

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 267/2019

Date of institution ... 22.02.2019
Date of judgment ... 02.03.2020

Jan Nisar S/o Ghulam Qadar
R/o Nawan Kali Rustam Tehsil & District Mardan
Designation Pump Operator-cum-Valve man,
Department of Public Health Engineering Circle, Mardan
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Engineer Public Health Circle, Mardan.
3. Executive Engineer Public Health Nizd Eidga Division, Mardan.
4. Executive Engineer Public Health Division, Charsadda.
5. Chief Engineer Public Health Civil Secretariat Khyber Pakhtunkhwa Peshawar.
6. Secretary Finance Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974, AGAINST THE ACT, COMMISSION AND OMISSION OF THE RESPONDENTS AS THEY ARE TAKING DUTY OF TUBE WELL OPERATOR FROM THE APPELLANTS AGAINST THE SALARY OF CHOWKIDAR POST IN BPS-1, WHICH IS ILLEGAL, UNLAWFUL AND THE RESPONDENTS ARE LIABLE TO BE RESTRAINED FROM TAKING DUTY OF TUBE WELL OPERATOR FROM THE APPELLANT OR LIABLE TO PAY PERKS AND PRIVILEGES OF TUBE WELL OPERATOR.

Mr. Amjid Ali (Mardan), Advocate .. For appellant.
Mr. Muhammad Jan, Deputy District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. MIAN MUHAMMAD .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for
the appellants and Mr. Muhammad Jan, Deputy District Attorney
alongwith Mr. Asghar Shah, Head Clerk for the respondents present.
Arguments heard and record perused.

M. Amin
23.3.2020

2. Our this judgment shall disposed of above mentioned service appeal as well as

- I. Service Appeal No. 268/2019 titled "Muhammad Arshad Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- II. Service Appeal No. 269/2019 titled "Muhammad Waleed Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- III. Service Appeal No. 270/2019 titled "Sadiq Ali Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- IV. Service Appeal No. 271/2019 titled "Hussain Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- V. Service Appeal No. 272/2019 titled "Aftab Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- VI. Service Appeal No. 273/2019 titled "Dawa Khan Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others",
- VII. Service Appeal No. 274/2019 titled "Aziz-ur-Rahman Versus Government of Khyber Pakhtunkhwa through Secretary

M. Amin
2-3-2020

Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others”,

VIII. Service Appeal No. 275/2019 titled “Zarwar Hussain Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others”,

IX. Service Appeal No. 276/2019 titled “Atta Ullah Shah Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others”,

X. Service Appeal No. 277/2019 titled “Arshad Ghani Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others”,

XI. Service Appeal No. 278/2019 titled “Abbas Khan Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others”,

XII. Service Appeal No. 279/2019 titled “Haji Waheed Ullah Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others” and

XIII. Service Appeal No. 280/2019 titled “Hussain Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary Public Health Engineer Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and five others” as common question of law and facts are involved in all the aforementioned service appeal.

3. Brief facts of the cases as per present appeals are that some of the appellants were appointed as Pump Operator-cum-Valve man.

M. Hussain
2.3.2020

and some of the appellants were appointed as Operator-cum-Chowkidars in the Public Health Department although there is no designation as operator-cum-Chowkidar and Operator-cum-Valve man in BPS-1 as per sanction order issued from the Finance Department Khyber Pakhtunkhwa. They were/are performing double duties of Operator-cum-Valve man/ Operator-cum-Chowkidar since their appointment. The post of Chowkidar/Valve man is Class-IV carrying BPS-1 while the scale of Operator is BPS-7 and the appellants were/are treated as Class-IV in BPS-1 and were/are receiving salary of post of Class-IV. They filed joint departmental appeal to Secretary Public Health Engineering Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar but the same was not responded, therefore, the appellant filed Writ Petition before the Worthy High Court with the pray that the respondents may be directed to maintain the designation of Operator in their appointment letter as per corresponding Basic pay Scale for the post of Operator issued from finance Department and delete the work of Chowkidar/Valve man from the appointment letter but the Writ Petition was disposed with the observations that admittedly, the petitioners are civil servants and their case falls in terms and conditions of civil servant, whereas, according to the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, each employee shall file separate appeal even against the common grievance, hence this petition cannot be transmitted to the Service Tribunal. However, the petitioners were held at liberty to approach the proper forum, if so advised vide judgment dated 17.10.2018. Hence, the service appeals.

4. Respondents were summoned who contested the appeal by filing written reply/comments.

M. Abbas
2.3.2020

5. Learned counsel for the appellants contended that some of the appellants were appointed as Operator-cum-Valve man and some of the appellants were appointed as Operator-cum-Chowkidar in the Public Health Department. It was further contended that as per sanctioned post order issued by the Finance Department an appointment can be either Chowkidar (Class-IV) or Operator but the appellants were/are performing double duties of Operators and Valve Man as well as Operators and Chowkidars but they were/are receiving salary of Chowkidar (Class-IV) while the post of Operator carrying BPS-7 and the appellants have been discriminated, therefore, prayed that the respondents may be directed to grant salary, perks and privileges of Operators as well as Chowkidars/Valve Man from the date of their appointment with all back benefits or the respondents may be restrained from taking duties of Operators in future against the salary of Chowkidar post BPS-1 and prayed for acceptance of appeals.

6. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellants and contended that under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 any civil servant aggrieved from any final order whether original or appellate made by the departmental authority in respect of any of the terms and conditions of the service may within thirty days of communication of such order to him prefer an appeal to the Tribunal having jurisdiction in the matter but in the present appeal neither there is any original order nor appellate order, therefore, the service appeals are not maintainable. It was further contended that under rule 3 (2) of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 where the order of competent authority affects more than one civil servant

M. Khan
2.3.2022

then every affected civil servant shall prefer appeal separately but in the present service appeals all the appellants have submitted joint departmental appeal (undated) to the departmental authority, therefore, the present service appeals are not maintainable and prayed that without touching the merit of the case, all the above mentioned service appeals may be dismissed.

7. Perusal of the record reveals that all the appellants have filed joint departmental appeal (undated) to the departmental authority and under rule 3 (2) of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 where the order of competent authority affects more than one civil servant then every affected civil servant shall prefer the appeal separately but in the present service appeal all the appellants have submitted joint departmental appeal (undated) to the departmental authority, therefore, in our view, all the above mentioned service appeals are not maintainable due to filing of joint departmental appeal. Hence, the same are dismissed. However, the appellants are at liberty to file separate departmental appeals and after disposal of departmental appeals they are at liberty to file service appeals, if so advised, subject to all legal objections. Parties are left to bear their own costs. Files be consigned to the record room.

ANNOUNCED
02.03.2020


(MIAN MUHAMMAD)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

14.11.2019

Appellant in person present. Mr. Ziaullah, DDA for respondents present. Appellant submitted rejoinder which is placed on file. Adjourned. To come up for arguments on 10.01.2020 before D.B.


Member


Member

10.01.2020

Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 02.03.2020 before D.B.


Member


Member

02.03.2020

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Asghar Shah, Head Clerk for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of six pages placed on file, the present service appeal is not maintainable due to filing of joint departmental appeal. Hence, the same is dismissed. However, the appellant is at liberty to file separate departmental appeal and after disposal of departmental appeal he is at liberty to file service appeal, if so advised, subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.03.2020


(MIAN MOHAMMAD)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

02.07.2019 Appellant absent. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Sajid Superintendent on behalf of the respondents No. 6 present. None present on behalf of the respondent No. 1 to 5 nor written reply submitted therefore, notice be issued to the respondents No. 1 to 5 with the direction to submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 28.08.2019 before S.B.



Member

28.08.2019 Nemo for appellant. Addl. AG alongwith Kamran Shahid ASO and Khursheed, ASO for the respondents present.

Representative of respondents No. 1 to 3, 5 & 6 has submitted written reply which is placed on record. Representative of respondent No. 4 states that the said respondent relies on the written reply submitted by respondents No. 1 to 3, 5 & 6 today. The appeal is assigned to D.B for arguments on 14.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

03.04.2019

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was appointed as Operator-cum-Valve man in 2009. Since his appointment he was performing duty regularly. Despite the fact that appellant was performing duty of Operator as well as Valve man but was placed in BPS-1. Feeling aggrieved, he filed departmental appeal before respondent no.1 but to no avail. Thereafter he knocked the door of Peshawar High Court, Peshawar by way of filing writ petition no. 3121/2017, which was dismissed for want of jurisdiction vide order dated 17.10.2018, hence, the present service appeal. Respondents are required to get the post re-designated from the Finance Department either Valve man or Operator, otherwise he should be paid emoluments of both the posts. On the face of it, present service appeal appears to be barred by time, however, an application for condonation of delay has been submitted.

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

Appellant Deposited
Security & Process Fee

(AHMAD HASSAN)
MEMBER

20.05.2019

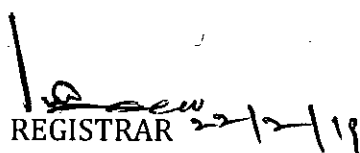

No one present on behalf of appellant. Written reply not submitted. Kamran Shahid Assistant Social Organizer representative of respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 02.07.2019 before S.B.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 267/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/2/2019	<p>The appeal of Mr. Jan Nisar presented today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 22/2/19</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>3-4-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 267 /2018

Jan NisarAppellant

Versus

Government of KPK through Secretary
Public Health Engineer.....Respondents

I N D E X

S.No.	Description of documents.	Annexure	Page
1.	Memo of appeal with affidavit.		1-4
2.	Application for condonation of delay with affidavit		5
3.	Addresses of parties		6
4.	Copy of appointment order of appellant	A	7
5.	Copy of departmental appeal	B	8-11
6.	Copy of writ petition / <i>and order</i> <i>17-10-18</i>	C	12-18
7.	Copy of comments	D	19-20
8.	Wakalatnama		21

Dated: 17-10-2018

Jan Nisar

Appellant

Through

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

(1)

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

Service Appeal No. 267/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 260

Dated 22/2/2019

Jan Nisar S/o Ghulam Qadar
R/o Nawan Kali Rustam Tehsil & District Mardan
Designation Pump Operator-cum-Valve man,
Department of Public Health Engineering Circle, Mardan
...Appellant

Versus

1. Government of KPK through Secretary Public Health Engineer Civil Secretariat, KPK, Peshawar.
2. Superintendent Engineer Public Health Circle, Mardan.
3. Executive Engineer Public Health Nizd Eidga Division, Mardan.
4. Executive Engineer Public Health Division, Charsadda.
5. Chief Engineer Public Health Civil Secretariat KPK Peshawar.
6. Secretary Finance Civil Secretariat, KPK Peshawar.

...Respondents

Filed to-day

[Signature]
Registrar
22/2/19

SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT, COMMISSION AND OMISSION OF THE RESPONDENTS AS THEY ARE TAKING DUTY OF TUBE WELL OPERATOR FROM THE APPELLANTS AGAINST THE SALARY OF CHOWKIDAR POST IN BPS-1, WHICH IS ILLEGAL, UNLAWFUL AND THE RESPONDENTS ARE LIABLE TO BE RESTRAINED FROM TAKING DUTY OF TUBE WELL OPERATOR FROM THE APPELLANT OR LIABLE TO PAY PERKS AND PRIVILEGES OF TUBE WELL OPERATOR

(2)

Respectfully Submitted:

The appellants humbly submit as under;-

1. That the appellant is serving as per his designation detailed in the appointment letter as operator-cum-Chowkidar/ Operator-cum-Valve man since 2009. **(Copy of appointment order of appellant is Annex "A")**
2. That the appellant is performing the duty of Operator as well as Chowkidar since his appointment.
3. That the scale of the Operator is BPS-7.
4. That there is no designation as Operator-cum-Chowkidar/ cum-Valve man in BPS-1 as per sanction order issued from the Finance Department KPK.
5. That the post of Chowkidar/ Valve man is carrying BPS-1.
6. That appellant is treated as Class-IV in BPS-1 as per his appointment letter inspite of the fact that appellant is being subjected to duty of Chowkidar in addition to the duty of Tube-Well Operator.
7. That appointment letter is issued as per sanction of post from the Finance Department by the competent authority.
8. That being aggrieved, the petitioner filed departmental appeal, before respondent No.1, but with no response. **(Copy of departmental appeal is Annex "B")**
9. That thereafter, being aggrieved, the appellant filed W.P.No.3121/2017 before the hon'ble Peshawar High Court, Peshawar, wherein, respondents filed comments wherein, in para 2 admitted that duty of Operator as well as Chowkidar is taken from appellant. **(Copy of writ petition is Annex "C" and comments is Annex "D")**

- 10. That the hon'ble High Court vide order dated ~~17-10-18~~, directed the petitioner to approached to proper forum for his redressal.
- 11. That being aggrieved, the appellant are filing this service appeal on the following grounds amongst others.

GROUNDS

- A. Because the competent authority is bound to pass appointment order as per the sanction of post order issued from the Finance Department, wherein, an appointment can be either Chowkidar (Class-IV) or Operator or accordingly he can be designated both with both salaries when both duties are taken from appellant.
- B. Because it is against the fundamental rights enshrined in the Constitution of Pakistan, 1973 that double duties that is one of Operator and the other of Chowkidar is being obtained from the appellant and the wages is not granted in accordance with law perks and privileges of operator and Chowkidar.
- C. Because appellant has not been dealt in accordance with law therefore, downtrodden Article 4 of Constitution of Pakistan, 1973.
- D. Because appellant has been discriminated, wherein fundamental right of appellants guaranteed under Articles 25 & 27 of the Constitution of Pakistan 1973 has been seriously infringed.

It is, therefore, most humbly prayed that appellant may please be granted salary, perks and privileges of Operator as well as Chowkidar/ Valve-man from date of appointment with all back benefits.

OR IN ALTERNATIVE

It is prayed that respondents may please be restrained from taking duty of tube well Operator from the appellant in future against the salary of

Chowkidar Post in BPS-1, while granting past benefits of Operator plus Chowkidar/ Valve-man. (4)

Any other relief deemed appropriate in the circumstances of the case, may also be graciously granted in favour of appellant.


Appellant

Through


Amjad Ali (Madan)

Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.


Deponent



(5) 6

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

Service Appeal No. _____/2018

Jan NisarAppellant

Versus

Government of KPK through Secretary
Public Health Engineer.....Respondents

**APPLICATION FOR CONDONATION
OF DELAY**

Respectfully Submitted:

1. That the above titled appeal is being filed before this hon'ble Tribunal alongwith instant application.
2. That it is a recurring cause of action and cause of action arises at the end of every month.
3. That the Superior Courts time and again held that, the cases should be decided on merit rather on the basis of technicalities.

It is, therefore, prayed that on acceptance of this application the delay if any caused in filing titled appeal may graciously be condoned and the same be decided on merit.

Appellant

Through

Amjad Ali (Madan)

Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.



Jan Nisar
Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR



Service Appeal No. _____/2010

Jan NisarAppellant

Versus

Government of KPK through Secretary
Public Health Engineer.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Jan Nisar S/o Ghulam Qadar
R/o Nawan Kali Rustam Tehsil & District Mardan
Designation Pump Operator-cum-Valve man,
Department of Public Health Engineering Circle,
Mardan.

RESPONDENTS

1. Government of KPK through Secretary Public Health Engineer Civil Secretariat, KPK, Peshawar.
2. Superintendent Engineer Public Health Circle, Mardan.
3. Executive Engineer Public Health Nizd Eidga Division, Mardan.
4. Executive Engineer Public Health Division, Charsadda.
5. Chief Engineer Public Health Civil Secretariat KPK Peshawar.
6. Secretary Finance Civil Secretariat, KPK Peshawar.

Appellant

Through


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

(7) *Ann-A*

OFFICE OF THE
EXECUTIVE DISTRICT OFFICER
WORKS & SERVICES DEPARTMENT
MARDAN.

No. 5403 /11-E
Dated Mardan the 17/02/2009.

(Handwritten marks and signatures)

OFFICE ORDER.

On the recommendation of Departmental Selection Committee in its meeting held on 03-09-2008. Mr. Jan Nisar S/O Ghulam Qadar Village Nawan Killi (Rustam) Tehsil & District Mardan is hereby appointed as PUMP OPERATOR-CUM VALVEMAN (BPS-1) against new created vacancy of V.D.O AM&R Water Supply Scheme Nawan Killi with effect from date of arrival with following condition:-

- 1- His Appointment will be on purely temporary basis without pension/graduity as per civil servant act 1973 rules 19. However the incumbent will be entitled for C.P funds as per notification July 2008. His appointment is liable to terminate at any time with out any notice and assigning any reason during the period of service.
- 2- He will liable to serve any where in Water Supply & Sanitation Division Mardan.
- 3- He will have no claim to the right of seniority.
- 4- Before joining Service he shall produce a Medical Certificate of Fitness from Medical Superintendent District Headquarter Hospital Mardan.

(Signature)
EXECUTIVE DISTRICT OFFICER

Copy to the:-

- 1- Chief Engineer Public Health Engg: (W&S)Department NWFP Peshawar with reference to his No.01/B-5/PHE dated 24/08/2007.
- 2- District Nazim Mardan.
- 3- District Coordination Officer, Mardan.
- 4- Deputy District Officer Water Supply & Sanitation Mardan.
- 5- Assistant District Officer WS&S Mardan.
- 6- Official concerned.

For information.

(Signatures)

(Signature)
EXECUTIVE DISTRICT OFFICER

ATTESTED

(Signature)

(Signature)

TESTED

To,

Secretary
Public Health Engineer
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

DEPARTMENTAL APPEAL

Sir,

The appellant humbly submits as under:-

1. That the appellants are serving as per their designation detailed in the appointment letter as operator-cum-Chowkidar/ Operator-cum-Valve man since 2009, 2010, 2012-2016. (Copy of appointment order of appellants are attached)
2. That the appellants are performing the duty of Operator as well as Chowkidar since their appointments.
3. That the scale of the Operator is BPS-7.
4. That there is no designation as Operator-cum-Chowkidar/ cum-Valve man in BPS-1 as per sanction order issued from the Finance Department KPK.
5. That the post of Chowkidar/ Valve man is carrying BPS-1.
6. That appellants are treated as Class-IV in BPS-1 as per their appointment letter in spite of the fact that appellants are being subjected to duty of Chowkidar in addition to the duty of Operator.
7. That appointment letter is issued as per sanction of post from the Finance Department by the competent authority.
8. That being aggrieved, the appellants are filing this departmental appeal on the following grounds amongst others:-

ATTESTED

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[Handwritten signature]

(8)

And-B

[Handwritten notes: Tlesun, Attached, Ac, Mar 2011]

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GROUNDS

Amr
①②
(9) (10)

- A. Because the competent authority is bound to pass appointment order as per the sanction of post order issued from the Finance Department, wherein, an appointment can be either Chowkidar (Class-IV) or Operator or accordingly he can be designated.
- B. Because it is against the fundamental rights enshrined in the Constitution of Pakistan, 1973 that double duties that is one of Operator and the other of Chowkidar are being obtained from the appellants and the wages are not granted in accordance with law and rules guarantee for both the posts.
- C. Because appellants have not been dealt in accordance with law therefore, duntrodden Article 4 of Constitution of Pakistan, 1973.
- D. Because appellants have been discriminated, wherein fundamental right of appellants guaranteed under Articles 25 & 27 of the Constitution of Pakistan 1973 has been seriously infringed.

It is, therefore, most humbly prayed that on acceptance of this Departmental Appeal, the concerned department may please be directed to maintain the designation of Operator in their appointment letter as per corresponding Basic Pay Scale for the post of Operator issued from the Finance Department and delete the word Chowkidar/ Valve man from their appointment letter.

OR IN ALTERNATE

It is prayed that respondents may please be restrained from taking duty of tube well Operator from the appellants against the salary of Chowkidar Post in BPS-1.

It is further prayed that the post of appellants may please be upgraded as per Provincial Government Policy like other employees of the Government.

Any other relief deemed appropriate in the circumstances of the case, may also be graciously granted in favour of appellant.

Amr
①②
(9) (10)
ATTESTED
①②

APPELLANTS

Ed
Mr. Sadiq Ali S/o Rehman Wali
R/o Mian Khan Akora Khel, Tehsil
Katlang, District Mardan, Designation
Operator cum Chowkidar, Department
Public Health Engineering Circle,
Mardan.

W/19/12
Mr. Jan Nisar S/o Ghulam Qadar
R/o Nawan Kali Rustam Tehsil & District
Mardan, Designation Pump Operator
Cum Valve man, Department
Public Health Engineering Circle,
Mardan.

19/12
Mr. Hussain Ahmad S/o Fazli Azeem
R/o Mohallah Boki Khel Garhi Ismail
Zai P/O Garhi Kapura tehsil & District
Mardan, Designation Operator cum
Chowkdidar, Department
Public Health Engineering Circle,
Mardan.

19/12
Mr. Zarwar Hussain S/o Gul Unber
R/o Ghundo Tehsil Katlang &
District Mardan, Designation Pump
Operator cum Valve man, Department
Public Health Engineering Circle,
Mardan.

Abdul
Mr. Abbas Khan S/o Waheedullah
R/o Touheed Colony Charsadda Road,
Mardan District & Tehsil Mardan,
Designation Pump Operator cum
Valve man Department Public Health
Engineering Circle, Mardan.

Abdul
Mr. Hussain Ahmed S/o Asir Khan
R/o Mash Banda Tehsil & District
Mardan, Designation Pump Operator
Cum Valve man, Department
Public Health Engineering Circle,
Mardan.

Abdul
Mr. Arshad Ghani S/o Sherin Ghani
R/o Bala Kohi Bermol Tehsil & District
Mardan, Designation Pump Operator
cum Valve Man, Department
Public Health Engineering Circle,
Mardan.

Des
Mr. Dawa Khan S/o Abdul Akbar
R/o Shamilat Babini Road Par Hoti
Tehsil & District Mardan, Designation
Operator cum Chowkidar
Department
Public Health Engineering Circle,
Mardan.

ATTESTED

Abdul

Abdul

10

Mr. Muhammad Waleed S/o Ahmad Ali
R/o Mohallah Tashqand Rustam
Tehsil & District Mardan, Designation
Operator cum Chowkidar
Department Public Health Engineering
Circle, Mardan.

Muhammad Arshad S/o Hidayat Ullah
R/o Mohallah Malakakhil, Tehsil &
District Mardan Pump Operator cum
Valve man, Department
Public Health Engineering Circle,
Mardan.



Atta Ullah Sha S/o Noor Hassan Shah
R/o Kocha Nadar Ali Ochai Bazar
Peshawar, Pump Operator cum
Chowkidar, Department
Public Health Engineering Circle,
Mardan.

Aziz ur Raman S/o Naseem Khan
R/o Dakhana Tehsil & District Mardan
Pump Operator cum Valve Man
Department
Public Health Engineering Circle,
Mardan.

Haji Waheed Ullah S/o Shah Zaman
R/o Garri Wahidullah Shafqadar
Tehsil & District Mardan, Pump
Operator cum Chowkidar
Department
Public Health Engineering Circle,
Mardan.

Aftab Ahmad S/o Jan Muhammad
R/o Shabqadar, Tehsil & District
Charsadda, Pump Operator cum Valve
Man, Department
Public Health Engineering Circle,
Mardan.

ATTESTED

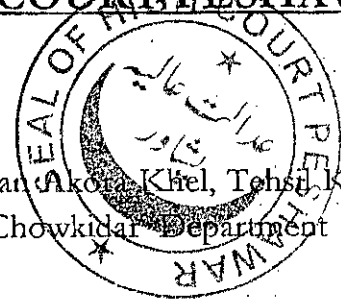
 

1

(2) 1/11/18 - C (d)

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No. 3121 / of 2017.



1. Mr. Sadiq Ali S/o Rehman Wali R/O Mian Khan Akora Khel, Tehsil Katlang District Mardan Designation Operator cum Chowkidar Department public health Engineering Circle Mardan
2. Mr. Abbas Khan S/o Waheedullah R/O Touheed Colony Charsadda Road Mardan District & Tehsil Mardan Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
3. Mr. Jan Nisar S/o Ghulam Qadar R/O Nawan Kali Rustam Tehsil & District Mardan Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
4. Mr. Hussain Ahmed S/o Asir Khan R/O Gul Mash Banda Tehsil & District Mardan. Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
5. Mr. Hussain Ahmad S/o Fazli Azeem R/O Mohallah Boki Khel Garhi Ismail Zai P/O Garhi Kapura Tehsil & District Mardan. Designation Operator cum Chowkidar Department public health Engineering Circle Mardan
6. Mr. Arshad Ghani S/o Sherin Ghani R/O Bala Kohi Bermol Tehsil & District Mardan. Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
7. Mr. Zawar Hussain S/o Gul Unber R/O Ghundo Tehsil Katlang & District Mardan. Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
8. Mr. Dawa Khan S/o Abdul Akbar R/O Shamilat Babini Road Par Hoti Tehsil & District Mardan. Designation Operator cum Chowkidar man Department public health Engineering Circle Mardan
9. Mr. Muhammad Waleed S/o Ahmad Ali R/O Mohallah Tashqand Rustam Tehsil & District Mardan. Designation Operator cum Chowkidar Department public health Engineering Circle Mardan.
10. Aziz Ur Rahman S/o Nascem Khan R/o Dhire dakhana Tehsil & Distt Mardan Pump Operator cum Valve man Department public health Engineering Circle Mardan.
11. Muhammad Arshad S/o Hidayyat Ullah R/o Mohallah Malakakhil Tehsil & Distt Mardan Pump Operator cum Valve man Department public health Engineering Circle Charsadda.

FILED TODAY
Deputy Registrar

24 JUL 2017

ATTESTED

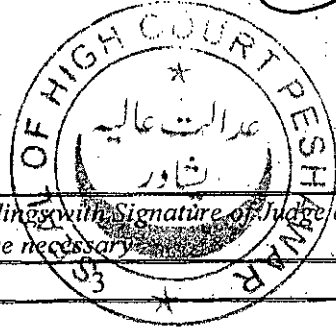
ATTESTED
Peshawar High Court

03 NOV 2018

(13)

PESHAWAR HIGH COURT PESHAWAR
FORM "A"

ORDER SHEET



Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	
	17.10.2018	<p><u>WP No. 3121-P/2017.</u></p> <p>Present: Mr. Amjad Ali, Advocate for petitioners.</p> <p style="text-align: center;">*****</p> <p><u>ROOH-UL-AMIN KHAN, J:-</u> Through instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners have prayed that the respondents may please be directed to maintain the designation of Operator in their appointment letter as per corresponding Basic Pay Scale for the post of Operator issued from the Finance Department and delete the work chowkidar/valve main from the appointment letter.</p> <p>2. Learned counsel for petitioners when confronted with the prayer of the writ petition which divulged that the case pertain to terms and conditions of service and para-9 of writ petition 'that since the Khyber Pakhtunkhwa Service</p>

ATTESTED

ATTESTED

EXAMINER
Peshawar High Court

03 NOV 2018

(M)

Tribunal is not functional due to not taking charge of chairman Service Tribunal, he candidly conceded that the case falls in terms and conditions of service therefore, requested that the same may be transmitted to the Service Tribunal.

3. Admittedly, petitioners are civil servants and their case falls in terms and conditions of civil servant, whereas, according to the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, each employee shall file separate appeal even against the common grievance, hence this petition cannot be transmitted to the Service Tribunal.

4. In view of the above, this writ petition is dismissed. However, the petitioner would be at liberty to approach the proper forum, if so advised.

Announced on;
17th of October, 2018

[Signature]
JUDGE
[Signature]
JUDGE

5387
Date of Presentation of Application..... 17-10-18
No of Pages..... 2
Copying Fee.....
Argent Fee.....
Total.....
Date of Preparation of Copy..... 2-11-18
Date of Delivery of Copy..... 3-11-18
Received By..... *[Signature]*

Zarshad

(DB)

Hon'ble Mr. Justice Rooh-Ul-Amin Khan & Hon'ble Mr. Justice Qalandar Ali Khan

[Signature]
ATTESTED

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order, 1954

03 NOV 2018

(15) (1)

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No. _____ / of 2017.

1. Mr. Sadiq Ali S/o Rehman Wali R/O Mian Khan Akora Khel, Tehsil Katlang District Mardan Designation Operator cum Chowkidar Department public health Engineering Circle Mardan
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4. Mr. Hussain Ahmed S/o Asir Khan R/O Gul Mash Banda Tehsil & District Mardan. Designation Pump Operator cum Valve man. Department public health Engineering Circle Mardan
5. Mr. Hussain Ahmad S/o Fazli Azeem R/O Mohallah Boki Khel Garhi Ismail Zai P/O Garhi Kapura Tehsil & District Mardan. Designation Operator cum Chowkidar Department public health Engineering Circle Mardan
6. Mr. Arshad Ghani S/o Sherin Ghani R/O Bala Kohi Bermol Tehsil & District Mardan. Designation Pump Operator cum Valve man Department public health Engineering Circle Mardan
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9. Mr. Muhammad Waleed S/o Ahmad Ali R/O Mohallah Tashqand Rustam Tehsil & District Mardan. Designation Operator cum Chowkidar Department public health Engineering Circle Mardan.
10. Aziz Ur Rahman S/o Naseem Khan R/o Dhire dakhana Tehsil & Distt Mardan Pump Operator cum Valve man Department public health Engineering Circle Mardan.
11. Muhammad Arshad S/o Hidayat Ullah R/o Mohallah Malakakhil Tehsil & Distt Mardan Pump Operator cum Valve man Department public health Engineering Circle Charsadda.

ATTESTED

(16)

(2)

12. Haji Waheed Ullah S/o Shah Zamir R/o garri wahidullah shafqadar tehsil district Mardan Pump Operator cum Chowkidar Department public health Engineering Circle Charsadda.
13. Atta Ullah Shah S/o Noor Hassan Shah R/o kocha Nadar Ali ochai Bazar Peshawar. Pump Operator cum Chowkidar Department public health Engineering Circle Charsadda.
14. Aftab Ahmad S/o Jan Muhammad R/o Shabqadar tehsil and District Charsadda Pump Operator cum Valve man Department public health Engineering Circle Charsadda

.....Petitioners

VERSUS

- 1) Government of KPK through Secretary Public Health Engineer Civil Secretariat, KPK Peshawar.
- 2) Superintendent Engineer Public Health Circle Mardan.
- 3) Executive Engineer Public Health nizd Eidga Division Mardan.
- 4) Executive Engineer Public Health Division Charsadda.
- 5) Chief Engineer Public Health Civil Secretariat KPK Peshawar.
- 6) Secretary Finance Civil Secretariat, KPK Peshawar.

.....Respondents

WRIT PETITION / UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN - 1973

ATTESTED

RESPECTFULLY SHEWETH:-

1. That petitioners are serving as per their designation detailed in the appointment letter as well as heading of the writ petition as operator Cum Chowkidar/ Operator Cum Valve man Since 2009, 2010, 2012-2016. (Copies of appointment order of petitioners are annex "A").
2. That petitioner is performing the duty of operator as well as Chowkidar Since their appointment.
3. That the Scale of the Operator is BPS 7.

Comdt

Comdt

ATTENDED

AS per
2

AS per
approval
orders

- C. Because petitioners have not been dealt in accordance with law therefore downrodding Art 4 of Constitution of Pakistan 1973.
- B. That it is against the Fundamental rights enshrined in the Constitution of Pakistan 1973 that double duties that is one of Operator and the other of Chowkidar are being obtained from the petitioners and the wages are not granted in accordance with law and rules guaranteed for both the post.
- A. Because the competent authority is bound to pass appointment order as per the sanction of post order issued from the Finance Department wherein an appointment can be either Chowkidar/ (Class IV) or Operator and accordingly he can be designated.

GROUNDS

- 11. That finding no other efficacious remedy petitioners approaches this honorable court on following grounds.
- 10. That the instant matter is not falling within the term and condition of service as the insertion of Operator only and deletion of Chowkidar/ Valve man from the appointment letter is involved.
- 9. That the KPK Service Tribunal is not functional due to not taking incharge of chairman Service Tribunal.
- 8. That petitioners filed departmental appeal before the Chief Engineer to only but in vain. (Copy of appeal along with Post Office slip as taken from them and they be allowed to post on the duty of Chowkidar and privileges of the post of Operator or the duty of Operator be not the effect that either petitioners may please be granted the scale, perks and privileges of the post of Operator or the duty of Operator be not taken from them and they be allowed to post on the duty of Chowkidar only but in vain. (Copy of appeal along with Post Office slip as annexed B)
- 7. That appointment letter is issue as per sanction of post from the Finance Department by the competent authority.
- 6. That Petitioners are treated as Class IV in BPS 1 as per their appointment letter in spite of the fact that petitioners are being subjected to the duty of Chowkidar in addition to the duty of Operator
- 5. That the Post of Chowkidar / Valve man is carrying BPS-1. *AS per 235-3*
- 4. That there is no designation as Operator Cum Chowkidar / Cum Valve man in BPS 1 as per sanction order issued from the Finance Department KPK

Fused

AS -
235

correct

AS -
235
*AS -
235*

*Sanction
order
in
BPS-1*

*Sanction
order
in
BPS-1*

Sanction order in BPS-1

(17) (18)

18

(R)

D. Because petitioners have been discriminated wherein fundamental right of petitioners guaranteed under Art 25, 27 of Constitution of Pakistan 1973 has been seriously infringed.

PRAYER

It is therefore humbly prayed that respondent may please be directed to maintain the designation of Operator in their appointment letter as per corresponding Basic Pay Scale for the post Operator issued from the Finance Department and delete the word chowkidar / valve man from their appointment letter.

Or In Alternative.

It is prayed that respondents may please be restrained from taking duty of tube well Operator from the petitioners against the salary of Chowkidar Post in BPS -1.

It is further prayed that the post of petitioners may please be upgraded as per provincial government policy like other employees of the government.

Any other relief deemed fit in the circumstance of the case may also be graciously granted.

INTERIM RELIEF

Respondent may please be restrained from taking duty of tube well Operator from the petitioner against the class IV post Chowkidar / valve man till the decision of the writ petition.

Dated.

Petitioner

Through

Amjad Ali
Advocate Supreme Court
Office at Mardan

CERTIFICATE

It is certified that no writ petition has been filed earlier on the instant subject matter.

Advocate.

LIST OF BOOKS

1. CONSTITUTION OF PAKISTAN 1973
2. OTHER AS PER NEED.

ATTESTED

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ petition No.3121/2017

Mr. Sadiq Ali S/O Rehman Wali R/O of Mian Khan Akora Khel,
Tehsil Katlang District Mardan & others.

.....(PETITIONER)

VERSUS

- 1) Government of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department Peshawar.
- 2) Superintending Engineer Public Health Engineering Circle Mardan.
- 3) Executive Engineer Public Health Engineering Division Mardan.
- 4) Executive Engineer Public Health Engineering Division Charsadda.
- 5) Chief Engineer (North) Public Health Engineering Department Khyber Pakhtunkhwa Peshawar.
- 6) Secretary Finance Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar.

.....(RESPONDENTS)

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1-6.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

1. That the petition is bad due to non-joinder and mis joinder of necessary parties.
2. That the petitioner has no cause of action.
3. That the petitioner has neither cause of action nor locus standi.
4. That the petitioner has stopped by his own conduct.
5. That the petitioner has not come to the court with clean hands and hit by laches.
6. That the petitioner is time barred.

FACTS:-

- 1- Pertains to record hence no comment.
- 2- Correct to the extent. As the petitioner is ex-land owner and the tube well is installed and located adjacent to his property. He has been appointed as Operator-cum-Chowkidar, therefore he is responsible for the maintenance and security of tube well in the best public interest.
- 3- Correct. But the petitioner concealed facts from this Honourable Court. That the post and designation of Operator (BPS-07) is different from Operator-cum-Chowkidar & Operator-cum-Valve man as per Policy of the Provincial Government.
- 4- Incorrect. Every sanctioned post from Finance Department must carry designation and Basic Pay Scale.

ATTESTED

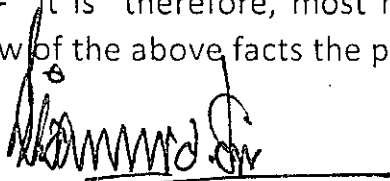
- 5- Incorrect. The Government of Khyber Pakhtunkhwa upgraded the post of Operator-cum-Chowkidar & Operator-cum-Valve man from (BPS-01) to (BPS-03) in June 2015. Now they are serving in BPS-03 as per Government Policy.
- 6- Incorrect. As explained in Para 2 and 5 of the above.
- 7- Correct.
- 8- Correct. As explained in Para 2 and 5 of the above.
- 9- Incorrect. That the Khyber Pakhtunkhwa Service Tribunal is functional now.
- 10- Incorrect. The petitioners were appointed as Operator-cum-Chowkidar & Operator-cum-Valve man as per Government Policy. That the matter do fall within the purview of terms & condition of service and the terms & conditions of service will be agitated before the Khyber Pakhtunkhwa Service Tribunal under Article 212 of Constitution of Pakistan.
- 11- That the petitioner has alternate remedy and he may approach to the Khyber Pakhtunkhwa Service Tribunal Peshawar.

(20)

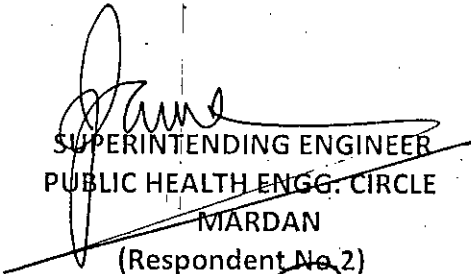
GROUND:-

- A) That the petitioners have been treated as per appointment orders.
- B) As explained in para-2 of facts.
- C) Incorrect. The petitioners have been dealt in accordance with Law/Policy.
- D) Incorrect. The petitioners have not discriminated whatsoever nor have any fundamental rights been violated.
- E) The respondents seek permission to raise additional grounds at the time of arguments.

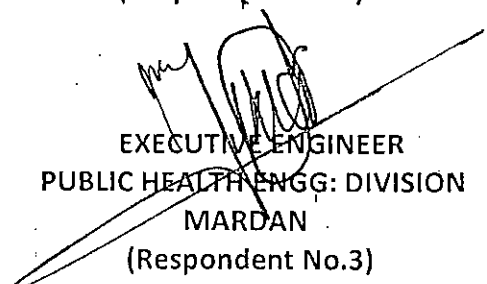
PRAYER:- It is therefore, most humbly prayed before this Honorable Court, that in view of the above facts the petition may please be dismissed.



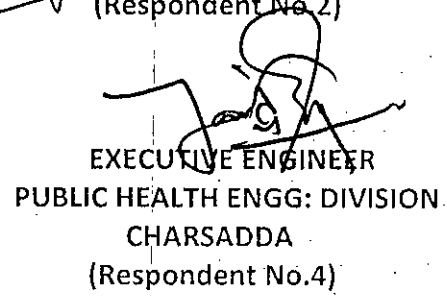
SECRETARY TO GOVT: OF KPK
PUBLIC HEALTH ENGG: DEPARTMENT
PESHAWAR
(Respondent No.1)



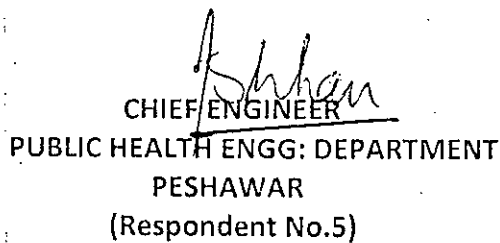
SUPERINTENDING ENGINEER
PUBLIC HEALTH ENGG. CIRCLE
MARDAN
(Respondent No.2)



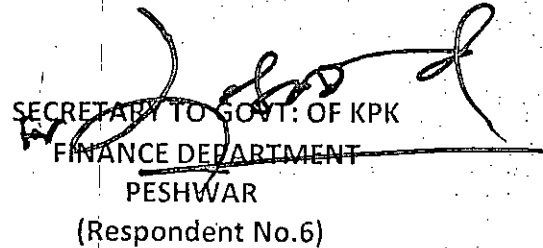
EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
MARDAN
(Respondent No.3)



EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
CHARSADDA
(Respondent No.4)



CHIEF ENGINEER
PUBLIC HEALTH ENGG: DEPARTMENT
PESHAWAR
(Respondent No.5)



SECRETARY TO GOVT: OF KPK
FINANCE DEPARTMENT
PESHAWAR
(Respondent No.6)

ATTESTED


بعدالت جناں سروس ٹریڈ مارک شاور

(21)

2019ء منجانب ای میل

مورخہ: 18-1-2019

بنام:

جان نثار

مقدمہ:

حکومت

سروس ای میل

دعویٰ:

جرم:

باجت تحریر آفندہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آئن مقام شاور کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان ایڈمرڈان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ

بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر

دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا

اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

2019ء

18 ماہ جنوری

المرقوم:

العبد

گواہ

العبد

بمقام شاور کے لیے منظور ہے۔

ATTESTED

Amjad Ali

ADVOCATE

SUPREME COURT

جان نثار

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 267/2019

Jan Nisar.....Appellant

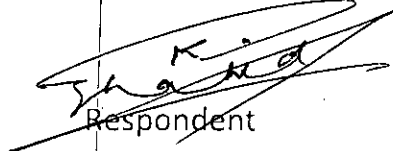
VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Public Health Engineering.....Respondent

INDEX

Serial No.	Description of Documents	Annexure	Page
1	Joint Para Wise Comments	-	1-5
2	Affidavit	-	6
3	Nomenclature of Posts with BPS-03 sanctioned by Finance Department Peshawar	A	7
4	Notification of Up-gradation	B	8

Dated:


Respondent

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

Service Appeal No. 267/2019

Jan Nisar S/o Ghulam Qadar

R/o Nawan Kali Rustam, Tehsil & District Mardan

Designation Pump Operator-cum-Valveman, Department of Public Health Engineering Circle,
Mardan

.....Appellant

V E R S U S

- 1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Civil Secretariat, Peshawar.
- 2. The Superintending Engineer, Public Health Engg: Circle Mardan.
- 3. Executive Engineer, Public Health Engg: Division Mardan.
- 4. Executive Engineer, Public Health Engg: Division Charsadda.
- 5. Chief Engineer Public Health Engineering Department, Civil Secretariat, Peshawar.
- 6. Secretary Finance Civil Secretariat, Govt. of Khyber Pakhtunkhwa, Peshawar.

.....Respondent

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDANTS NO. 1, 2, 3, 5 & 6

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS:

- 1. That the appellant has no cause of action / locus standi.
- 2. That the appellant has not come to this Honorable Court with clean hands.
- 3. That the present appeal in hand is not maintainable in its present form and also in the present circumstances of the issue.

4. That the present appeal is liable to be dismissed with cost for miss joinder / non joinder of necessary parties.
5. That the appellant has filed the instant appeal on malafide motives.
6. That the instant appeal is against the prevailing laws and rules.
7. That the appellant is estopped by his own conduct to file the present appeal.
8. That the instant appeal is badly time-barred.

ON FACTS:

1. Incorrect and misconceived. That the appellant is serving as Operator-cum-Valvemen and not Operator-cum-Chowkidar on Water Supply Scheme Nawan Killi since 2009. **(Copy of appointment order of appellant is already attached by the appellant in his supporting documents in service appeal on page no. 7)**
2. Incorrect and misconceived. That the designation of appellant is Operator-cum-Valveman and not Operator-cum-Chowkidar. The duty of Operator-cum-Valveman is to supply water to the consumers and to check/operate the valves of the pipeline and to report illegal connections/leakage of pipeline on water supply scheme if found. The appellant has accepted the terms and conditions in offer of appointment and he has no right to come to court against his appointment order. New designation is Operator-cum-Chowkidar (Tube well based) and Valveman-cum-Chowkidar (BPS-03) (Gravity based) Rural Water Supply Schemes. Under the laid down policy, a new post with nomenclature of Operator-cum-Chowkidar (BPS-03) and Operator-cum-Valveman (BPS-03) exist. There is no dual duty taken from the appellant, during duty the appellant is responsible for the maintenance of Water Supply Schemes. This shows malafide intentions of the appellant; therefore, his appeal is liable to be dismissed with cost due to wrong statement in his appeal before this Honorable Court.
3. Correct. It is pertinent to mention here that the post of Pump Operator is (BPS-07) while that of Operator-cum-Chowkidar and Operator-cum-Valveman are of (BPS-03). As per notification of Finance Department, the post of Pump Operator BPS-07 is of dying cadre post and in future all the post creation will be of Operator-cum-Chowkidar BPS-03 and

Operator-cum-Valveman BPS-03. Under the laid down policy, a new post with the nomenclature of Operator-cum-Chowkidar and Operator-cum-Valveman in (BPS-03) exist.

4. Incorrect and misconceived. That the designation of Operator-cum-Valveman and Operator-cum-Chowkidar is sanctioned by Finance Department, Govt. of Khyber Pakhtunkhwa Peshawar (Copy of Letter of Finance Department having sanction of posts is attached as Annex-A).
5. Incorrect and misconceived. Now the post of Operator-cum-Chowkidar and Operator-cum-Valveman is carrying BPS-03. Initially the posts were in BPS-01 but after the policy of up gradation by Govt. of Khyber Pakhtunkhwa in June 2015, these posts have been up graded to BPS-03 (Notification of Up gradation is attached as Annex-B). The post of appellant has been up graded to BPS-03 from BPS-01. This appeal may please be dismissed with cost for concealment of facts by the appellant from this Honorable Court.
6. Incorrect and misconceived. As discussed in Para No. 2 of the above.
7. Correct. The appellant was appointed as Operator-cum-Valveman after fulfilling all codal formalities. The appellant himself admits that he was appointed as per sanction of post from Finance Department by the Competent Authority. Therefore, his appeal may be dismissed with cost as it is filed on malafide intentions.
8. Incorrect and misconceived. The appellant is not an aggrieved person, as he has been dealt in accordance with law and there is no violation of his fundamental rights.
9. A Writ Petition No. 3121-P/2017 titled "Mr. Sadiq Ali and Others Vs. Secretary PHED and Others" before Honorable Peshawar High Court Peshawar, but the same was dismissed on 17-10-2018 with the direction in order sheet to approach the proper forum as appellant is a civil servant and his case falls in terms and conditions of civil servant, whereas, according to Khyber Pakhtunkhwa Service Tribunal Rules, 1974, and Appeal Rules, 1986, each employee shall file a separate appeal even against the common grievance. It is pertinent to mention here that in this writ petition, there was concealment of facts from the appellant that the service tribunal was not functional, as

the service tribunal was functional at that time, therefore, the present appeal may please be dismissed with cost.

10. As discussed in Para No. 9 of the above.

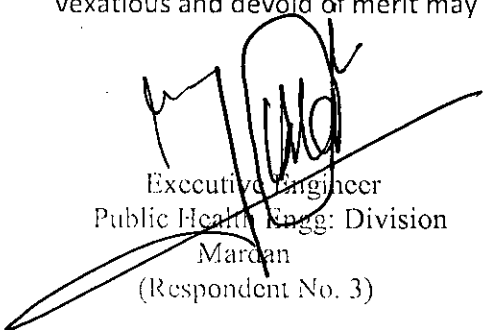
11. Incorrect and misconceived. The appellant is not an aggrieved person, as he has been dealt in accordance with law and there is no violation of his fundamental rights.

GROUND:

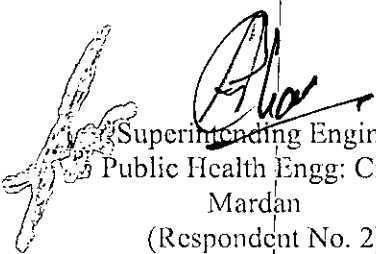
- A. Incorrect. The appellant is treated as per rules and regulations and as per his appointment order. It is pertinent to mention here that the appellant has signed his offer of appointment in 2009 wherein he accepted the terms and conditions of service and joined PHE Department. He himself is violating the rules and regulations of the Provincial Government.
- B. Incorrect and misconceived. That the duty of Operator-cum-Valveman is to supply water to the consumers and to check/operate valves of the pipelines and to report illegal connections/leakage of pipeline on water supply scheme if found. The appellant has accepted the terms and conditions in offer of appointment and he has no right to come to court against his appointment order. And there are no double duties; the appellant is misleading this honorable Court from the word "Chowkidar" as there is no such word "Chowkidar" in his appointment letter. His designation is Operator-cum-Valveman.
- C. Incorrect and misconceived. The appellant is not an aggrieved person, as he has been dealt in accordance with law and there is no violation of his fundamental rights under Article 4 of Constitution of Pakistan, 1973.
- D. This department follows rules and regulation and there is no violation of fundamental rights of the appellant guaranteed under Article 25 and 27 of the Constitution of Pakistan, 1973.

PRAYERS:

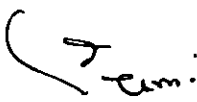
In view of the above facts, it is prayed before this Honorable Court that the appeal being vexatious and devoid of merit may please be dismissed with cost.



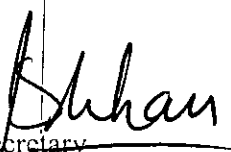
Executive Engineer
Public Health Engg: Division
Mardan
(Respondent No. 3)



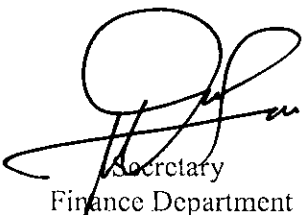
Superintending Engineer
Public Health Engg: Circle
Mardan
(Respondent No. 2)



Chief Engineer (N)
Public Health Engg: Department
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 5)



Secretary
Public Health Engg: Department
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 1)



Secretary
Finance Department
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 6)

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 267/2019

Jan Nisar S/o Ghulam Qadar

R/o Nawan Kali Rustam, Tehsil & District Mardan

Designation Pump Operator-cum-Valveman, Department of Public Health Engineering Circle,
Mardan

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Civil Secretariat, Peshawar.
2. The Superintending Engineer, Public Health Engg: Circle Mardan.
3. Executive Engineer, Public Health Engg: Division Mardan.
4. Executive Engineer, Public Health Engg: Division Charsadda.
5. Chief Engineer Public Health Engineering Department, Civil Secretariat, Peshawar.
6. Secretary Finance Civil Secretariat, Govt. of Khyber Pakhtunkhwa, Peshawar.

.....Respondent

AFFIDAVIT

I, Kamran Shahid S/o Muslim Umber, Assistant Social Organizer of PHE Department R/O Main Road Gharibabad, do hereby solemnly affirm and declare that the joint Para wise comments with supporting documents filed by the Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT

CNIC #: 16101-6850506-9

Cell No. 0333-9111069

NO. BO-I/FD/12-2/2018-19/Mardan (A)

Dated Peshawar the 18/01/2019

To

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

Subject: - PC-IV WATER SUPPLY SCHEME NAWAN KALLAY DISTRICT MARDAN

Dear Sir,

I am directed to refer to your letter No.SO(B&A)/PHE/1-18/2018-19/SNE/Mardan/NawanKallay dated: 07/01/2019 on the subject noted above and to say that Finance Department agrees to the creation of one post of "Operator-Cum-Chowkidar (BPS-03)" for operation and maintenance of the following Rural Water Supply Scheme in PHE Division Mardan with immediate effect, as per breakup given below, subject to observance of all codal formalities:-

S.#	DDO Code	Name of RWS Scheme	No of Post	Nomenclature of Posts with BPS	Position Code
1.	MR7023	Nawan Kallay (Moh: Shahban Khet) PK-51	01	Operator-Cum-Chowkidar (BPS-03)	80838909

2. The expenditure involved is debitable to the function-cum-object classification "06-Housing & Community Amenities, 063-Water Supply, 0631-Water Supply, 063101-Administration (Grant No:16),MR7023-Executive Engineer PHE Division Mardan during the current financial year 2018-19.

3. Audit copy may be prepared and submitted to this Department for authentication.

Yours faithfully,

(SAEED AHMAD KHAN)
BUDGET OFFICER-I

Endst. No. & Date Even.

Copy is forwarded for information & necessary action to the:-

1. Director FMIU, Finance Department.
2. Executive Engineer, PHE Division, Mardan.
3. District Account Officer, Mardan.
4. AD-II FMIU, Finance Department
5. PS to Finance Secretary.
6. Master File.

BUDGET OFFICER-I

H.C
For action

Already Marked

H.C

H.C



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 30-06-2015

NOTIFICATION

NO.FD/SO(FR)7-20/2015 The competent authority has been pleased to accord approval to the upgradation of pay scales of the following provincial government employees with effect from 01-07-2015:

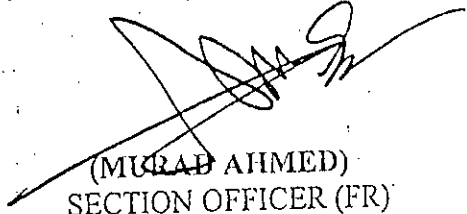
- a) Two pay scale upgradation will be allowed to all provincial government employees from BS-01 to BS-05.
 - b) One pay scale upgradation will be allowed to all provincial government employees from BS-06 to BS-15
 - c) Special Compensatory Allowance equal to difference of notional upgradation of BS-16 to BS-17 will be allowed to all provincial government employees in BS-16 in lieu of upgradation.
 - d) Upgradation will be applicable to both pay and allowances with freezing limits and other conditions currently in vogue unless revised by the government.
 - e) Pay fixation on upgradation will be applicable w.e.f. 01-07-2015 or 01-12-2015 on the option to be given by the concerned employee.
 - f) All provincial government employees who have been upgraded en-block or individually in last five years starting from 01-07-2010 or have been granted special allowance / pay equal to 40 % or more of their normal pay shall not be entitled for the instant upgradation.
2. Pay of existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.
 3. All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.
 4. The above upgradation scheme shall not be applicable to employees of Autonomous Bodies, Semi Autonomous Bodies and Public Sector Companies.
 5. Explanatory note and subsidiary instructions on the subject will be issued separately.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Encl No. & Date even.

Copy of the above is forwarded for information and necessary action to the: -

- 1) PS to Additional Chief Secretary, FATA.
- 2) All Administrative Secretaries Government of Khyber Pakhtunkhwa.
- 3) Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
- 4) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5) Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
- 6) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 7) Secretary Provincial Assembly, Khyber Pakhtunkhwa.
- 8) All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 9) Registrar, Peshawar High Court, Peshawar.
- 10) All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
- 11) Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
- 12) Registrar, Service Tribunal Khyber Pakhtunkhwa.
- 13) Secretary to Govt. of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
- 14) The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and I.I. Khan.
- 15) The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Manshera and Dir Lower.
- 16) The Treasury Officer, Peshawar.
- 17) All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
- 18) PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
- 19) PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 20) Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
- 21) PS to Finance Secretary.
- 22) PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
- 23) All Section Officers/Budget Officers in Finance Department.
- 24) Mr. Jabir Hussain Bangash, President, Class-IV Association, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 25) Mr. Manzoor Khan, President, Civil Secretariat Driver Association Khyber Pakhtunkhwa, Peshawar.
- 26) Mr. Akbar Khan Mohmand, Provincial President, Class-IV Association, Khyber Pakhtunkhwa, Peshawar.


(MURAD AHMED)
SECTION OFFICER (FR)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In re:

S.A.No.267/2019

Jan Nisar.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Secretary etc
.....Respondents

REJOINDER ON BEHALF OF THE APPELLANT

Sir,

Appellant humbly submits as under:-

PRELIMINARY OBJECTION

That all the preliminary objections are incorrect, misconceived, denied.

ON FACTS

All the facts and grounds of appeal are correct and those of reply are incorrect, hence denied. Identically placed Faiz Mohammad, Zeeshan, Qasim Khan have been granted BPS-6 from BPS-1, who were inducted like appellant in BPS-1, so, appellant has been discriminated.

There is no proof that Pump Operator is a dying Cadre. It is strange, if Operator-cum-Chowkidar Job description is:-

- a. To supply water.
- b. To Check pipelines
- c. To report illegal connection/ leakage of pipelines on water supply scheme.

then what would be the job description of Operator.

PRAYER

It is, therefore, humbly prayed that the appeal in and may graciously be allowed.

Appellant
Through



Amjid Ali (Mardan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my client that the contents of the accompanying **Rejoinder** are true and correct and nothing has been concealed from this Hon'ble Court.


Deponent