, a total of 24 Sub Engineers, 6 stenotypist/Stenographers and 2 Data Entry Operators had been terminated. This being so, we are afraid that due care and caution had not been exercised by sorting out individual case of each of the appellants. In the above scenario, while not interfering with the ^{impugned} order dated 14.2.2014 at this stage, the Tribunal in the interest of justice would remit cases of the appellants to the appellate authority of the department with direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing. This process of disposal of departmental appeals of the appellants be completed within a period of 2 months after receipt of this judgment. In case the appellate authority finds that any of the appellant had been unlawfully terminated or terminated by mis-conceiving order of the august Supreme Court of Pakistan dated 15.1.2014 and

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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facts of a particular case and it leads the authority to accept such an appeal, the said decision would require to be taken with full justification and shall have to be intimated to the Registrar of the august Supreme Court of Pakistan in continuation of respondent department letter dated 17.2.2014. All the appeals are disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.12.2015

Sd/- Pir Bakhtish Shah,
Member

Sd/- Abdul Latif,
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 01-01-2016
Number of Cases 3200
Copies Fee 18
Fees 18
Name of Officer MSM
Date of Issuance 01-01-2016
Date of Collection 01-01-2016

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Received
H. J. Khan
28-1-15

Chief Engineer (South) Public Health Engineering Department Peshawar services. I received shocking termination letter NO. 26/E-4 PHE dated 14-02-2014 from years, completed probation period and leaving no chance of complaint by rendering good and upgraded properly to BPS-14. After serving the Department for approximately five merits, I was appointed as Steno typist (BPS-12) and I joined the Department accordingly. (iv) Having higher Educational Qualifications and considering my case on authentic by the Department

pertinent to point out that this joint DSC recommendation was considered recommendation by JOINT DSC etc, formalities were completed. It would be (iii) All the other formalities such as test interview and

(Copy attached)

Departmental Selection Committee vide No. 04/E-4/PHE dated 14-11-2009. Engineer Public Health Engineering Department Khyber Pakhtunkhwa before (ii) After wards I have called for Test/Interview by the Worthy Chief in Daily Aaj

INF(P) 2791 in Daily Newspaper dated 28-08-2009 in "Daily Mashriq & dated 27-08-2009 (i) Applied for post (Steno Typist) after advertisement vide Add: No

requirements in vogue, i.e:- a) My appointment has been made after fulfillment of all the

order dated 14-02-2014) on the following grounds. kindly not be considered jointly with other 28-Nos terminated employees (Impugned First of all I would draw your kind attention to the fact that my case may

sympathetic and justifiable honor for consideration on merits. the appellant have the honor to submit my this Departmental appeal in your kind Tribunal Peshawar judgment announced on 30-12-2015 in Service Appeal No. 803/2014. Under the directives contained in Honorable Khyber Pakhtunkhwa Service

Respected Sir,

Subject: - RE APPEAL FOR REINSTATEMENT INTO GOVERNMENT SERVICE AS (STENO TYPIST) IN THE LIGHT HONORABLE SERVICE TRIBUNAL PESHAWAR, DATED 30-12-2015

2) The Honorable Chief Engineer (South) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.

1) The Honorable Secretary, Govt: of Khyber Pakhtunkhwa Peshawar.

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Amended

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Respected Sir,

The case remained under consideration/trial into Department and the Hounrable Courts.

- 1) Departmental Appeal.
- 2) High Court Peshawar.
- 3) Supreme Court.

NOTE: the Supreme Court declared us Civil Servants in his respective decision dated 29-04-2014.

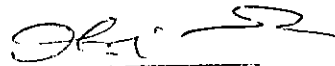
- 4) Service Tribunal.

As a last sort, the Service Tribunal Pesahawar passed the following decision:

"This being so, we are afraid that due care and caution had not been exercised by sorting out individual case of each of the appellants. In the above scenario, while not interfering with the impugned order dated 14-02-2014 at this stage, the Tribunal in the interest of justice would remit cases of the appellants to the appellate authority of the department with direction to decide the department appeal of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the rehearing. This process of disposal of departmental appeals of the appellants be completed within a period of 2 months after receipt of this judgment. In case the appellate authority finds that any of the appellant had been unlawfully terminated or terminated by miss-conceiving order of the August Supreme Court of Pakistan dated 15-01-2014 and facts of a particular case and it leads the authority to accept such an appeal, the said decision would require to be taken with full justifications.

Submitted for sympathetic and favorable consideration by accepting this appeal and appointing appellant as Steno Typist with effect from date of termination with all back benefits please.

Yours obediently



Muhammad Iftikhar

S/O Chinar Gul

Ex-Steno Typist

Cell: 03339874228

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**Office Of The Public Health Engineering
Division Mardan.**



GOVERNMENT OF KHYBER PAKHTUNKHWA /
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/1-90/2013-14.VOI-II
Dated Peshawar the, March 03, 2016

To,

Mr. Muhammad Iftikhar
S/o Chinar Gul
R/o New Adda Charsadda Chowk,
Mohallah Gulbahar, District Mardan

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Aaqex "K"

Subject:

**DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No.45/E-4/PHE DATED 14-02-2014.**

WHEREAS, you managed to get yourself appointed as Steno typist (BPS-12) in PHED vide Chief Engineer PHE Office Order No.04/E-4/PHE dated 11-12-2009.

2. AND WHEREAS, you were served with a Show Cause Notice by the Chief Engineer (South) PHE vide No.32/E-4/PHE dated 02-01-2014, and subsequently your services were dispensed with by the said authority vide his Office Order No.21/E-4/PHE dated 14-02-2014 as a sequel to the apex Court Order dated 15-01-2014 in C.P No.2026 and 2029/2013 and the same was also intimated/confirmed to the said august Court vide letter dated 17-02-2014.

3. AND WHEREAS, you filed a Writ Petition bearing No.615-P/2014 before the Peshawar High Court Peshawar against your termination order which was dismissed by the Hon'ble Court vide its judgment dated 26-02-2014, being not entertainable. Subsequently, you challenged the said judgment before the Hon'ble Apex Court vide C.P No.551 of 2014 and the apex court vide Order dated 28-04-2014 disposed the said Civil Petition in terms that in the event of filing the appeal, the Service Tribunal shall decide the appeal as mandated in law.

4. AND WHEREAS, you also filed Service Appeal No.791/2014 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was also disposed off vide its judgment dated 30-12-2015, with the direction to decide the departmental appeals of the appellants strictly in accordance with law/rules considering each of the appeal on its merits and fulfilling the requirements of opportunity of personal hearing.

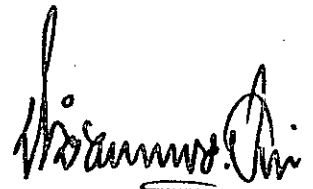
5. AND WHEREAS, you were given the opportunity of being heard on 08-02-2016 and material on record perused. It revealed that your appointment as Steno typist was effected as a consequence of production of a politically motivated list by the then Political Secretary to Chief Minister and that too, in sheer violation of the provisions contained in the K.P Civil Servants Act, 1973 and the rules made there-under. The then

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Chief Engineer (South) PHE abused his powers while grabbing the authority vested in the K.P Public Service Commission. Even C.E (South) PHE was not competent to make your appointment on adhoc basis for want of NOC from the K.P Public Service Commission, advertising the post as per prescribed procedure, observing merit, zonal allocation and mandatory recommendations of the Departmental Selection Committee. As such, your appointment as Steno typist PHE stands void ab-initio and ultra-vires of the provisions contained in the law/rules/policy ibid. Hence, your termination order dated 14-02-2014 by the competent authority is quite legal, lawful, valid and does not require any review, modification or setting aside whatsoever by the appellate authority.

6. NOW THEREFORE, after having considered the material on record & your explanation during personal hearing held on 08-02-2016, your facts appealed against the C.E (South) PHE Office Order dated 14-02-2014 have not been established and in exercise of the powers as Appellate Authority, conferred under the K.P Civil Servants (Appeal) Rules, 1986 and all other such powers in this behalf, your departmental appeal is hereby dismissed for the reasons mentioned in Para-5 supra.

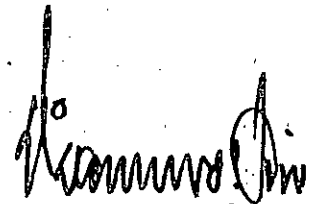


(NIZAM-UD-DIN) 03/03
SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

ENDST: NO & DATE AS ABOVE:

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.29/ST, dated 05.01.2016 for information.
2. Senior Govt Pleader, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.(SR.GP)E&AD/1-5/Lit/Appeal/2013/192-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.



SECRETARY TO 03/03
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

WAKALAT NAMA

IN THE COURT OF

K. P. K. Jemee Tashud

Muhammad Iftikhar Appellant(s)/Petitioner(s)

Quel VERSUS

Respondent(s)

I/We _____ do hereby appoint
Mr. Khaled Rehman, Advocate Supreme Court of Pakistan 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
Supreme Court of Pakistan

J. P. K.

Signature of Executants

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

**BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR**

Service Appeal No

349/2016

Mr. Muhammad Iftikhar S/O Chinar Gul
Ex-Steno Typiest
PHE Department

..... (Appellant)

Versus

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

...Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 & 2

Respectfully stated

Para-wise comments of the Respondent 1 and 2 are as under:-

PRELIMINARY OBJECTIONS.

- 1). That the appellant has got no cause of action.
- 2). That the appellant is estopped by his own conduct to bring the instant appeal.
- 3). That the present appeal is not maintainable in its present form and shape.
- 4). That the appellant has got no locus standi.
- 6). That the appellant has not come to the Tribunal with clean hands.
- 7). That the appeal is bad for non-joinder and misjoinder of necessary parties.
- 8). That the appeal is barred by Law & limitation
- 9). That this Honourable Service Tribunal has no jurisdiction to entertain the present appeal.

BRIEF HISTORY

A writ petition bearing No W.P 271-P/2013 was filed by Mr. Mushtaq Ahmad, etc, for extending benefits of regularization, before the Peshawar High Court order, Peshawar and the same was declined by the Peshawar High Court, (Copy of the judgment dated 2.10.2013 is annexed as **(ANNEXURE-I)**). The said petitioners then moved a Civil Petition No 2026 and 2029 of 2013 before the August Supreme Court of Pakistan. Though the August Supreme Court of Pakistan dismissed the same and directed the department to finalize the action against the illegal appointees within one month, vide judgment dated 15.1.2014 (**ANNEXURE-II**) and subsequent reminder dated 07.02.2014 (**ANNEXURE-III**). The appellant was appointed from a list submitted by Political Secretary to then Chief Minister Khyber Pakhtunkhwa (**ANNEXURE-IV**). Upon completion of the legal formalities i.e. issuance of Show Cause Notice etc, the action was taken against the appellant.

ON THE FACTS.

- (1) Incorrect. The advertisement was floated for appointment of Steno typist on contract basis where as he was appointed by the then Chief Engineer on regular basis without recommendation of Public Service Commission illegally on the unlawful direction of Political Secretary of the then Chief Minister Khyber Pakhtunkhwa without fulfillment of codal formalities. Chairman and Two members of Departmental Selection Committee disowned their signatures and participation in the selection process (**ANNEXURE-V**).
- (2) Incorrect. The appellant was illegally appointed without written test, interview, merit and without recommendation of Public Service Commission. Therefore he is not a permanent Government Servant and his regularization is subject to recommendation of Public Service Commission which he did not qualify. The DPC was not legally constituted and Chairman and Two members of DSC disowned their signatures and participation in the selection process. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgment dated 30/05/2016 (**ANNEXURE-VI**).
- (3) Pertain to record hence no comments.
- (4) Correct that petition 271-P/2013 and No.663-P/2013 filed by various adhoc Sub Engineers was dismissed by honourable High Court. Against dismissal of appeal the petitioner filed an appeal before Apex Court vide WP No.2026 and 2029 which was dismissed by the Apex Court. Amongst one of the petitioner brought to the notice of honourable court that illegal appointees are still working in the Department, while they have been terminated. The honourable court further directed to the then Chief Engineer respondent No.2 to take action against all illegal appointees within one month period vide judgment dated 15.1.2014 and subsequent reminder dated 7.2.2014. In light of direction of Apex court, after issuance of show cause notice to the appellant being illegally appointed was terminated.

- (5) Denied as drafted. The appellant was illegally appointed by the wrong authority on the post come in the purview of Public Service Commission contrary to rules. Show cause notice was given to appellant but the appellant failed to produce legal documents in his defense regarding legality of his appointment.
- (6) Incorrect. The appellant was appointed from a list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa on the post come in the purview of Public service Commission by wrong authority. In light of direction of Apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014 after issuance of show cause notice the appellant was terminated being illegally appointed. There was no merit/weight age in his reply for show cause notice hence not considered. Correct to the extent that the case was remitted by the service tribunal to the department for giving opportunity of departmental appeal and personal hearing, which was given to the appellant in the stipulated period.
- (7) Correct. That the appellant submitted departmental appeal in light of orders of honourable Service Tribunal and also heard in person by the appellant authority. The appellant was illegally appointed contrary to rules and there was no merit in his reply of departmental appeal hence dismissed by appellant authority correctly.

GROUND S

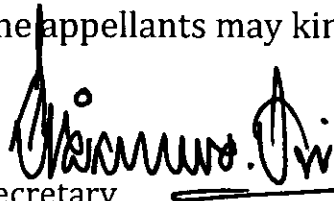
- A). Incorrect. The appellant was illegally appointed on the post come in the purview of Public Service Commission by wrong authority. The appellant not come in the category of civil servant and was terminated in the light of direction of apex court orders dated 15.1.2014 and subsequent reminder dated 7.2.2014 fulfillment of codal formalities of issuing show cause notice.
- (B) Incorrect. The filling of instant post comes within the purview of Public Service Commission as per Public Service Commission Ordinance, ESTA Code, recruitment policy and local Govt Ordinance Para 23 and 24 (**ANNEXURE-VII, VIII, IX, & X**), if the assumption of appellant of appointment of 1 to 15 the district cadre post is considered, then the DCO was competent to appoint the appellant instead of Chief Engineer who is provincial head of the department.
- (C) Incorrect. The appellant was illegally appointed by wrong authority on the post come in the purview of Public Service Commission. The appellant was illegally appointed therefore his name was not included in the seniority list and he never objected for not including his name in the seniority list. The appellant was terminated on the direction of apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014 after fulfillment of codal formalities, the appellant was not civil servant as he was appointed contrary to rules by wrong authority. Illegally appointee has no right to retain in service. There was no merit and weight in his reply of departmental appeal, hence reject by competent authority.

- (D) Incorrect. The appellant was illegally appointed contrary to rules by wrong authority and not come in category of civil servants. In light of direction of apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014 after issuance of show cause notice, terminated as he failed to prove his appointment legal in the reply of show cause notice.
- (E) Incorrect. The appellant was not civil servant. In case of illegal appointment no inquiry needed, show cause notice was issued to the appellant but he failed to provide legal documents regarding legality of his appointment.
- (F) Correct to the extent that in light of judgment of Service Tribunal dated 30.12.2015 the appellant was given opportunity of departmental appeal and also heard in person by the appellant authority. The appellant was appointed in illegal manner on the post come in the purview of Public Service Commission by wrong authority. There was no merit and weight age in the reply of the appellant in his departmental appeal, hence dismissed by the appellant authority correctly according to rules.
- (G) Incorrect. The appellant was appointed contrary to rules on the post come in the purview of Public Service Commission as per Public Service Commission Ordinance, ESTA code recruitment policy by wrong authority. The illegal appointee not come in the category of civil servants, therefore his name has not been included in the seniority list and never the appellant objected regarding his seniority. The appellant being illegally appointed, terminated in the light of direction of apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014.
- (H) Incorrect. The appellant illegally appointed by violating prevailing rules by wrong authority on the post come in the purview of Public Service commission. The illegal appointments create no legal rights and correctly terminated after observing codal formalities in light of direction of apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014. One wrong or number of wrong cannot be justified through another wrong.
- (I) Incorrect. Ignorance of law is no excuse hence denied as drafted. One wrong cannot be justified through another wrong. The appellant was illegally appointed and the department was under in obligation to take action against illegally appointees in the light of direction of apex court, in letter and spirit. Hence after issuance of show cause notice to the appellant terminated as he failed to produce documentary proof regarding his appointment. However department has initiated disciplinary proceedings against the then Chief Engineers and DSC members.

- (J) Incorrect. The referred case pertain to appointment of Junior Clerk which was not come in the purview of Public service Commission while the appellant appointment as steno typist (Junior Scale Stenographer) come in the purview of Public Service Commission. Therefore there is no contradictory stance of the department. The department correctly terminated the appellant being illegal appointed in light of direction of Apex court.

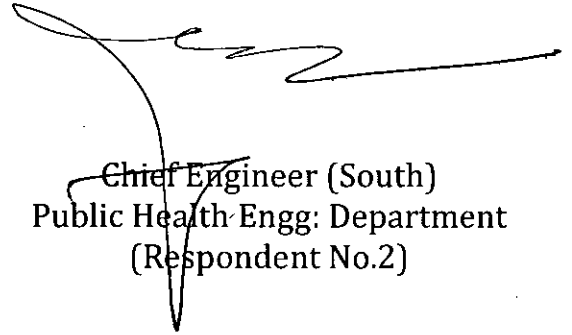
The respondent seeks leave of this Honourable Tribunal to raise additional grounds and proof at the time of arguments.

In this case article 25 of the constitution has been violated by not giving equal right of opportunity to the citizen of the Khyber Pakhtunkhwa and FATA having the requisite Qualification zonal allocation formula has been violated. Appointment of the appellant is without lawful authority and of no legal effect. It is therefore humbly prayed that in view of the above written reply, the appeal of the appellants may kindly be dismissed with cost.



Secretary

to Govt of Khyber Pakhtunkhwa
Public Health Engg: Department
(Respondent No.1)



Chief Engineer (South)
Public Health Engg: Department
(Respondent No.2)

BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No

349/2016

Mr. Muhammad Iftikhar S/O Chinar Gul
Ex-Steno Typiest
PHE Department

..... (Appellant)

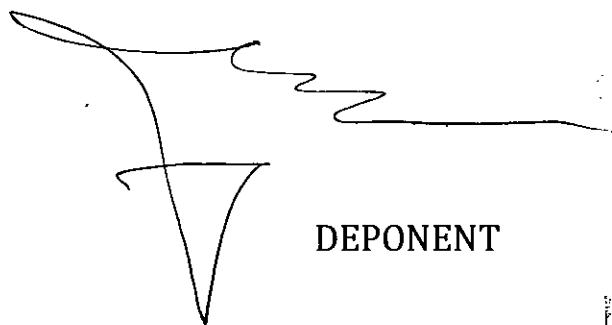
Versus

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

...Respondents

AFFIDAVIT

I, Sanobar Khan, Chief Engineer (South) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm that the contents of the accompanying written statements are true and correct to the best of my knowledge and nothing has been concealed from this honourable tribunal.



DEPONENT

S

S.No	Name	Father
1	Faizullah	Tabarak Shah
2	Muhammad Fiaz	Aziz Muham
3	Amjad Ali	Essa Khan

*Submitted 7.15.14
 dated 27.10.14*

Endstt: No. :

C

- 1 Chief Engine
- 2 All Superinte
- 3 All Executive
- 4 Section Offic

Chief Engineer, Peshawar
 District Public Health Officer, Peshawar

Chief Engineer, Peshawar

Chief Engineer, Peshawar

ATTESTED

EXAMINER
Peshawar

20 FEB 2014

Public Health Engineering Department

Annex-C

Seniority List of Stenotyp-est (B-12) as stood on 31.12.2010

S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Previous Post	Date of Appointment to Present Post	Remarks
1	Faizullah	Tabarak Shah	Chitral	MA/B.Ed	20.02.1969	31.03.1990	-	25.03.1990	
2	Muhammad Fiaz	Aziz Muhammad	Mansehra	M.A	28.03.1970	02.04.1990	-	25.03.1990	
3	Amjad Ali	Essa Khan	Charssada	F.Sc	01.12.1969	25.04.1996	-	25.04.1996	

Chief Engineer (South)
Public Health Engg: Department
Khyber Pakhtunkhwa Peshawar

Endstt: No. 20/E-16/PHE Dated Peshawar the 30/04/2011

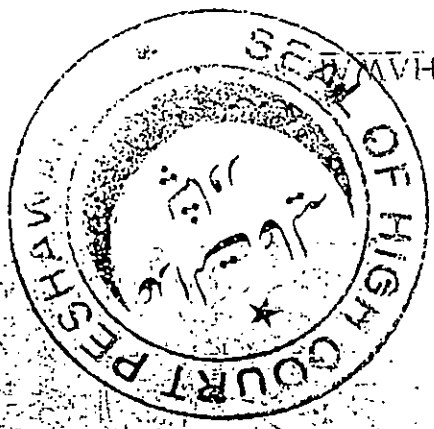
Copy of the Seniority List is forwarded to the: -

- 1 Chief Engineer (North) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
- 2 All Superintending Engineers in Public Health Engg: Department Khyber Pakhtunkhwa.
- 3 All Executive Engineers in Public Health Engg: Department Khyber Pakhtunkhwa.
- 4 Section Officer (Estt) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar

Chief Engineer (South)
Public Health Engg: Department
Khyber Pakhtunkhwa Peshawar

ATTESTED
EXAMINER
Peshawar
20 FEB 2014

Faint, mostly illegible text, possibly bleed-through from the reverse side of the page.



PESHAWAR HIGH COURT, PESHAWAR

Amex

Handwritten marks or scribbles in the bottom right corner.

ESTD
EXAMINER
Peshawar High Court
FEB 2014

Investigation Act No. XVI of 2009 vide which services of all
appointment of petitioners are Provincial Government
them vide office order dated 8.1.2012. Prior to the
They were still in service when the respondents re-appointed
respondent/department on ad hoc basis after due process.
they were appointed as Sub-Engineers in the
Government Organizations/Projects However, on 2.1.2011
technologists and since then are working in various
of Associate Engineer in the year 1995 in different
2. According to the petitioners, they obtained Diploma
both these petitions.

Govt. as common question of law and fact is involved in
W.P. 663-P of 2013 entitled "Muhammad Nisar Khan vs.
MUSARRAT BIALI, J. This judgment shall also decide

Respondent/
Petitioner/Mushtaq Ahmad etc. by Mr. Shah Nawaz
Khan, advocate.

Date of hearing: 2.10.2013.

JUDGMENT

W.P. 271-P of 2013 with interim relief (N).

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT SHEET

2014
Court
2014

the adhoc/contract employees of the Province were regularized, however, the same benefit was not extended to the petitioners. Moreover, services of some six Sub-Engineers have been regularized after appointment of the petitioners. The petitioners preferred an application/appeal to the competent authority as well as to the Human Rights Cell of this court. In this respect, a letter dated 21.12.2013 was addressed to Human Rights Cell by the respondents. wherein, it was stated that Sub-Engineers, namely, Sher Hayat and Musarrat Ahmad, who were 38 and 39 years old, respectively and were debarred from future employment in any institution of the Provincial/Federal Government for the reasons beyond their control. Nevertheless, handsome share of posts of Sub-Engineers were lying in the department and as a gesture of good will, the petitioners can be accommodated on regular basis. According to the petitioners, they waited for some time but did not receive any fruitful result from the respondents whereas their tenure is going to expire, hence necessitated the filing of instant constitutional petition.

3. Learned counsel for petitioners contends that the respondents have acted mala fide by regularizing the services of other employees, similarly placed, who were appointed after the petitioners but the same benefit has been

RECEIVED

...of the view that as the period of one year has elapsed,

the Public Service Commission or whichever is earlier. He

basis for one year or till the arrival of the recommendees of

mentioned that the term of appointment would be on adhoc

appointed as sub-Engineer, whereas it was clearly

dated 23 April 2010 against which the petitioners were

side and straight away referred to the advertisement

4. Learned AAG controverted the arguments from other

other similarly placed employees.

be directed to regularize the services of the petitioners like

violation of Article 25 (2) of the Constitution, therefore, they

learned counsel, the impugned act of respondents is in

the petitioners can be accommodated. According to the

contended that there are vacant posts available against which

control and if not regularized will spoil their future. Also

Provincial/Federal Government, which fact is beyond their

coverage for appointment in any institution of the

cases. Further contended that the petitioners have become

violation of judgments of superior courts rendered in various

regularized. He maintained that the act of respondents is in

in long line of jobless people and would face hardship, if not

of the view that the petitioners and their families will stand

them is discriminatory, which is not tenable in law. He was

denied to the petitioners, thus, the treatment meted out to

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... of recommendees of Public Service Commission.
... would be for one year and on ad hoc basis or till the
... of appointment against the post in
... against the said posts, however, it was
... were asked from desiring candidates
Daily Mashiy Fehawer in its issue dated 23rd April, 2010.
vacant posts of Sub-Engineers located advertisement in
5. Admittedly, the respondents in order to fill up the

available before us.
learned AAG for respondents and gone through the record
We have heard learned counsel for petitioners and

above grounds:
the case, hence prayer for dismissal of the same on the
maintainable keeping in view the facts and circumstances of
Lastly, he contended that the instant petition is not
against which the petitioners can be adjusted/regularized.
there is no vacant post available in the concerned department
discrimination does not arise. He maintained that presently
their services have been dispensed with, hence question of
no similarly placed persons have been regularized rather
petitioners were rightly not regularized. He maintained that
have come and appointed, therefore, the services of the
further one year and the recommendees of the Public Service
which is followed by re-appointment of the petitioners not

72-02-11
EXAMINED
FORWARDED TO THE
SARAWAK HIGH COURT
SARAWAK
Kuching
10 FEB 2014

RECORDED
INDEXED

501, Mrs. MUSA...
A...
501, Mrs. MUSA...
A...

substance is hereby discussed.
of this court, hence this petition being without any legal
out a case for interference in the constitutional jurisdiction
considered opinion that the petitioners have failed to make
keeping in view the above discussion, we are of the
arrival of candidates from Public Service Commission.
respondent/department have also been terminated after the
those employees, who were retained by the
a copy of the letter dated 17/2013 showing that
of no help to them. Moreover, the learned AAG produced
which is not the case in hand, therefore, the plea taken is
1st December, 2008 or till the commencement of the Act.
of those adhoc employees, who were holding the posts on
Act No XVI of 2009 and can be pressed into service in case
6. The petitioners are taking the shelter behind
Sub-Engineers as a stop-gap arrangement.
28.2.2012, the petitioners were re-appointed as
process, they were appointed on 9th January, 2010. On
participated in the test/interview. However, after due
whichever is earlier. The petitioners amongst others also

56

ANNEXURE - ~~1/2~~

(25)

PE: 9082235
FAX: 9220406

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/11/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOS. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

**On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013**

Dear Sir,

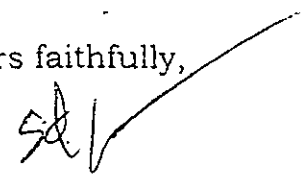
I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions with directions for information and further necessary action.

I am also to invite your attention to the directions of this Court contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action and report compliance.

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

26

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.

(On appeal against the judgment dt. 2.10.2013 passed by the Peshawar High Court, Peshawar in W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13).
...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

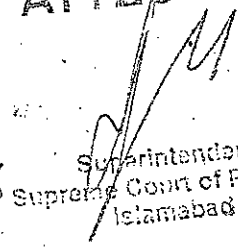
Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

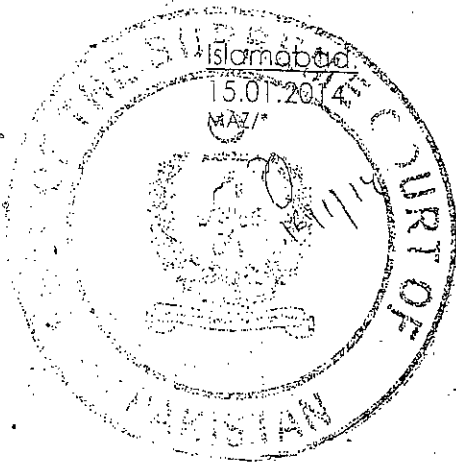
ATTESTED


Superintendent
Supreme Court of Pakistan
Islamabad

although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali, J
Sd/- Ejaz Afzal Khan, J



Certified to be True Copy

Supraintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Words: 680

No. of Pages: 6

Requisition Fee Rs: 5.00

Copy Fee in: 3.12

Court Fee stamps: 8.12

Date of Completion of Copy: 18-1-14

Date of delivery of Copy: 18-1-14

Compared by: [Signature]

Received by: Zahid Jinnah

11

12

145
137

REGISTERED

Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN. 59

Annex-10

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Chief Engineer,
Public Health Engineering Department,
Khyber Pakhtunkhwa,
Peshawar.

Subject: CIVIL PETITION NOS. 2026 & 2029 OF 2013.
 Mushtaq Ahmed & another ...in C.P. 2026/2013
 Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
 Government of Khyber Pakhtunkhwa through Chief Secretary,
 Peshawar & others ...in both cases

On appeal from the Judgment/Order of the
 Peshawar High Court, Peshawar dated
 02.10.2013 in W.P. 271-P & 663-P/2013

Dear Sir,

In continuation of this Court's letter of even number dated
 16.01.2014, I am directed to say that while dismissing as time barred the above
 cited civil petition on 15.01.2014, this Hon'ble Court was pleased to direct as
 under:-

"...2. So far as some other illegalities in the
 appointments brought to our notice is concerned, in
 response to our earlier order dated 09.01.2014, Mr.
~~Dr. ... Khan~~ Sikandar Khan, Chief Engineer, Public Health
 he states that although many other illegal appointees
 in his department have been removed from service,
 but against many other such action is in process at
 various stages and they are still in service.

3. In view of the above statement, he is directed
 to finalize the action against such illegal appointees
 within one month from today and submit his report
 through Registrar of this Court. In case, he faces any
 difficulty in this regard, those difficulties may also be
 brought to our notice so that appropriate orders may
 be passed.

Accordingly, a certified copy of the Order was sent to you vide letter
 referred above for immediate necessary action and report compliance but no
 compliance report in this regard has been received so far from your end.

Contd: P/2

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Chief Engineer,
Public Health Engineering Department,
Khyber Pakhtunkhwa,
Peshawar.

Subject:

CIVIL PETITION NOS. 2026 & 2029 OF 2013.
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

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he states that although many other illegal appointees
in his department have been removed from service,
but against many other such action is in process at
various stages and they are still in service.

3. In view of the above statement, he is directed
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within one month from today and submit his report
through Registrar of this Court. In case, he faces any
difficulty in this regard, those difficulties may also be
brought to our notice so that appropriate orders may
be passed.

Accordingly, a certified copy of the Order was sent to you vide letter
referred above for immediate necessary action and report compliance but no
compliance report in this regard has been received so far from your end.

Contd: P/2

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149

132

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You are, therefore, required to submit requisite compliance report enabling this office to place the same before Hon'ble Court.

dt. 16.01.2014

✓ to
referring earlier
letter

Yours faithfully,

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de.



(23)

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

No. 03 K-4-A/HC/PHE

Dated Peshawar, the 17 /02/2014

To

The Registrar,
Supreme Court of Pakistan,
Islamabad

Subject: Civil Petition Nos. 2026 & 2029 of 2013.

Mushtaq Ahmed & another in C.P. 2026/2013

Muhammad Nasir Ali & Others in C.P. 2029/2013

Versus

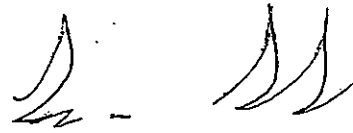
Govt of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others

Reference: No. C.P. 2026 & 2029 of 2013 - SCJ dated 16.1.2014

In light of direction of honourable Supreme Court of Pakistan order dated 15.1.2014 action against illegally appointees in Public Health Engg: Department Khyber Pakhtunkhwa has been finalized. Services of the 24-Nos Sub Engineers, 6-Nos Seno typist/Stenographer and 2-Nos Data Entry Operator who were appointed without advertisement and recommendation of Public Service Commission have been terminated. List attached for your good self perusal please.

DA/As above

ou


Chief Engineer (South)

LIST OF ILLEGAL APPOINTEES IN PUBLIC HEALTH ENGG:
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

A. 24-Nos SUB ENGINEERS

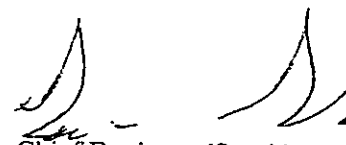
- | | |
|-------------------------------|---------------|
| 1. Mr. Tariq Nawaz | Sub Engineer, |
| 2. Mr. Sajjad Khan | Sub Engineer, |
| 3. Mr. S. Muhammad Ihsan Shah | Sub Engineer, |
| 4. Mr. S. Muhammad Ali Sajjad | Sub Engineer, |
| 5. Mr. Abdul Samad | Sub Engineer, |
| 6. Mr. Shaukat Ali | Sub Engineer, |
| 7. Mr. M. Ali Noor | Sub Engineer, |
| 8. Mr. Irshad Elahi | Sub Engineer, |
| 9. Mr. Hussain Zaman | Sub Engineer, |
| 10. Mr. Salim Nawaz | Sub Engineer, |
| 11. Mr. S. Ashfaq Ahmad | Sub Engineer, |
| 12. Mr. Murtaza Ali | Sub Engineer, |
| 13. Mr. Ishfaq | Sub Engineer, |
| 14. Mr. Abdul Shahid | Sub Engineer, |
| 15. Mr. Kashif Raza | Sub Engineer, |
| 16. Mr. Waqas Ali | Sub Engineer, |
| 17. Mr. Muslim Shah | Sub Engineer, |
| 18. Mr. Ishtiaq Ahmad | Sub Engineer, |
| 19. Mr. Zuhib Khan | Sub Engineer, |
| 20. Mr. S. Hassan Ali | Sub Engineer, |
| 21. Mr. Mohsin Ali | Sub Engineer, |
| 22. Mr. Muqtada Qureshi | Sub Engineer, |
| 23. Mr. Ishfaq Ahmad | Sub Engineer, |
| 24. Mr. M. Qaiser Khan | Sub Engineer, |

B. 6-Nos STENO TYPIST/STENOGRAPHERS

- | | |
|---------------------|----------------------------|
| 1. Mr. Nomanullah | Senior Scale Stenographer, |
| 2. Mr. M. Jamil | Steno Typist, |
| 3. Mr. Iftikhar | Steno Typist, |
| 4. Mr. Shah Khalid | Steno Typist, |
| 5. Mr. Aziz Ullah | Steno Typist, |
| 6. Mr. Farhan Ullah | Steno Typist, |

C 2-Nos DATA ENTRY OPERATOR

- | | |
|--------------------------|------------------|
| 1. Mr. Farman Ali | Data E/Operator, |
| 2. Mr. Murtaza Qureshi - | Data E/Operator, |


Chief Engineer (South)

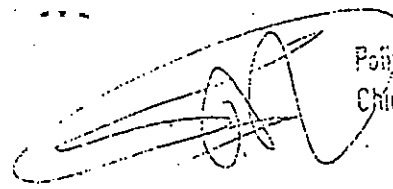
24

Subject:- APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOYPIST & DEO.

It has come in to the notice of Honourble Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenotypists & DEO are lying vacant in PHE. While discussing the matter of appointments against these posts with Chief Engineer PHE, on more than one occasions, it was told that the posts of BPS-10 and above are to be filled through PSC. Where on the other hand due to implementation of Devolution Plan, the Commission is not clear as to whether appointments against these posts, is the prerogative of the respective District or Provincial Governments.

In view of above, the Honourble Chief Minister NWFP, has been pleased to direct to consider the application of the following personnels for their appointments against the vacant posts by the Departmental Authority to bridge the gap of the staff & to ensure smooth working of the newly separated / established PHE Department. Necessary sanction to the condonation of the requisite codal formalities if any will be accorded by the competent authority at due course of time separately:-

S.No	Name of Applicant	Name of Post
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M.Hassan Shah District D.I.Khan	-do-
4.	Mr. S.M Ali Sajjad S/O S.Abid Hussain Shah District D.I.Khan.	-do-
5.	Mr. Abdul Samad S/O Abdul Mueed District Malakand.	-do-
6.	Mr. Shaukat Ali S/O Ghulam Qadir District Karak.	-do-
7.	Mr. Muhammad Ali Noor S/O Noor Muhammad District D.I.Khan	-do-
8.	Mr. Irshad Elahi S/O Shah Nawaz District D.I.Khan	-do-
9.	Mr. Hussain Zaman S/O Syed Zaman District Malakand.	-do-
10.	Mr. Saleem Nawaz S/O Karim Nawaz District D.I.Khan.	-do-
11.	Mr. S.Ashfaq Ahmad S/O S.Jamil ud Din District Malakand.	-do-
12.	Mr. Murtaz Ali S/O Abdul Haq District Malakand.	-do-
13.	Mr. Sahar Gul S/O Abdul Jalil District Lakki Marwat.	-do-
14.	Mr. Samiullah S/O Khuda Baksh District D.I.Khan.	-do-
15.	Mr. Abdul Shahid Sadiqui S/O Abdul Azim District Dir Upper.	-do-
16.	Mr. Asfaq Ahmad S/O Muhammad Shuiab District Malakand.	-do-
17.	Mr. Kashif Raza S/o S.Abid Hussain District D.I.KLhan.	-do-
18.	Mr. Waqas Ali S/O Farznad Ali District Nowshera.	-do-
19.	Mr. Muslim Shah S/O Mehmood Shah District Mardan.	-do-
20.	Mr. Ishtiaq Ahmad S/O Tahmeed Ullah District Charsadda.	-do-
21.	Mr. Zohaib Khan S/O Jehanzeb Khan District Mardan.	-do-
22.	Mr. S. Hassan Ali S/O S.Ajmal Shah District Charsadda.	-do-
23.	Mr. Mohsin Ali S/O Muhammad Pervez District D.I.Khan.	-do-
24.	Mr. Muqtada S/O Afsar Ali District Peshawar.	-do-
25.	Mr. Iftikhar S/O Chainar Gui District Mardan.	Stenotypiest
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	-do-
27.	Mr. Aziz Ullah SD/O Abid Ullah District Bannu.	-do-
28.	Mr. Farhan Ullah S/o Aziz Ullah District Bannu.	-do-
29.	Mr. Murtaz S/O Afsar Ali District Peshawar	D.E.O


Political Secretary to
Chief Minister NWFP



Annex-B

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

No. 07 / E-11 / PHE (N)

Dated Peshawar, the 04 / 06 / 2014

To

The Chief Engineer (South)
Public Health Engg: Department
Peshawar

Subject: UNLAWFULLY APPOINTMENT OF MISS BEENA RANI JUNIOR CLERK

While going through findings of the enquiry report in the subject case submitted by Mr. Sarfaraz Jehan Superintending Engineer PHE Circle Bannu vide his No. 16-19/E-10 dated 15.4.2014, following findings have been recommended by the Inquiry Officer in his report:

1. She has been appointed unlawfully without any interview.
2. She has not been recommended by DSC.
3. She was over age on the time of appointment.
4. She remained absent in her entire service.

The Inquiry Officer in his report has mentioned recommendation by the Departmental Selection Committee furnishing a photo copy of the minutes containing signature/name of undersigned as chairman of the committee and also other members. This is totally unlawful/illegal. In this regard the undersigned and other members mentioned therein categorically denied existence of such Departmental Selection Committee as fake (certificate of signatory's are attached). The undersigned and committee of the members mentioned therein has never attended such meeting of the Departmental Selection Committee and not recommended Miss Beena Rani as Junior Clerk.

Submitted for taking necessary action against her as per rules.


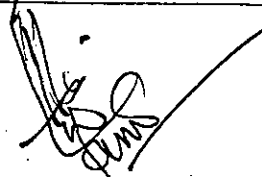
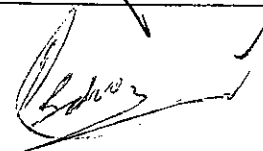
Signature
Chief Engineer (North)

Copy forwarded to the Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar for information.

Chief Engineer (North)

CERTIFICATE

It is certified that we, the following officers categorically denied existence/constitution of Departmental Selection Committee of the under mentioned members in the enquiry report submitted by Sarfaraz Jehan Superintending Engineer PHE Circle Bannu (Inquiry Officer) in respect ^{of} Miss Beena Rani Junior Clerk. This so called committee has never been constituted/notified nor has recommended Miss Beena Rani Junior Clerk for appointment and has not signed any minutes of the DSC meeting.

1.	Akhtar Ali Khan, Director Design Now Chief Engineer (North) PHED.	Chairman	
2.	Haji Ghulam Mohammad ADO Now Retired	Member	
3.	Abdul Bashir ADO, Now Superintending Engineer (H/Q) North PHED	Member	

Annex-11



SERVICE APPEALS NO. 1331/2013
Date of institution ... 11.09.2013
Date of judgment ... 30.05.2016

PESHAWAR

Farhan Ullah S/O Aman Ullah,
Sub Engineer office of Executive Engineer PHE Division Shangla presently Junior Clerk
office of Executive Engineer PHE Division Shangla.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary, Public Health Engineering Department, Govt. of Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (South), Public Health Engineering Department, Govt. of Khyber Pakhtunkhwa Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 05.03.2013 OF CHIEF ENGINEER BEING VOID, ILLEGAL AND WITHOUT LAWFUL AUTHORITY.

Mr. Yousaf Khan, Advocate.
Mr. Muhammad Jan, Government Pleader

MR. PIR BAKJISH SHAH
MR. ABDUL LATIF

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

For appellant.
For respondents.

JUDGMENT

PIR BAKJISH SHAH, MEMBER: Appointed as Junior Clerk (BPS-05) in the respondent-department (Public Health Engineering) the appellant was promoted to the post of the Sub-Engineer (BPS-11) vide order dated 30.03.2011. This promotion order was withdrawn by the competent authority vide impugned order dated 05.03.2013, hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

Arguments heard and record perusal.

[Handwritten signature]

AT PESHAWAR
Khyber Pakhtunkhwa Service Tribunal
Peshawar

12/7/16

1431

Learned counsel for the appellant submitted that no regular enquiry was conducted, no charge sheet was framed but the appellant was unlawfully reverted from the post of Sub-Engineer to his regular post of Junior Clerk. He further submitted that the appellant was diploma holder in Engineering and being qualified he was deserving for the post. He argued that the post of Sub-Engineer was duly advertized and the appellant appeared in its test and interview and was also duly recommended by the committee, therefore he was entitled to the post of Sub-Engineer. He submitted that on acceptance of the instant appeal the impugned order may be set aside and the appellant may be restored to the post of Sub-Engineer(BPS-11).

4. This appeal was resisted by learned GP who submitted that the post of a Sub-Engineer can be filled through Public Service Commission and no junior clerk can be promoted to the said post as was done in the case of the appellant. He submitted that the post of the Sub-Engineer was advertized by the department but it was for Adhoc appointment and the appellant failed in the process of selection for the post of Sub-Engineer. He submitted that the promotion order dated 30.03.2011 is fake and unlawful which cannot create any right in favour of the appellant, therefore, the same was rightly cancelled through impugned order by the competent authority. He submitted that the appeal being devoid of merits may be dismissed.

After a careful perusal of the record and having pro & contra arguments for the parties, it was observed that appointment for the post of a Sub-Engineer falls in the purview of the Public Service Commission and the appellant has failed to prove by showing the relevant rules that he was lawfully promoted from the post of a junior clerk to the post of a Sub-Engineer. We have carefully perused the record and unable to reach on definite conclusion as to whether the appellant was freshly appointed on the post of Sub-Engineer or promoted from the post of Junior Clerk. In the first eventuality, the appellant was required to have been recommended either by Public Service Commission or by the Competent Departmental Promotion/Selection Committee which is not the case of the appellant. In the

case of second eventuality of promotion, it was not shown from the rules that a Junior Clerk can be promoted to the post of Sub-Engineer. Prima-facie, the order of promotion dated 30.03.2011 was unlawful, therefore, the same was rightly withdrawn/cancelled through impugned order dated 05.03.2013. Consequently, there is no merit in this appeal to attract for indulgence of the Tribunal, hence the appeal is dismissed. File be consigned to the record room.

ANNOUNCED
30.05.2016

sd/- P. Bakhsh Shah, Member
sd/- Abdul Latif, Member

Certificate of the true copy
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Service Tribunal
Peshawar

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(2)

1. Short title and commencement. (1) This Ordinance may be called the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002.
- (2) It shall come into force at once.
2. Amendment of section 3 of N.W.F.P. Ord. No. XI of 1978. In the North-West Frontier Province Public Service Commission Ordinance, 1978, hereinafter referred to as the said Ordinance, in section 3:—
 - (a) in sub-section (3), the full stop appearing at the end shall be replaced by a colon and thereafter the following proviso shall be inserted:—

Provided that a serving member of the Commission may be appointed as Chairman for a term not exceeding the un-expired portion of his term as such member.
 - (b) in sub-section (4) the words and figure "and has been retired in basic pay scale 20 or above" shall be deleted after the word "years" appearing at the end.
3. Amendment of section 4 of N.W.F.P. Ord. No. XI of 1978. In the said Ordinance, in section 4, for sub-section (1) the following shall be substituted:—

(1) A member of the Commission shall hold office for a term of five years from the date on which he enters upon office and shall not be eligible for re-appointment.

Provided that a person holding office as Chairman or a member immediately before the commencement of the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002 shall cease to hold office on such date as the Governor may direct.
4. Insertion of new section 4A to N.W.F.P. Ord. XI of 1978. In the said Ordinance, after section 4, as so amended, the following new section 4A shall be inserted, namely:—

"4A. Oath of office. Before entering upon office, the Chairman and a member shall take oath in the form set out in the Schedule to this Ordinance, before the Governor in the case of Chairman, and before the Chairman in case of a member."
5. Insertion of new section 5 to N.W.F.P. Ord. XI of 1978. In the said Ordinance, for section 5 omitted by N.W.F.P. Act No. XX of 1987, allowing shall be inserted, namely:—

"5. Eligibility for further employment. On ceasing to hold office, a member shall not be eligible for further employment in the Service of Pakistan."

6. **Amendment of section 7 of N.W.F.P. Ord. No. XI of 1978.**—(1) In the said Ordinance, for section 7, the following shall be substituted, namely:

7. **Functions of the Commission.**—(1) The functions of the Commission shall be—

(a) to conduct tests and examinations for recruitment of persons to—

(i) the civil services of the Province and civil posts in connection with the affairs of the Province in basic pay scales 16 and above or equivalent, and

(ii) posts in basic pay scales 11 to 15 or equivalent specified in following Departments, (except the District cadre posts)—

1. Civil Secretariat (through Establishment Department);
2. Board of Revenue;
3. Police Department;
4. Prison Department;
5. Services and Works Department;
6. Irrigation Department;
7. Industries, Labour and Manpower Department;
8. Health Department;
9. Education Department;
10. Local Government and Rural Development Department;
11. Excise and Taxation Department;
12. Food Department;
13. Physical Planning and Environment Department including Urban Development Board; and
14. Organizations, except autonomous bodies, under the Health and Education Departments;

(b) to advise the Governor—

(i) on matters relating to qualifications for, and method of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making—

(1) initial appointments to the services and posts referred to in clause (a);

(2) appointments by promotion to posts in BPS-17 and above; and

(3) transfer from one service to another; and

That I will not allow any personal interest to influence my official conduct or my official decisions and that in the performance of my functions, whether in the selection of persons for recruitment of appointments or in any other way, I will act without fear or favour, affection or ill-will."

Peshawar,
Dated the 3th August, 2002.

Lt. Gen. (Rtd.) Ijaz Hussain Shah,
Governor of the North-West Frontier Province.

M. Khan,
Secretary to Government of North-West Frontier Province,
Department.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 349 /2016

Muhammad Iftikhar.....Appellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got cause of action as well as locus standi to file the instant appeal. Estoppels has no application in the instant appeal. The appeal is drafted in accordance with the rules in its correct form and shape. The appellant has approached the Tribunal with a bonafide claim. The necessary parties are added as Respondents. The appeal is within time.

Facts:

1. Misconceived. Appellant was appointed after observing the codal formalities. The subject post did not fall within the purview of the Public Service Commission. The appellant was appointed purely on merit in accordance with the prescribed procedure without any political approach. As far as the cases of Sub-Engineers are concerned, that is a separate issue and has nothing to do with the case in hand.

2. Incorrect hence denied. The appointment of the appellant was made in accordance with the prescribed procedure and on the recommendation of the Departmental Selection Committee. The post in question does not fall within the purview of the Public Service Commission. The subsequent resilience from the DPC proceedings on the part of the Members is an afterthought under political pressure of the ruling government.
3. Being not replied hence admitted.
4. Misconceived. The Judgment of the Peshawar High Court as well as that of the Apex Court pertained to the appointment of Sub-Engineers and had nothing to do with the appointment of the appellant but malafide the appellant was also encircled alongwith the Sub-Engineers for ulterior motives and thus terminated from service in an illegal and irregular fashion.
5. Incorrect. The appointment of the appellant was perfectly in accordance with law. The post in question at that time was not within the purview of the Public Service Commission as would be evident from the reinstatement order dated 09.05.2016 (*Annex:-RJ/1*) of one Mr. Muhammad Jameel, Steno Typist and order dated 10.08.2016 (*Annex:-Rj/2*) of one Mr. Suleman Shah as Draftsman (BPS-11).
6. Incorrect. The appellant was appointed in accordance with law against a vacant post which did not fall within the purview of the Public Service Commission by the competent authority. The direction of the Hon'ble Apex Court related to the appointment of Sub-Engineers and not the subject post. The appointment of the appellant was based on merit. The Hon'ble Tribunal remanded the case with directions but neither those directions were complied with nor the legal and factual aspects/grounds

were taken into consideration. Rather the appellant has been targeted due to political rivalry with the previous government.

7. Misconceived. The departmental appeal was wrongly rejected. The personal hearing was treated as only formality and nothing else.

Grounds:

- A. Incorrect. The appellant was treated in violation of the law. The relevant rules were neither considered nor applied in the case of the appellant. It is a settled law that Rules at the time of appointment are to be considered and not what were before and after the appointment.
- B. Incorrect. The subject post was not within the purview of the Public Service Commission as explained. The reference to ESTACODE is misconceived. The competent authority cannot deny its competency after the appointments were made.
- C. Incorrect. The answering Respondents have not replied the para. After the probation period the services of the appellant were confirmed and thereafter appellant served for more than 5 years and therefore, valuable rights accrued in his favour which cannot be taken away under the law.
- D. Incorrect. The appellant was not proceeded in accordance with law as per the mandate of Section-16 of the Khyber Pakhtunkhwa Civil Servants Act-1973.
- E. Reply to ground-F of the appeal is a clear admission, it is a settled legal principle that in case of major penalty a regular enquiry is sine qua non and since no enquiry has been conducted, therefore, the impugned order is void ab-initio and

hence not sustainable.

- F. Misconceived. No meaningful opportunity of personal hearing was given to the appellant and thus he was condemned unheard. The grounds raised in the departmental appeal were neither enquired into nor appreciated in correct legal perspective which is violative of Section-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules-1986.
- G. Misconceived. The answering Respondents have evaded direct reply to the para which also amounts to admission. The direction of the Apex Court was against the illegal appointments whereas the appellant was appointed according to law and therefore his appointment was unexceptionable.
- H. Incorrect. After completion of the probation, the services of the appellant were confirmed and thereafter he served for more than five years and therefore valuable rights accrued to him which could not be taken away under the law.
- I. Misconceived. Till date no action has been taken against the then Chief Engineer and Members of the Departmental Selection Committee and only the appellant has been targeted on the false charge of political interference/approach.
- J. Misconceived. In the cited case, the appointment was made under the same advertisement and appointment made by the same authority yet the answering Respondents are blowing hot and cold in the same breath before the Courts in order to serve their vested interest.

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: 14 /11/2016

Verification

Verified as per instructions 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.

Counsel



Similar by please
PHE Peshawar

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar the, May 09, 2016

6

ORDER

No.SO(Estt)/PHED/1-90/2013-14/Vol-II: WHEREAS, Mr. Muhammad Jamil was appointed as Steno Typist (BPS-12) in PHE Division Tank vide District Coordination Officer Tank Order No.1484/GB dated 13-09-2007.

2. AND WHEREAS, he was served with a Show Cause Notice by the then Chief Engineer (South) PHE vide No.32/E-4/PHE dated 21-01-2014, and subsequently his services were dispensed with by the said authority vide his Office Order No.47/E-4/PHE dated 14-02-2014.

3. AND WHEREAS, he filed a Service Appeal No.615/2014 before the Khyber Pakhtunkhwa Service Tribunal D.I. Khan against his termination order, which was disposed off vide its judgment dated 15-01-2016, with the direction to decide the departmental appeal of the appellant as per Hon'ble Tribunal Judgment dated 30-12-2015.

4. AND WHEREAS, he was given the opportunity of being heard on 31-03-2016 and material on record perused. It revealed that his appointment as Steno Typist was neither politically motivated nor deviated from the prescribed manner. The then DCO Tank had appointed the above-named Steno by virtue that he had the powers of appointing authority in respect of officials in BPS-1 to BPS-15, under Section 6 (b) of the District Government Rules of Business, 2001, followed by the laid down procedure i.e. Advertisement of the post in the newspaper, constitution of District Selection Committee, Test/Interview of the candidates, minutes of the DSC & appointment order etc.

5. AND WHEREAS, the Deputy Commissioner Tank verified all the documents involved in the appointment of the appellant vide his letter No.2492/BC dated 11-04-2016.

6. NOW THEREFORE, after having considered the material on record & explanation of the appellant during personal hearing held on 31-03-2016, his facts/grounds appealed against the Chief Engineer (South) PHE Office Order dated 14-02-2014 have been established and in exercise of the powers as Appellate Authority, conferred under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, and all other such powers in this behalf, the departmental appeal of Mr. Muhammad Jamil S/o Aslam Khan is hereby accepted by reinstating him in service with all back benefits and posted as Steno Typist (BPS-14) at PHE Division Tank against the vacant post in the public interest.

SECRETARY

ENDST: NO & DATE AS ABOVE:

Copy forwarded for information & necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Peshawar.
3. Registrar, Khyber Pakhtunkhwa Service Tribunal D.I. Khan
4. Superintending Engineer PHE Circle D.I. Khan
5. Deputy Commissioner Tank.
6. Executive Engineer PHE Division Tank.
7. District Accounts Officer Tank.
8. Office Order/Personal File.

SECTION OFFICER (ESTT)



Rj/2

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar the, August 10, 2016

(7)

ORDER

No.SO(Estt)/PHED/1-90/2013-14/Vol-II: WHEREAS, Mr. Suleman Shah was appointed as Draftsman (BPS-11) in PHE Division Tank vide District Coordination Officer Tank letter No.1851/DCO/Order dated 16-04-2008.

2. AND WHEREAS, he was served with a Show Cause Notice by the then Chief Engineer (South) PHE vide No.08/E-4/PHE dated 15-07-2014, and subsequently his services were dispensed with by the said authority vide his office letter No.07/E-4/PHE dated 07-08-2014.

3. AND WHEREAS, he filed a Service Appeal No.17/2015 before the Khyber Pakhtunkhwa Service Tribunal Peshawar against his termination order, which was disposed off vide its judgment dated 23-06-2016, with the direction that the appellant be also treated at par with Muhammad Jamil, Steno Typist PHE Division Tank as this case is identical with his case.

4. AND WHEREAS, he was given the opportunity of being heard on 10-08-2016 and material on record perused. It revealed that his appointment as Draftsman was neither politically motivated nor deviated from the prescribed manner. The then DCO Tank had appointed the above-named Draftsman by virtue that he had the powers of appointing authority in respect of officials in BPS-1 to BPS-15, under Section 6 (b) of the District Government Rules of Business, 2001, followed by the laid down procedure i.e. Advertisement of the post in the newspaper, constitution of District Selection Committee, Test/Interview of the candidates, minutes of the DSC & appointment order etc.

5. AND WHEREAS, the Deputy Commissioner Tank verified all the documents involved in the appointment of the appellant vide his letter No.4736/BC dated 25-07-2016.

6. NOW THEREFORE, after having considered the material on record & explanation of the appellant during personal hearing held on 10-08-2016, his facts/grounds appealed against the Chief Engineer (South) PHE office letter dated 07-08-2014 have been established and in exercise of the powers as Appellate Authority, conferred under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, and all other such powers in this behalf, the departmental appeal of Mr. Suleman Shah S/o Gul Bad Shah (Late) is hereby accepted by reinstating him in service with all back benefits, in the public interest.

ENDST: NO & DATE AS ABOVE:

SECRETARY

Copy forwarded for information & necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Peshawar. He is requested to post/adjust the official concerned accordingly.
3. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
4. Superintending Engineer PHE Circle D.I. Khan.
5. Deputy Commissioner Tank.
6. Executive Engineer PHE Division Tank.
7. District Accounts Officer Tank.
8. Office Order/Personal File.

Ac
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SECTION OFFICER (ESTT)