

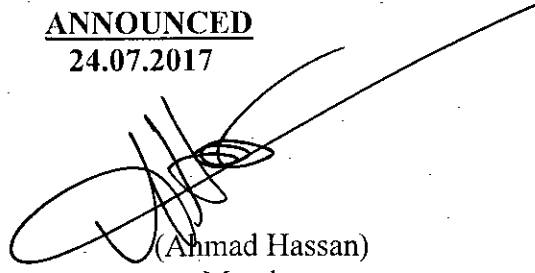
Appeal No. 356/2016
Mohsin Ali vs Govt

12. 24.07.2017


Learned counsel for the appellant present.
Learned Deputy District attorney on behalf of respondents present. Vide our separate judgment of today placed on file bearing appeal No. 289/2016 titled Amir Muqtada Qureshi Ex-Sub Engineer Versus The Secretary, Public Health Engineering Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

24.07.2017



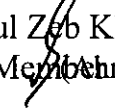
(Ahmad Hassan)
Member




(Muhammad Hamid Mughal)
Member

24.05.2017
12.07.2017

Clerk of the counsel for appellant and Mr. Muhammad Adee Butt, Additional AG AG for respondent present. Clerk of District Attorney alongwith Mr. Muhammad Saddique, the counsel for appellant requested for adjournment. Adjudged. Administrative Officer for present. Arguments heard. To come up for arguments on 12.07.2017 before D.B. for order on 24.07.2017 before D.B.

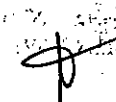

(Gul Zeb Khan)
Member
Member


(Muhammad Amin Khan Kundi)


(Muhammad Hamid Mughal)
Member
Member

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

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

27.09.2016

Counsel for the appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Learned counsel for the appellant stated that he does not want to file rejoinder and requested that the appeal may be fixed for arguments. To come up for arguments on 26.12.2016 before D.B at Camp Court D.I.Khan


Member
Camp Court D.I.Khan

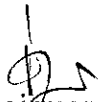
26.12.2016

Mr. Tehsin Alamdar, Advocate for appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.03.2017 before D.B at Camp Court D.I.Khan.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

31.03.2017

Counsel for the appellant submitted application for hearing of the appeal alongwith connected appeals on 11.4.2017 at Principal Seat at Peshawar instead of 24.07.2017 at camp court D.I.Khan. Application accepted. To come up for final hearing before the D.B alongwith connected appeals on 11.4.2017 at Peshawar instead of 24.07.2017 at camp court, D.I.Khan. Notices be issued to the respondents.


Chairman

26.04.2016

Mr. Rustam Khan Kundi, Advocate, for the appellant present and submitted that without giving any opportunity of defense and personal hearing to the appellant, he has been sacked. He further submitted that this service appeal is maintainable for the reason that departmental appeal of the appellant has been decided against him. He also asserted that the respondent-department fulfilled codal formalities and thus the impugned order is not lawful and in violation of law of natural justice. He also argued that the appeal is within time.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 30.08.2016 before S.B. *at camp court D.I Khan*

Appellant Deposited
Security & Process Fee

Member
Camp court D.I Khan

30.08.2016

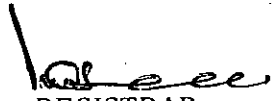

Appellant in person and Mr. Muhammad Yaseen, Supdt alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply/comments submitted, copy of which is placed on file. To come up for rejoinder on 27.09.2016 before S.B at camp court D.I Khan.

Member
Camp court D.I Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 356/2016

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. Mohsin Ali presented today by Mr. Rustam Khan Kundi 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 Touring S. Bench at D.I.Khan for preliminary hearing to be put up thereon <u>26.4.16</u></p> <p> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL K.P.K
PESHAWAR

S.T.A No. 356 2016.

Mohsin Ali.....Appellant

VERSUS

Government of KPK etc.....Respondents

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3	Copy of Show Cause Notice Dated 21.01.2014	II	5-6
4	Copy of termination order No.24/E-4/PHE Dated 14.02.2014	III	7
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6	Copy of Departmental Appeal Dated 25.02.2014	V	10-14
7	Copy of Decision/order Dated 30.12.2015	VI	15-22
8	Copy of Impugned Order No. SO(Estt)/PHED/1-90/2013-14.VOI-II Dated Peshawar the, 03.03.2016	VII	23
9	Vakalat Nama		24

Dated 01.04.2016

Yours Humble Appellant


Mohsin Ali

Through Counsel


Rustam Khan Kundi
Advocate High Court

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBR PAKHTUNKHWA PROVINCE
PESHAWAR.

S.T.A No. 356 2016

G.W.P. Province
Service Tribunal

Diary No. 331

Date 04-04-2016

Mohsin Ali,

S/o Muhammad Pervez,

R/O, Opposite New Bannu Chungi,

D.I.Khan City.....**APPELLANT.**

VERSUS

1. The Govt of Khyber Pakhtunkhwar through:-
The Secretary, Public Health Engineering Deptt:
Peshawar.
2. The Chief Engineer (South) Khyber Pakhtunkhwa
Public Health Engineering Deptt:
Peshawar.....**RESPONDENTS.**

Further Representation (Appeal) under S-4 of Khyber Pakhtunkhwa Service Tribunal (Act-I) 1974 against order dated 03.03.2016 (Passed at Peshawar in the Absence of Appellant at Peshawar on 03.03.2016) whereby Appeal No. 725/2014 dated 25.02.2014 (remitted by the Honorable Tribunal on 30.12.2015) against the impugned order No. 24/E-4/ PHE dated 14.02.2014 by the respondent No.2 has been dismissed, concurring on variant or dissimilar grounds (vide para 5 of the impugned order dated 03.03.2016) with the original, Impugned order dated 14.02.2014 of the Respondent No.2.

PRAYER.

On acceptance of the instant Appeal, to set aside the two impugned orders dated. 03.03.2016 and 14.02.2014 passed by the respondent No.1 & 2 respectively and to re-instate the Appellant in his incumbency of BPS-11 (Sub Engineer) with all Back benefits since 14.02.2014.

Date of communication impugned order dated 01.03.2016 at Dera Ismail Khan

12.03.2016.

[Handwritten Signature]
1/4/16
Page 1 of 3

The Appellant, amongst other grounds, respectfully submits as follows.

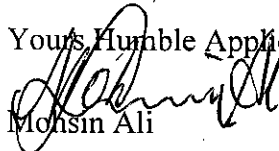
1. The Appellant was appointed on the recommendation of the Departmental Selection Committee (Constituted by the Respondent No.2 without any objection or exception from the respondent No.1)
2. The Appellant was allowed all fringe benefits and perks of a regular employee since 15.01.2010 and the appointing authority (now substituted by C.E (S) PHED) did not indicate any cause of complaint before the issuance of Show Cause notice (Copy enclosed as Annexure-II) dated 21.01.2014.
3. The Appellant submitted reply on 18.02.2014, but before 18.02.2014, the services of the Appellant were terminated vide order No. 24-E/4/PHE dated 14.02.2014 (Copy enclosed as Annexure -III) and copy of reply dated 18.02.2014 is enclosed as Annexure -IV.
4. The Appellant was relieved off on 14.02.2014 (Copy is enclosed as Annexure-V)
5. The Respondent No.1, declined to pass order within the prescribed bout of period of limitation.
6. The Appellant was obliged to prefer S.T.A No.725 on 22.05.2014 copy is enclosed as Annexure-VI.
7. The Honourable Tribunal on 30.12.2015 passed its appellate order and remitted the S.T.A No.725 of 2014 and the Departmental appeal dated 25.02.2014 to the Respondent No.1
8. The Respondent No.1 afforded opportunity of personal hearing on 08.02.2016 in the absence of prosecution agent (thence after Defence agent before him) and did not give opportunity of oral cross-examination of the agent of the Respondent No.2 and did not hear the parties under article 161 of the Q.S.O 1984 and passed the impugned order on 03.03.2016. Copy enclosed as Annexure-VII.
9. There is no other adequate remedy under Civil Servant Act (XVIII) 1973. Hence the instant Appeal which is well within time under S-22 of the Act Ibid r/w Appeal Rules, 1986.

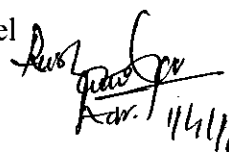
[Handwritten Signature]
[Handwritten Date: 1/4/16]

GROUND OF THE APPEAL.

- i). The grounds narrated in S.T.A No.725 of 2014 vide its Para No.i to iv , vii are reiterated and further grounds are urged as under:-
- ii). The devolution of power to the Distt: Co-Ordination officer of the Distt: Govt and the exclusion of incumbencies of BPS 11 to 15 from the jurisdiction of the Public Services Commission had caused confounded situation and due to such imbroglio, the selection through Public Service Commission could not be made and there was thus no reference to P.S.C by 31.12.2009.
- iii) In case of some anomaly or irregularity in the appointments, that is curable under the rule of locus paeonitentiae & the remedial provisions of S-21 of the Contract act (IX) 1872 when employment of a qualified candidate is not unlawful fiat. (Reference is made to PLJ-2012-P/64-NLR2005CC-P31-NLR 2005 CC SC-44)
- iv) There is no adverse consequences of a selection for initial recruitment without advertisement and there are incumbencies of BPS 20 and above under Govt which are filled up without press advertisement and the sacked employees under the promulgations of Re-instatement of Sacked Employees Act 2010 and 2012 were re-instated which provide sufficient anchor for sustention of appointment order dated 15.01.2010. ;moreso; when Termination simpliciter after expiry of probation period is not valid fiat.
- v) The Appellant's Counsel may be permitted to urge further grounds in the contexts of various Acts of Regularization of Contract and Adhoc employees.

It is therefore PRAYED that the instant Appeal may graciously be Accepted.

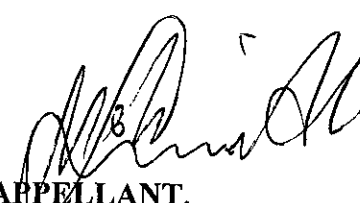
Yours Humble Applicant,

Mohsin Ali

Through Counsel 
Rev. 11/4/16

Dated 01.04.2016.

VERIFICATION.

It is solemnly affirmed that the contents of the appeal are true and correct to the best of my knowledge and belief.


APPELLANT.

Annex I

4

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

No. 32 / E-4/PHE

Dated Pesh: the 15 / 01 / 2010.

OFFICE ORDER.

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 Sub Engineer (BPS-11) to Mr. Mohsin Ali S/O Muhammad Pervez R/O Opposite New Bannu Octroi Post D.I.Khan on the following terms and conditions :-

- 1) He will get pay at the minimum of BPS-11 (Rs.4115 - 275 - 12365) 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, initially, be on probation for a period of two years extendable upto 3 years.
- 6) He shall produce a medical certificate of fitness from Medical Superintendent, Hangu before reporting himself for duty to the O/O Deputy District Officer Water Supply & Sanitation Hangu as required under the rules.
- 7) He has to join duty at his own expenses.
- 8) If he accepts the post of these conditions, he should report for duty to the Deputy District Officer Water Supply & Sanitation Hangu, 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 Hangu.
- 2) District Accounts Officer Hangu.
- 3) ✓ Mr. Mohsin Ali S/O Muhammad Pervez R/O Opposite New Bannu Octroi Post D.I.Khan.

Attended

Mohsin Ali

Mohsin Ali

CHIEF ENGINEER



Annexure II

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. Ishtlaq 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. Iftikhar | 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:

- 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.
- Your appointment orders have been made in contravention of Govt led down policy vide circulated notification No. SOR-VI/EXAD/1-10/2005/Vol-VI dated 15.11.2007.

Attentive



Page -2

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-parte action will be taken against you under the E&D rules which will entail your termination from service.

Chief Engineer (South)

Copy forwarded to:

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 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)

Attended



Annexure III

(2)

7

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

No. 24 / E-4 / PHE,
Dated Peshawar, the 11 /02/2014

To

Mr. Mohsin Ali s/o Muhammad Pervez
Sub Engineer P.H.Engg Division
Tank

Subject: **TERMINATION FROM SERVICE**

Your recruitment in PHED made vide this office letter No.32/E-1 /PHE dated 15.01.2010 was illegal and unlawful due to non-fulfillment of codal formalities.

2. Your appointment as a Sub Engineer 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(Estt)/PHED/1-90/2012-13 dated 3.2.2014 record of the recruitment of Sub Engineer and other staff has been checked and found the following irregularities committed by the appointing authority in your appointment.

1. Vacancies/posts of Sub Engineers were not advertized through news paper.
2. Initial recruitment of Sub Engineers will continue to be made through recommendation of the Public Service Commission in light of S&GAD letter No.SOR-1 (S&GAD)1-117 /91(c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. A requisition for filling up these posts were not placed with Khyber Pakhtunkhwa Public Service Commission and you have not qualified test and interview conducted by the Public Service Commission during this period. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.
3. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.
4. Departmental selection committee was not constituted by the Administrative Secretary.
5. You have also failed to reply to the show cause notice issued vide this office No. 32/E-4 /PHE dated 21.01.2014 in your defense with in stipulated period.
6. 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 Sub Engineer 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.

Attested

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

Annex IV

8

Subject: - SHOW CAUSE NOTICE.

Reference: - Your No.32/E-4/PHE dated 21-01-2014 received by me on 7/02/2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

Para wise explanation is submitted as under:-

1. In this connection your attention is invited to E.A.D letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/4/2006 declaring the posts in B-I 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 against the post was made by the Competent Authority as having the prescribed qualifications 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/11-23/2007 dated 30-4-08 assigned all the Establishment matters of officials from BPS-1 to BPS-15 to the respective Chief Engineers of the 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 appointment 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 hands 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 Year 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.

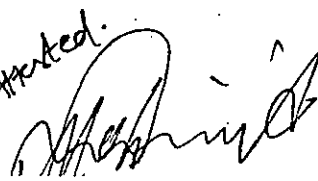
Thanking you.

Yours Obediently,

Mohsin Ali

PHE Department Tank.

Dated 18/02/2014.

18/2/14
Accepted.


Copy to the:-

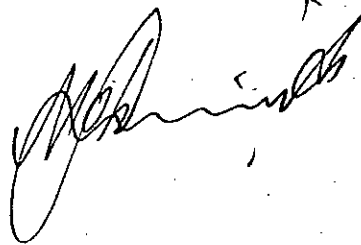
1. Registrar, Supreme Court of Pakistan, Islamabad with reference to C.Ps N.2026 & 2029 of 2013.
2. Registrar, Peshwar High Court, Peshawar w/r to W.Ps No,271-P & 663-P of 2013 w/r to above.

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

Tank.
PHE Department Peshawar.

Attended


To

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

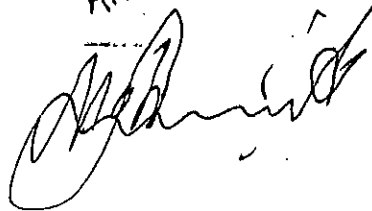
Annex V

Subject: Departmental appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of the KP Civil Servants (Appeal) Rules, 1986 against the impugned order dated 14.02.2014 whereby the services of appellant was terminated with immediate effect by the Chief Engineer (South) of the Public Health Engineering Department, Peshawar.

Respected Sir,

1. That appellant being qualified for the post of Sub Engineer so he applied for the existed vacancies of Sub Engineers in the Public Health Engineering Department Khyber Pakhtunkhwa Peshawar. After observing the codal formalities, on the recommendation of Departmental Selection Committee he was appointed as Sub Engineer (BPS-11) on regular basis from his respective date of appointment issued by the Chief Engineer.
2. That after completing the requisite formalities including medical fitness certificate, the appellant joined duties at his respective place of posting. The respondent department also maintained the service book of the appellant and necessary entries have been made therein from time to time.
3. That the appellant is regular employee of the respondent department working against the permanent post since his respective appointment having more than five years service at his credit with excellent service record.
4. That some other employees whose appointments were made on adhoc basis so they agitated their regularisation under the Khyber

Attested



19

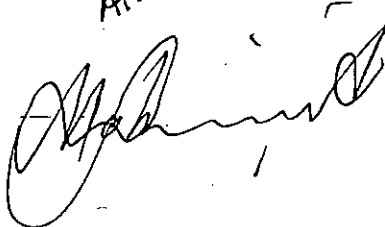
Pakhtunkhwa Employees (Regularization of Services) Act, 2009 before this Hon'ble Court through two separate writ petition NOs.271-P/2013 and 663-P/2013 which were dismissed by common judgment passed on 02.10.2013.

5. That the impugned judgment was challenged by the same employees before Hon'ble Supreme Court of Pakistan through C.P. No.2026 and 2029 of 2013 but same were also dismissed on 15.01.2014. However during the proceedings, Mr. Sikandar Khan Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa orally brought into the notice of Hon'ble Supreme Court of Pakistan about the existence of illegal appointees in the department and accordingly he was directed to finalize the action against such illegal appointees within one month.
6. That a joint show cause notice was issued to appellant alongwith others vide letter No.32/E-4/PIIE dated 21.01.2014 by Chief Engineer (South) therein he has unlawfully and malafidely shown the appointments of appellant and others as illegal. Since the copy of show cause notice was not received within stipulated time therefore he submitted an application before the Chief Engineer (South) requesting for extension in period of reply but before submitting the requisite reply, now which had been submitted, the Chief Engineer (South) had issued the impugned order dated 14.02.2014 thereby his services were terminated with immediate effect.

Grounds:

- A. That the appointment of appellant was made by competent authority on regular basis on the recommendation of Departmental Selection Committee. He was within age limit, having prescribe qualifications thus in such circumstances the Chief Engineer (South) was unjustified to treat the valid appointment of appellant as illegal.

Attested.



than five years service to the department efficiently, satisfactory and without any complaint. Therefore the Chief Engineer has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order thereby appellant was terminated has no legal sanctity being without lawful authority.

E. That clause 2 of appointment orders of appellant provides that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made thereunder and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Chief Engineer has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.

F. That in the impugned order, Chief Engineer used the word of "termination" which neither applicable in the case of appellant being confirmed employees of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not sustainable under the law and rules.

G. That Chief Engineer has malafidely brought in the notice of the Hon'ble Supreme Court of Pakistan during the hearing of an other case. Neither he supplied any list of illegal appointments to Hon'ble Supreme Court of Pakistan at that very moment nor specified such illegal appointments but in general way he mentioned the existence of illegal appointments in the department which now he has exploited the situation and purposely held the appointments of appellant and others as illegal and issued the impugned order of termination without legal justification.

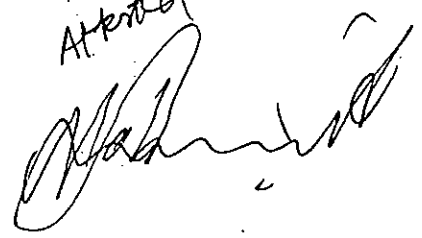
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03/10/14

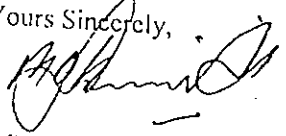
- H. That the impugned order has been passed at the back of appellant. Neither any regular enquiry has been conducted nor a fair opportunity was provided to them to defend their cases therefore the impugned order is illegal, without lawful authority being violative of principle of natural justice.
- I. That the appellant was continuously serving the department having more than five years service at their credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of locus poenitentiae.
- J. That in case of any defect in the appointment of appellant is existed for which only the departmental authority is responsible and not the appellant therefore the action of the Chief Engineer is not warranted under the law and rules and the impugned order is illegal and of no legal effect.
- K. That the appellant is a permanent and confirmed employee of the department and performing his respective duty efficiently since the date of his appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools and colleges thus in such circumstances, the Chief Engineer has no legal and moral justification to hold the appointment of appellant as illegal. Therefore the act and action of the Chief Engineer is tainted with malafide intention, unlawful and not operative against the vested rights of appellant.

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned order dated 14.02.2014 thereby the services of appellant

Appended


was terminated with immediate effect, may kindly be set aside and appellant may graciously be reinstated with all back benefits.

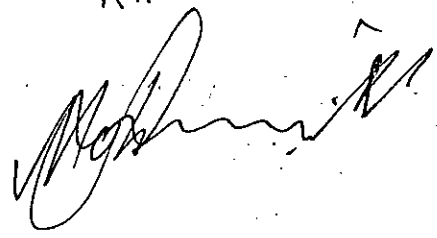
Yours Sincerely,



Mohsin Ali
S/O Muhammad Pervaz
Office Address:- PHE Dept Division Tank
Home Address:- Opp:- New Bannu Chungi
D.I. Khan

Dated: 25/02/2014

Attended



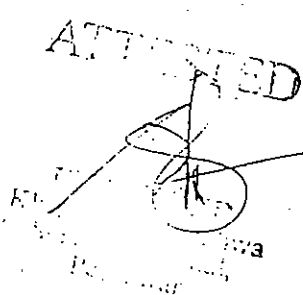
ANNEX VI

15

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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 Ali, -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 Ifikhar, (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, Nooran Ullah, -do-
25. 803/2014, Aziz Ullah, (Aslam Khan Adv.)
26. 810/2014, Muslim Shah, (M. Asif Yousafzai, 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)

ATTACHED


Versus
Govt. of KPK Province through Secretary, Public Health
Engineering Department, Peshawar & Others.

30.12.2015

JUDGMENT

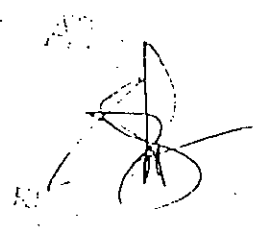
PIR BAKHSH SHAH, MEMBER:- Counsels for
the appellants and Sr. Government Pleader (Mr. Usman
Ghani) with Muhammad Siddique Admn. Officer for the
respondents present.

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

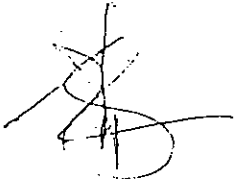
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through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed."

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)I-117/91C 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/I-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



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

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 mis-conceived 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.

ATTORNEY


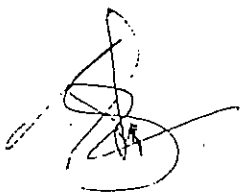
8. These appeals were resisted by the learned Sr. Govt. Pleader on the grounds that the Public Service Commission was the competent forum for the process of recruitment of the posts of the appellants. That no formalities of advertisement, constitution of DSC, conduct of test/interview, preparation of 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

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

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



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

Self - Piyush Shah
Member

Self - Abdul Latif
Member

Certified
K. S. ...
Peshawar

Date
No.

01-01-2016
3700
18
18
06-01-2016
06-01-2016

Date



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. Mohsin Ali
S/o ~~Mohsin Pervaiz~~ *Mohammad Parvez*
R/o Opposite new Bannu
Chungi D.I.Khan

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE
ORDER No.24/E-4/PHE DATED 14-02-2014.**

WHEREAS, you managed to get yourself appointed as Sub Engineer (BPS-11) in PHED vide Chief Engineer PHE Office Order No.32/E-4/PHE dated 15-01-2010.

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 Supreme Court of Pakistan vide C.P No.551 of 2014 and the apex court vide Order dated 28-04-2014 disposed off 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.725/2014 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 Sub Engineer 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.

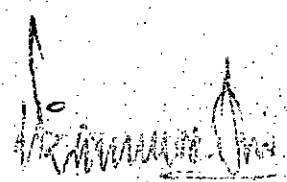
Alleged to be
[Signature]

Annexure VII

23

The then 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 Sub Engineer 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) 02/02
SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

END ST: 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/2013/492-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.


SECRETARY TO 02/02
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

وکالت نامہ

قیمتی ایک روپیہ		کورٹ فیس
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Before the Honble Service Tribunal. K.P. Peshawar

بعدالت

مخبر جناب

نام حکومت وفاق

دعویٰ یا جرم

2016 STA

تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ موجود بالا عنوان میں اپنی طرف واسطے بیرونی وجوہ دی برائے پیشی یا تصفیہ مقدمہ ہذا کے لئے
 کسٹم خان لنگ و ملک صاحب دالیں۔

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
 موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب
 موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل
 بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا پیچھے پیش ہونے
 پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا محنت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ
 کو کل ساختہ پر واختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ یا درخواست اجراء اسمائے ذگری
 نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر جانش یا راضی نامہ و فیصلہ برحلف کرنے اقبال دعویٰ کا بھی اختیار ہو گا اور بصورت مقرر ہونے
 تاریخ پیشی مقدمہ مزکور بیرون از پکھری صدر بیرونی مقدمہ مزکور نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا منسوخی ذگری یک طرفہ یا درخواست حکم استغاثی یا ترقی
 یا گرفتاری قبل از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ادا ہنگی علیحدہ مختصم بیرونی کا اختیار ہو گا اور تمام ساختہ پرواختہ صاحب موصوف مثل کردہ
 از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مزکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی
 اپیل نگرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا بیر مٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے
 اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التواء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر
 صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور ایسی صورت
 میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے
 مورخہ ۱۰/۱۱/۱۶

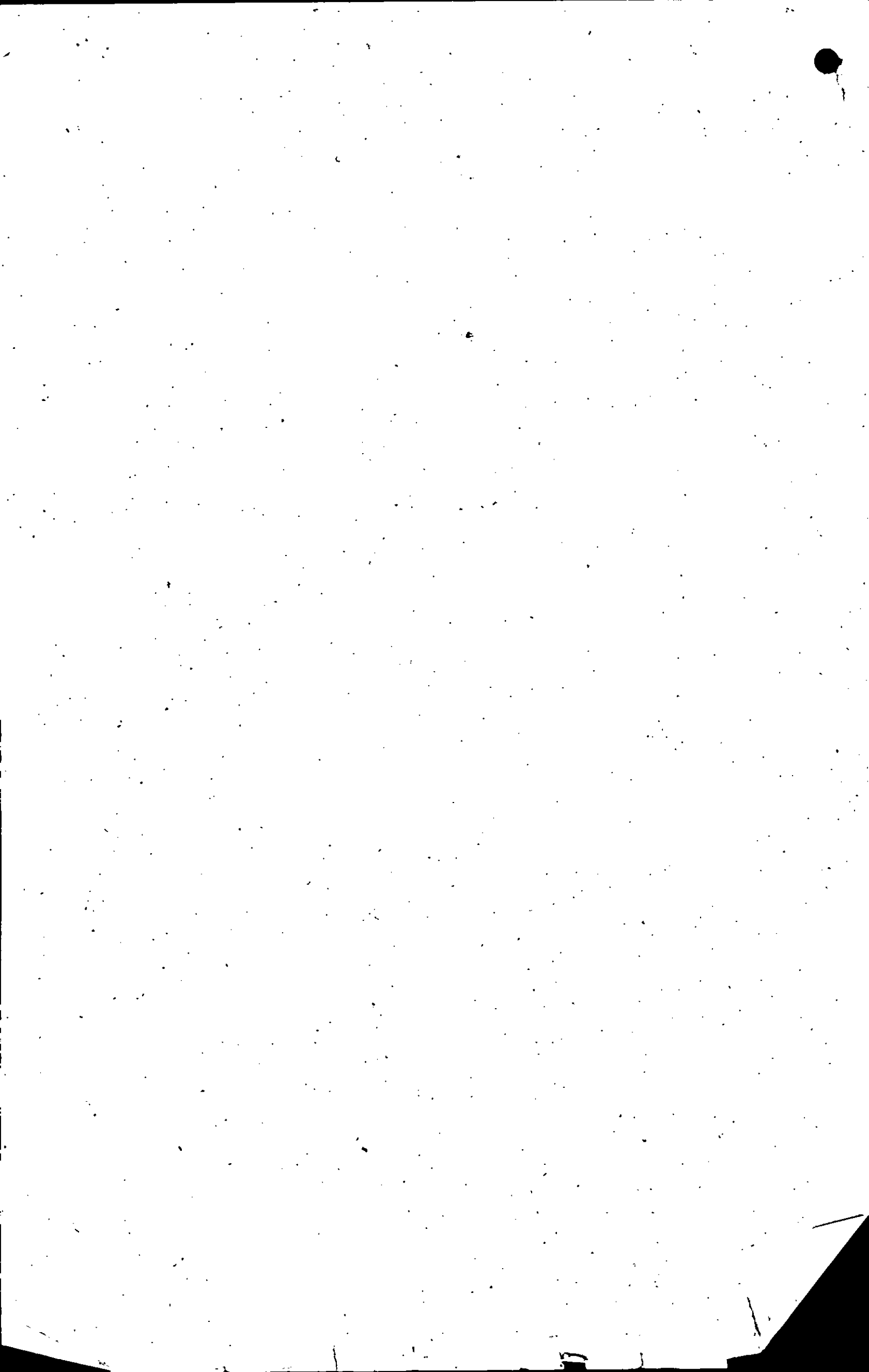
مضمون وکالت نامہ من لیا ہے اور صحیحی طرح سمجھ لیا ہے اور منظور ہے

حسن

Accepted

Rashid Khan
Advocate

11/11/16



BEFORE THE HON. BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No

356/2016

Mr. Mohsin Ali S/O Muhammad Pervez
Ex-Sub Engineer, PHED

..... (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 TO 2

Respectfully stated

Para-wise comments of the Respondent 1 to 3 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 unnecessary 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. Departmental Selection Committee (DSC) is not authorized to make recommendation for the appointment of Sub Engineer BPS-11 on regular basis. The unauthorized DSC without advertizing the Vacancies of Sub Engineers BPS-11, without conducting test and interview and without obtaining NOC from Public Service Commission appointed the appellant on the unlawful order of the Chief Minister Khyber Pakhtunkhwa. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgment dated 30/05/2016 (**ANNEXURE-V**).

According to ESTA Code (**Annexure-VI**) and Public Service Commission ordinance, (**Annexure-VII**), recruitment policy (**Annexure-VIII**) recruitment to posts of Sub Engineers BPS-11 falls within the purview of Public Service Commission. The appellant has not availed the opportunity to appear in the test and interview conducted by Public Service Commission advertized on 07.4.2011 (**Annexure-IX**). The appellant has come through back door and his appointment is against the norms of merit. Necessary sanction to condonation of the violation of codal formalities has not been accorded by the competent authority.

- 2). Incorrect. The Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa had actually wrongfully exercised powers by appointing the appellant on regular basis without the recommendation of Public Service Commission which is prerequisite for any appointment in BPS-11 and above according to ESTA Code and Public Service Commission Ordinance. On the report of Chief Engineer (South) Public Health Engineering Department Khyber Pakhtunkhwa , Secretary to Govt: of Khyber Pakhtunkhwa PHED forwarded the illegal appointment case of the appellant and other 23 Sub Engineers BPS-11 to establishment Department for advice on 12.11.2011 and 24.12.2013 (**Annexure-X**). The establishment department vide letter No SOR(E&AD)/15-3/09 dated 30.1.2014 and letter No SOR-V(E&AD)/15-3/2009 dated 17.3.2014 (**Annexure-XI**) declared the appointment as illegal.

District Account Officer Tank has also raised observation on illegal appointment of one of the Sub Engineer in his batch. Letters of District Accounts Officer Tank and Accountant General in this connection are presented for further clarification of the matter (**Annexure-XII**). The issue of illegal appointment of the appellant and 23 other Sub Engineers was raised in the Supreme Court of Pakistan on 15.1.2014 by some other terminated Sub Engineers in civil petition No 2026 and 2029 of 2013. The Supreme Court after hearing both the parties decided to finalize action against all illegal appointees within one Month.

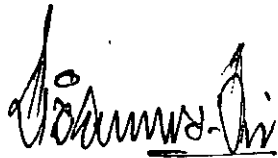
- 3) The appellant failed to submit reply of show cause notice well in time. The appellant had no legal proof regarding his appointment being appointed without advertisement, test/interview and recommendation of the Public Service Commission, illegally. After fulfillment of codal formalities, the appellant was correctly terminated, as illegally appointees has no rights to retain in service.
- 4) Being illegally appointed correctly terminated/relieved in light of direction of apex court judgment dated 15.1.2014 and subsequent reminder dated 07.2.2014.
- 5) Incorrect. The appellant failed to submit departmental appeal in stipulated period. There was also no weight-age/merit in reply of the appellant hence not considered. The appellant was appointed contrary to all prevailing rules without test interview advertisement on the post come within purview of Public Service Commission by wrong authority.
- 6) Pertain to record hence no comments.
- 7) Correct to the extent that service tribunal has remitted the case to department for giving opportunity of departmental appeal and personal hearing to the appellant.
- 8) Incorrect. The appellant authority given opportunity of departmental appeal and heard in person the appellant in light of orders of honourable court dated 30.12.2015. The appellant authority rejected the departmental appeal on merit as the appellant was appointed contrary to all prevailing rules i.e. without test interview advertisement and recommendation of Public Service Commission, as per Public Service Commission ordinance, ESTA Code, recruitment policy and advice of Establishment Department. The appellant was appointed from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa on violation of rules, wherein fundamental rights of deserved persons damaged as well as zonal quota allocation not followed.
- 9) Incorrect. The appellant did not come in the category of civil servant being illegally appointed contrary to prevailing rules/procedures by wrong authority on the post come within the purview of Public Service Commission. Show cause notice was served upon the appellant in which sufficient time was given to him to clarify his position. The appellant does not come under category of civil servant being illegally appointee. Therefore E&D rules 2011 and the appeal rules 1986 are not applicable in his case.

GROUNDS

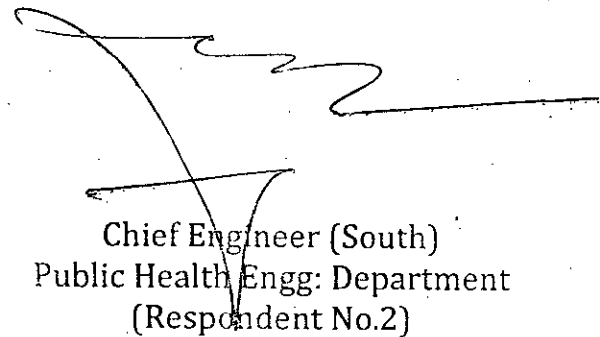
- i). Reply of the department in service appeal No.724/2014 of the appellant for Para I to IV are reiterated as under while Para VII not exist in the above appeal of the appellant reproduced as under (a,b,c & d)
- a) Incorrect. Chief Engineer Public Health Engg: Department is not the competent authority to make recruitment of Sub Engineers BPS-11 on regular basis against regular vacancy. According to ESTA Code and Public Service Commission Ordinance. The appointment of Sub Engineer will be made through the recommendation of Public Service Commission. The appellant was appointed on the unlawful order of the Chief Minister's Khyber Pakhtunkhwa which is against the norms of merit and contrary to the prevailing rules and Public Service Commission Ordinance.
- b) Incorrect. The appellant failed to submit reply in more than Two Weeks after issuance of show cause notice. The case of illegal appointment of Sub Engineer was sent to Establishment Department for advice. The Supreme Court of Pakistan in a civil petition had given one Month deadline to finalize action against all such illegal appointee. So on receiving decision from Establishment Department, Services of the appellant and others were terminated. As the appellant was appointed through back door, therefore E&D Rules 2011 and 1973 are not an applicable in case of appellant.
- c) Incorrect. The appellant was given sufficient time in show cause notice. The appellant was illegally appointed. He does not come under category of civil servant. As such E&D rules 2011 and check list of 1985 under #&D rules 2011 are not applicable in this case.
- d) Sub Engineers are appointed through the recommendation of Public Service Commission. There are no chances of nepotism and political interference in selection process of Public Service Commission. Protection to those who come through back door cannot be given. The previous Government has distributed the posts among their favorites including the appellant. The appellant should have applied to Public Service Commission on 07.4.2011 for regularization of his service. The appellant has missed this golden opportunity.
- ii) Incorrect. The Public Service Commission Ordinance, ESTA Code, recruitment policy as well as advice of Public Service Commission is clear that appointment of Sub Engineer come within the purview of Public Service Commission. In case the appointment of Sub Engineer was within the purview of DCO, the Chief Engineer was also not authorized to appoint Sub Engineer being Provincial Head of the Department. The appellant failed to avail the opportunity to appear in the test/interview conducted by Public Service Commission in 2011 and later on time and again.
- iii) The referred Judgment of Supreme Court of Pakistan pertains to petty employees like Chowkidar, Naib Qasid and Junior Clerks non commissioned posts recruited illegally in Semi Government Department i.e. Punjab Text Book Board. This Judgment is not applicable on the posts fill through Public Service Commission in the government Departments. The appellant was terminated on the basis of decision of Supreme Court of Pakistan dated 15.1.2014. The termination Order of the appellant is consistent with the Judgment of Supreme Court of Pakistan dated 17.3.2014 in constitution petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari verses EOBI.

The prescribed procedure in ESTA Code was never followed. The principal of natural justice has been violated. Applications were not invited through advertisement No interview and written test was got conducted.

- iv) Incorrect. Advertisement, test/interview is must for appointment under the rules. Appointment of Sub Engineers is within the purview of Public Service Commission as per Public Service Commission Ordinance, ESTA code, recruitment policy and advice of Establishment Department. The appellant was appointed through back door from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa. The promulgation of reinstatement of sack employees Act 2010 not applicable to the illegal appointees like the appellant. Illegally appointee has no rights to retain in service and terminated in light of the judgment of the Apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014.
- v) 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 appellant 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

356/2016

Mr. Mohsin Ali S/O Muhammad Pervez
Ex-Sub Engineer, PHED

..... (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

Annex-I



IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No 271-P/2013

1. Mr. [Name] of [Address]
2. Mr. [Name] of [Address]
3. Mr. [Name], Engineer, in Public Health Engineering Department
District Pakhtunkhwa, Peshawar Division, Peshawar

4. Mr. [Name] of [Address]
5. Mr. [Name], Secretary, Civil Secretariat, Peshawar
6. Mr. [Name], Engineer, [Address]
7. Mr. [Name], [Address]
8. Mr. [Name], [Address]
9. Mr. [Name], [Address]
10. Mr. [Name], [Address]

ATTEST
EXAMIN
Peshawar High Court
2 OF 2

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

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

JUDGMENT

Date of hearing: 2.10.2013.

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

Respondent/*Govt. of Peshawar*

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

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

ATTEST

EXAMINER
Peshawar High

20 FEB 2014

20 FEB 2013
FEDERAL BUREAU OF INVESTIGATION

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 Hayer and Mushtaq Ahmad, who were 38 and 39 years old, respectively and were departed 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 final report from the respondents whereas their tenure is going to expire, hence necessitated the filing of instant constitutional petition.

[Handwritten signature and scribbles]

was 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 intended that the term of appointment would be on ad hoc appointed as Sub-Engineer, wherein it was clearly dated 23 April 2010 against which the petitioners were side and straight away referred to the advertisement. 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

whichever is earlier. The petitioners amongst others also participated in the test/interview. However, after due process, they were appointed on 3rd January, 2010. On 28.2.2012, the petitioners were re-appointed as Sub-Engineers as a stop-gap arrangement.

6. The petitioners are taking the shelter behind Act No.XVI of 2009 and can be pressed into service in case of those adhoc employees, who were holding the posts on 31st December, 2008 or till the commencement of the Act, which is not the case in hand, therefore, the plea taken is of no help to them. Moreover, the learned AAG produced a copy of the letter dated 1.7.2013 showing that those employees, who were retained by the responder/department have also been terminated after the arrival of candidates from Public Service Commission.

Keeping in view the above discussion, we are of the considered opinion that the petitioners have failed to make out a case for interference in the constitutional jurisdiction of this court, hence this petition being without any legal substance is hereby dismissed.

Mr. Nisar Hussain Khan - J
Mr. Ms. Musarrat Hilali - J



CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court,
Authorized Under Order
The Qanun-e-Shahadaat

20 FEB 2014

20-02

PH 9082235
FAX:9220406

11

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

Islamabad, dated 15/1/2014

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-F & 663-F/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 to report compliance.

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

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:
(on court notice)

Sikandar Khan, Chief Engineer, PHEK, KPK.

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
[Signature]
Supintendent
Supreme Court of Pakistan
Islamabad

GR No: 645/14 CIVIL/Criminal
Date of Presentation: 15-1-14
No. of Wards: 6
No. of Parties: 6
Registration Fee Rs: 5000
Copy Fee in: 3000
Court Fee Stamp: 8000
Date of Receipt of Copy: 15/1/14
Date of Case, etc. set: 15/1/14
Compared by: [Signature]
Finalized by: [Signature]

Islamabad, dated 11/1/2014.

FROM

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 & 683-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. 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

Kzami/****

132
-2-
You are, therefore, required to submit requisite compliance report enabling this office to place the same before Hon'ble Court.

dt. 16.01.2014

✓
Referring to earlier

letter

Yours faithfully,


NIAZAR ABBAS,
ASSISTANT REGISTRAR (MP)
FOR REGISTRAR

de



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

No. 03 K-4-A/H/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

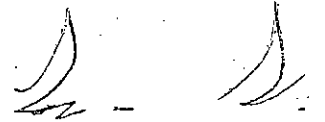
Reference:

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

In light of direction of honourable Supreme Court of Pakistan order da
15.1.2014 action against illegally appointees in Public Health Engg: Department Khy
Pakhtunkhwa has been finalized. Services of the 24-Nos Sub Engineers, 6-Nos St
typist/Stenographer and 2-Nos Data Entry Operator who were appointed with
advertisement and recommendation of Public Service Commission have been terminat
List attached for your good self perusal please.

DA/As above

ok


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 (S)

Annex-11

11/11/11

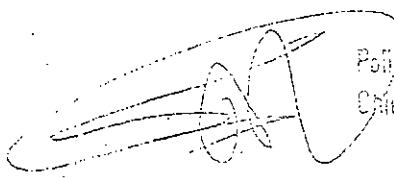
APPOINTMENTS AGAINST THE VACANT POSTS OF SUB
ENGINEER / STENOGRAPHER & DEO.

It has come in to the notice of Honourable Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenographers & 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 Honourable Chief Minister NWFP, has been pleased to direct to consider the application of the following persons 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:-

<u>S.No</u>	<u>Name of Applicant</u>	<u>Name of Post</u>
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 Shulab 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. Ishlaq 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 Gul District Mardan.	-do-
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	Stenotypiest
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	-do-

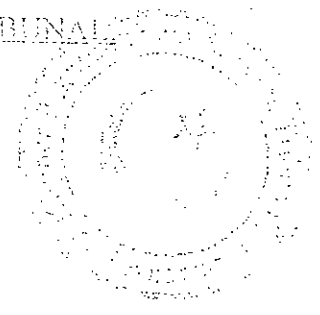
D.E.O


 Political Secretary to
 Chief Minister NWFP

Aman Ullah

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEALS NO. 1351/2013
Date of institution ... 11.09.2013
Date of judgment ... 30.05.2016



Aman 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

.. For appellant.
.. For respondents.

MIR PIR BAKHISH SHAIH
MR. ABDUL LATIF

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MR. BAKHISH SHAIH, 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 5.03.2013. hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

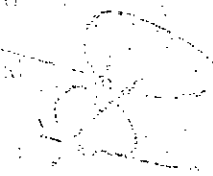
Aman Ullah

Arguments heard and record perused.

APPELLANT
MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

1351/2013
17/7

After a careful perusal of the record and having pro & contra arguments for the
at 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 Compete
Departmental Promotion/Selection Committee which is not the case of the appellant. In t



Dismissed

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

111

order may be set aside and the appellant may be restored to the post of Sub-Engineer(BPS-
post of Sub-Engineer. He submitted that on acceptance of the instant appeal the impugned
order was also duly recommended by the committee, therefore he was entitled to the
for the post of Sub-Engineer was duly advertised and the appellant appeared in his test and
different order in Engineering and being qualified he was deserving for the post. He argued
Engineer to his regular post of Junior Clerk. He further submitted that the appellant was
an empty post was filled but the appellant was unlawfully removed from the post of Sub-
learned counsel for the appellant submitted that no regular empty was considered

in the 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. B. Bhatnagar, Member
Sd/- Abdul Latif, Member



Date of Issuance *12-07-16*
Number of Pages *10*
Costing Fee *8*
By *[Signature]*
In Charge *[Signature]*
Date of Completion *12-07-16*
Date of Delivery *12-07-16*

9

ESTAB CODE

(Establishment Code)

Khyber Pakhtunkhwa

Law Books Publishers

Y 8

- (viii) Shirani Area.
- (ix) Merged Areas of Hazara and Mardan Division and Upper Tanawal.
- (x) Swat District.
- (xi) Upper Dir District.
- (xii) Lower Dir District.
- (xiii) Chitral District.
- (xiv) Buner District.
- (xv) Kala Dhaka Area.
- (xvi) Kohistan District.
- (xvii) Shangha District.
- (xviii) Gadoon Area in Swabi District.
- (xix) Backward areas of Mansehra and District Batagram.
- (xx) Backward areas of Haripur District, i.e. Kalanjar Field Kanungo Circle of Tehsil Haripur and Amazar Field Kanungo circle of Tehsil Ghazi.

RECRUITMENT INCLUDING AGE RELAXATION POLICY

Subject:- RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION FOR SPECIAL POSTS.

I am directed to refer to this Department circular letter of even number dated 15 February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Tehsildars, Zilladars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:
 - (i) All Departments including Board of Revenue, NWFP-
 - (1) Senior Scale Stenographer (B-15)
 - (2) Data Processing Supervisor (B-14)
 - (3) Junior Scale Stenographer (B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman (B-11)
 - (ii) Board of Revenue-
 - (1) Sub-Registrar (B-14)
 - (2) Excise and Taxation Inspector (B-11)

ANNEXURE

Annex III

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P. 111

GAZETTE

North-West Frontier Province

Published by Authority

PESHAWAR, FRIDAY, 9TH AUGUST, 2002

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT

NOTIFICATION

9th August, 2002

No. LEGIS. 1(20)/73/6131.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:—

THE NORTH-WEST FRONTIER PROVINCE
PUBLIC SERVICE COMMISSION (AMENDMENT)
ORDINANCE, 2002

N.W.F.P. ORDINANCE NO. XXVII OF 2002.

AN
ORDINANCE

*Further to amend the North-West Frontier Province
Public Service Commission Ordinance, 2002.*

WHEREAS it is expedient further to amend the North-West Frontier Province Public Service Commission Ordinance, 1978 (N.W.F.P. Ord. No XI of 1978), for the purposes hereafter appearing,

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action,

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended upto date, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

Annex III

(2)

(2)

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, namely—

“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 added 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, namely—

(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, following shall be inserted, namely—

Ineligibility 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

(4) (5)

(iii) on any other matter which the Governor may refer to the Commission.

Explanation.—In this section, recruitment means initial appointment other than by promotion or transfer.

(2) Recruitment to the following posts shall be outside the preview of the Commission:

(i) post in the Governor's House;

(ii) posts to be filled on ad hoc basis for a period of six months or less; provided that before filling the post, prior approval shall be obtained from the Commission;

(iii) posts to be filled by re-employing as retired officer, provided that the re-employment is made for a specified period not exceeding two years in a post not higher than the post in which the person was employed on regular basis before recruitment."

7. **Insertion of Section 10A of Ordinance XI of 1978.**—In the said Ordinance after section 10, the following new section shall be inserted, namely:

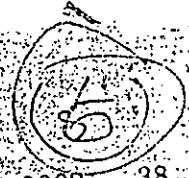
"10A. **Power of the Commission to make regulation.**—Subject to the provisions of this Ordinance and the rules made thereunder, the Commission may make regulations for carrying out the purposes of this Ordinance."

8. **Addition of Schedule to the N.W.F.P. Ordinance XI of 1978.**—In the said Ordinance, the following Schedule shall be added at the end, namely:

"SCHEDULE

[Section 4A]

I, _____ do solemnly swear that I will bear true faith and allegiance to Pakistan. That, as a Chairman (or Member) of the North-West Frontier Province Public Service Commission, I will discharge my duties and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law and always in the interest of the solidarity, integrity and well-being and prosperity of Pakistan.



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 or appointment or in any other way, I will act without fear or favour, affection or ill-will."

Peshawar,
Dated the 6th August, 2002.

Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH,
Governor of the North-West Frontier Province

SALIM KHAN,
Secretary to Government of North-West Frontier Province,
Law Department.

Printed by the Controller,
Pig. & Staty. Dept. NWFP, Pesh.



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/1-10/2005/Vol:IV
Dated Peshawar, the 15th November, 2007

The Accountant General
NWFP, Peshawar.

Subject: NEW RECRUITMENT POLICY/PROCEDURE OF
CONTRACT EMPLOYEES.

Dear Sir,

I am directed to refer to your letter No.T-23(48)Vol-
VIII/2559-60 dated 30-10-2007 on the subject noted above and to enclose
herewith copies of the following letters as desired:-

- 1.No.SORI(S&GAD)1-117/91(C) dated 12-10-93
- 2.No.SORVI(E&AD)1-10/2005 dated 9-5-2006
- 3.No.SORVI(E&AD)1-3/2007 dated 22-3-2007

Yours faithfully,

(MUHAMMAD MASOOD)
SECTION OFFICER (REG-VI)

OFFICE OF THE ACCOUNTANT GENERAL NWFP, PESHAWAR.
No.T-23(48)/CoA/Vol-VIII/3012

Dated:-11-12-2007

Copy alongwith its enclosure forwarded for information and
necessary action to:-

1. PA to Addl: AG NWFP.
2. All DAGs in Main Office.
3. All DAOs/AAOs in NWFP.
4. All Pay Roll in AG Office.

ACCOUNTS OFFICER (C&M)
NWFP PESHAWAR

GOVERNMENT OF N.W.F.P.
SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(REGULATION WING)

Subject: RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION FOR SPECIAL POSTS

I am directed to refer to this Department circular letter of even number dated 1st February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Telesildars, Zailadars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:
 - (i) All Department including Board of Revenue, NWFP-
 - (1) Senior Scale Stenographer (B-15)
 - (2) Data Processing supervisor (B-14)
 - (3) Junior Scale Stenographer (B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman (B-11)
 - (ii) Board of Revenue-
 - (1) Sub-Registrar (B-14)
 - (2) Excise and Taxation Inspector (B-11)
 - (iii) Home & Tribal Affairs Department-
 - (a) Police Department:
 - (1) Prosecuting Sub Inspector (B-14)
 - (b) Inspectorate of Prisons:
 - (1) Assistant Jail Superintendent (B-11)
 - (c) Reclamation and Probation Department:
 - (1) Parole/Probation Officer (B-11)
 - (iv) Industries, Commerce, Mineral Development, Labour and Transport Department-
 - (a) Directorate of Industries:
 - (1) Assistant Industrial Development Officer/Assistant Price Stabilization Officer (B-11)
 - (2) Royalty Inspector (B-11)
 - (3) Surveyor (B-11)
 - (b) Directorate of Manpower Training:
 - (1) Instructor T.T.C (B-14)
 - (v) Cooperative Societies:
 - (1) Inspector (B-11)

- (f) The Regional/Zonal quota if not filled will be carried forward till suitable candidates are available from the Region/Zone concerned. No. "Substitute" recruitment shall be made. Existing backlog, if any, in respect of any zone will not be carried forward and the Commission shall take a fresh start in respect of the posts under its purview. However, this condition will not be applicable in respect of posts which have already been advertised by the NWFP Public Service Commission.
- (g) The vacancies in all the Departments shall be advertised in leading newspapers on Sundays. The advertisement in electronic media should be to the extent of drawing attention of all concerned to the relevant newspapers in which the vacancies are advertised.
- (h) Initial Recruitment to all the vacant posts shall be made on regular known periodic intervals in February and August each year after proper advertisement through electronic and national/regional media. After advertisement, a minimum period of 30 days should be allowed for receipt of applications. A waiting list of the eligible candidates shall be maintained for a period of six months.
- (i) [Deleted].
- (j) 2% quota for disabled persons already fixed earlier shall stand and should be enforced strictly. However, 2% quota has also been fixed for female candidates in all the services which are filled up through initial recruitment. The Commission shall revise the Requisition Form for all such posts for specifying the women's quota in the available vacancies and the Administrative Department shall indicate the quota for women in the Requisition Form accordingly. The 2% quota shall be over and above the selection of women, if any, under general quota of merit etc. This quota shall, however, be restricted to those Departments where no separate female cadres exist.
- (k) For initial appointment to posts in BPS-17 and below in the Autonomous Bodies/Corporations, the zonal allocation formula applicable for Provincial Services may be adopted. The method of recruitment shall also conform to sub-para (c) above.
- (l) The Provincial Government have already agreed that recruitment to the post of PTC in Education Department in various districts shall be made on constituency-wise basis. For this purpose, the existing districts have been divided into various zones. Each zone shall correspond to the area of constituency of the Provincial Assembly. However, recruitment to the posts shall, in each case, be 50% on merit in open competition on district basis and 50% on constituency basis.

2. I am directed to request that the above decisions of the Provincial Government may be brought to the notice of all concerned for strict compliance.

Government of NWFP, S&GAD's
letter No.SORI(S&GAD)1-117/91(C) dated.12.10.93

Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 7.1.1999
 Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 8.10.1999
 Substituted vide No.SOR-I(S&GAD)1-117/91(C) dated 22.11.1997
 Substituted vide No.SOR-I(S&GAD)4-1/SO(III) dated 19.2.1999

- (v) Cooperative Societies:
 - (1) Inspector (B-11)
 - (vi) Communication and Works Department-
 - (1) Assistant Architectural Draftsman (B-14)
 - (2) Senior Draftsman (B-13)
 - (vii) Irrigation Department-
 - (1) Computer Supervisor (B-14)
 - (viii) Public Health Engineering Department-
 - (1) Motivation Officer (B-15)
 - (2) Assistant Motivation Officer (B-14)
 - (3) Lady Health Educator (B-12)
 - (ix) Electric Inspectorate-
 - (1) Sub-Inspector (B-11)
 - (x) Food Department-
 - (1) Assistant Food Controller (B-8)
 - (2) Food Grain Inspector (B-6)
 - (xi) Directorate of Archives and Libraries-
 - (1) Preservation Assistant (B-11)
 - (2) Cataloguer/Classifier (B-11)
- (c) Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission, in all the departments shall continue to be made in accordance with Rules 10, 11 and 12 (Part-III) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the criteria as laid down in SGAD letter No. SORI(S&GAD)4-1/75, dated 11.2.1987 and the zonal allocation formula contained in S&GAD notification No. SOS-III(S&GAD)3-39/70, dated 2.10.1973 as amended from time to time.

(d) No adhoc appointment against any post in any pay scale shall be made.

(e) Relaxation in maximum age limit may be allowed to candidates for various posts having prescribed qualifications in specific fields upto a period of 5 years by the Competent Authority and for not more than 10 years by the S&GAD. The details of such posts are indicated in the annexure to this letter.

The age relaxation in respect of posts other than posts mentioned above may be confined to 5 years only. The Competent Authority may allow relaxation upto 2 years whereas the S&GAD may relax the age upto a period of 5 years.

*The age limit in respect of Govt. Servants who have completed at least four years service in the Government, on the closing day for submission of applications for the posts, shall be automatically relaxed by 10 years or a number of years an officer/official has actually served, whichever is less.

All the proposals for the grant of relaxation in upper age shall continue to be accompanied by:-

- (i) Full justification in support of the proposal; and
- (ii) A certificate to the effect that no eligible candidate within the prescribed age limits are/were available.

** An over age candidate shall be entitled to only one age concession whichever is beneficial to him.

Annex-14

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION**2- Fort Road Peshawar Cantt:****Website: www.nwfppsc.gov.pk****Tele: Nos. 091-9214131, 9213563, 9213750, 9212897**Dated: 07.04.2011**ADVERTISEMENT No. 02 / 2011.**

Applications, on prescribed form, are invited for the following posts from Pakistani citizens having domicile of Khyber Pakhtunkhwa / F.A.T.A by 07.05.2011 (candidates applying from abroad by 21.05.2011). Incomplete applications and applications without supporting documents required to prove the claim of the candidates shall be rejected without intimation to the candidates.

AGRICULTURE, LIVESTOCK & CO-OPERATIVE DEPTT:**1. FIVE (05) POSTS OF FEMALE LIVESTOCK PRODUCTION OFFICER (HEALTH) IN L&DD DEPTT:**

QUALIFICATION: (i) B.Sc (Hons) Animal Husbandry from a recognized University; OR (ii) Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences from a recognized university and registered with Pakistan Veterinary Medical Council.

AGE LIMIT: 22 to 35 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Female.
ALLOCATION: Two to Zone-1 and One each to Zone-2, 3 and 5.

2. THREE (03) POSTS OF SOIL CONSERVATION ASSISTANT

QUALIFICATION: (a) M.Sc Agriculture (Soil Science) from a recognized University; OR (b) B.Sc (Hons) Agriculture with Soil Science as major subject obtained after four years of academic instructions after F.Sc from a recognized university; OR (c) B.sc Agriculture Engineering from a recognized university.

AGE LIMIT: 21 to 35 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Both Sexes
ALLOCATION: One each to Merit, Zone-1 and 5.

3. ONE (01) POST OF BIO-CHEMIST

QUALIFICATION: Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences with M.Sc in Biochemistry or M.Sc (Hons) in Animal Nutrition recognized by Pakistan Veterinary Medical Council.

AGE LIMIT: 25 to 32 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Both Sexes.
ALLOCATION: Merit.

C & W DEPARTMENT**4. THIRTEEN (13) POSTS OF JUNIOR SCALE STENOGRAPHER.**

QUALIFICATION: (i) Intermediate or equivalent qualification from recognized a Board. (ii) A speed of 60 words per minute in Shorthand in English and 35 words per minute in typewriting in English and knowledge of Computer in using MS Word and MS Excel.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Both Sexes
ALLOCATION: Three to Zone-1, Five each to Zone- 3 and 5.

2/2011

69.	<p>EIGHT (08) POSTS OF MALE SERVEYOR IN MINES AND MINERALS DEPTT:</p> <p>QUALIFICATION: F.SC Pre Engineering or equivalent qualification from recognized Board of Intermediate and Secondary Education with (a) Mine Surveyor Competency Certificate under Mines Act 1923 and (b) Certificate in Auto cad from a recognized institute</p> <p>AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: Two each to Zone-1,2,3 and One each to Zone-4 & 5.</p>
70.	<p>THREE (03) POSTS OF COMPUTER OPERATOR IN DIRECTORATE GENERAL OF TECHNICAL EDUCATION AND MANPOWER TRAINING</p> <p>QUALIFICATION: (a) Bachelor Degree from a recognized University and (b) Diploma of one year duration in Information Technology from a recognized Institute.</p> <p>AGE LIMIT: 20 to 32 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: One each to Zone-1, 2 and 3.</p>
PUBLIC HEALTH ENGINEERING DEPTT:	
71.	<p>TWO (02) POSTS OF RESEARCH OFFICER/ HYDRO-GEOLOGIST.</p> <p>QUALIFICATION: Second Division M.Sc (Hydro-Geology) OR B.Sc (Civil/ Agriculture Engineering) with two years relevant experience Or Second Division M.Sc (Water Resources/ Civil Engineering) from a recognized University.</p> <p>AGE LIMIT: 21 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes ALLOCATION: One each to Merit and Zone-1.</p>
72.	<p>EIGHTEEN (18) POSTS OF ASSISTANT SOCIAL ORGANIZER.</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes ALLOCATION: Five to Merit, Three each to Zone-1, 2, 3 and Two each to Zone-4&5.</p>
73.	<p>TWO (02) POSTS OF ASSISTANT SOCIAL ORGANIZER (WOMEN QUOTA).</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Female ALLOCATION: Merit.</p>
74.	<p>SEVEN (07) POSTS OF ASSISTANT RESEARCH OFFICER (WATER QUALITY).</p> <p>QUALIFICATION: Second Division B.Sc (Microbiology or Chemistry) from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes. ALLOCATION: One each to Merit, Zone-2, 3, 4, 5 and Two to Zone-1</p>

2/2011

75. EIGHT (08) POSTS OF JUNIOR SCALE STENOGRAPHER. ✓

QUALIFICATION: (i) 2ND Class Intermediate/ D.com or equivalent qualification from recognized a Board; and (ii) A speed of 50 words per minute in English Shorthand and 35 words per minute in English Typing.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Both Sexes
ALLOCATION: Two each to Zone-1, 2 & 3 and One each to Zone-4 and 5.

76. EIGHTEEN (18) POSTS OF SUB ENGINEER CIVIL. ✓

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male
ALLOCATION: Four each to Zone-1, 2, 3 and Three each to Zone-4 and 5.

77. TWO (02) POSTS OF SUB ENGINEER CIVIL (WOMEN QUOTA). ✓

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Female
ALLOCATION: Merit.

78. FOUR (04) POSTS OF DRAFTSMAN. ✓

QUALIFICATION: (i) Second Division Secondary School Certificate from a recognized Board and (ii) Two years duration Certificate Course in Civil Draftsmanship from a recognized Board of Technical Education.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Both Sexes
ALLOCATION: One each to Zone-1, 2, 3 and 4.

**PROVINCIAL PUBLIC SAFETY AND POLICE COMPLAINT
COMMISSION**

79. ONE (01) POST OF FEMALE JUNIOR SCALE STENOGRAPHER CUM COMPUTER OPERATOR

QUALIFICATION: (i) FA/ F.SC in second division from recognized Board (ii) One year diploma in Computer Science from an institute recognized by the Board of Technical Education. (iii) A speed of 60 words per minute in English Shorthand and 35 words per minute in English Typewriting.

AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-12 ELIGIBILITY: Female
ALLOCATION: Merit

**SPORTS, TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS
DEPARTMENT**

80. ONE (01) POST OF ADMINISTRATOR

QUALIFICATION: Bachelor Degree from a recognized university with at least five years experience in management / administration.

AGE LIMIT: 21 to 35 years. PAY SCALE: BPS-17 ELIGIBILITY: Male
ALLOCATION: Zone-1

2/2011

Detail Marks Certificates for all the examinations shall necessarily be required and these should be attached with the application forms.

- (iii) Ex-armed Forces Personnel must send copy of Discharge Certificate with their applications. Govt / Semi Govt. / Autonomous / Semi Autonomous Bodies employees may apply direct but their Departmental Permission Certificates should reach within 30 days of the closing date.
- (iv) Applications should be on the prescribed application form obtainable from the listed below branches of the NATIONAL BANK OF PAKISTAN. Application Fee is Rs.285/- (Rupees Two Hundred Eighty Five only) for all the candidates. In addition to the application-fee, the candidates will have to pay Rs 15/- (rupees fifteen only) on account of Bank Charges. Separate application form will be required for each advertised category of posts. Application forms obtained other than the specified branches of the National Bank will be considered invalid and such applications will not be entertained. The applications on plain paper or Photostat shall not be accepted. Incomplete and late applications shall also be ignored.
- (v) Applications must be submitted within time as no extra time is allowed for postal transit. The applications if submitted on the last date for receipt of applications must reach the Commission's office by the closing hours.
- (vi) Applicants married to Foreigners are considered only on production of the Govt: Relaxation Orders.
- (vii) No applicant shall be considered in absentia on paper qualifications unless, he/she possesses exceptionally higher qualifications than the minimum prescribed qualification for a particular post(s)
- (viii) Govt. reserves the right not to fill any or fill more or less than the advertised post(s).
- (ix) Candidates who have already availed three chances by physical appearance before the Commission and have failed for the post(s) having one and the same qualifications and scale of pay shall be ineligible.
- (x) Experience wherever prescribed shall be counted after the minimum qualifications for the post(s), if not specifically provided otherwise against the advertised post(s).
- (xi) In case the number of applications of candidates is disproportionately higher than the number of posts, short listing will be made in anyone of the following manner: -
- Written Test in the Subject
 - General Knowledge or Psychological General Ability Test.
 - Academic and/or Professional record as the Commission may decide.

SPECIFIED BRANCHES OF THE NATIONAL BANK OF PAKISTAN.

- (1) Main Branches of:
Parachinar, Mardan, Swabi, Malakand, Shangla, Chitral, Timargara, Daggar, D.I.Khan, Bannu, Karak, Kohat, Hangu, Lakki Marwat, Abbottabad, Haripur, and Mansehra
- (2) Saddar Road Branch, Tehkal Payan Branch, and G.T Road (Nishtar Abad) Branch Peshawar.
- (3) Tehsil Bazar Branch Charsadda, Nowshera Cantt: Branch, Bank Square Branch Mingora and City Branch Tank

Note: -The candidate who apply for the post(s) are advised to make sure that they are eligible for the post in all respects because eligibility of the candidate will be determined strictly according to the rules after conduct of all essential tests.

(ATTA-UR-REHMAN)
Secretary
Khyber Pukhtoonkhwa
Public Service Commission
Peshawar

15

CONFIDEN

Phone : 091-9213551
Fax : 091-9211795
Website : www.kppsc.gov.pk

KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
2-Fort Road, Peshawar Cantt.



No. PSC/SR-1/ 128939

Dated: 22/10/15

24

To

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

Subject: - RECRUITMENT TO (33) POSTS OF SUB ENGINEER CIVIL (BPS-11) IN PUBLIC HEALTH ENGINEER DEPARTMENT (Advertisement No.05/2014, Sr.No.49).

Dear Sir,

I am directed to refer to your letter No.SO(Estt)/PHED/1-90/2012-13, dated 23.05.2014 on the subject noted above and to state that the Commission recommends the following candidates to the Government for appointment against subject cited posts.

2nd Block

Vacancy Rotation	Allocation	Merit Order	Name with Father's Name	Domic Zone
18 th	Zone-3	01 ✓	Suliman Khan S/O Amir Laiq Khan	Dir.Uy

3rd Block

Vacancy Rotation	Allocation	Merit Order	Name with Father's Name	Domic Zone
1 st	Zone-1	15 ✓	Muhammad Riaz S/O Taslim Khan	Khybe
2 nd	Zone-2	03 ✓	Alamgir Khan S/O Mazullah Khan	Charsa
3 rd	Zone-3	05 ✓	Shaukat Ali S/O Muhammad Amin	Swat/3
4 th	Zone-4	02 ✓	Murad Khan S/O Taza Khan	Bannu
5 th	Zone-5	11 ✓	Aasim Mumtaz S/O Muhammad Mumtaz	Mansel
6 th	Zone-1	17 ✓	Inam Khan S/O Muhammad Aziz	Bajaur
7 th	Zone-2	07 ✓	Jahangir Khan S/O Inayat Ullah Khan	Mardan
8 th	Zone-3	09 ✓	Fayyaz Ullah S/O Gul	Swat/3
9 th	Zone-4	04 ✓	Mateen Ullah S/O Sami Ullah	D.I.Kh.
10 th	Zone-5	12 ✓	Husnain Zeb S/O Jahan Zeb	Mansel
11 th	Zone-1	20 ✓	Aziz Ur Rehman S/O Ali Hussain	N.W A
12 th	Zone-2	08 ✓	Saif Ul Islam S/O Wadood Shah	Charsa
13 th	Zone-3	10 ✓	Qaisar Rahim khan S/O Rahim Dad	Malaka
14 th	Zone-4	06 ✓	Rizwan Ullah S/O Gul Zaman	Lakki Marwat
15 th	Zone-5	16 ✓	Aamir Shafique S/O Shafique Ahmed	Haripur
16 th	Zone-1	21 ✓	Muhammad Nisar S/O Shamrooz Khan	Moh.A.
17 th	Zone-2	18 ✓	Zuaid Ur Rahman S/O Mehboob Ur Rahman	Charsa
18 th	Zone-3	13 ✓	Zahid Ali S/O Fazli Raziq	Malaka

SO (Estt) PHED
Diary No. 347
Date: 26/10/15

D.S (Admn) PHED
Diary No: 1462
Date: 26-10-15

Secretary P.H.E. Deptt:
Diary No. 235
Date: 26.10.15

22/x

DR(A)

22/x
76/x/15
SOE

[Handwritten signature]

Vacancy Rotation	Allocation	Merit Order	Name with Father's Name	Domicile/ Zone
1 st	Zone-1	24 ✓	Usman Ullah S/O Kobal Khan	F.R Bannu/1
2 nd	Zone-2	22 ✓	Imran Khan S/O Mumtaz Khan	Charsadda/2
3 rd	Zone-3	28 ✓	Rahmat Zeb S/O Bin Yamin	Dir.Upper/3
4 th	Zone-4	14 ✓	Muhammad Adnan Javaid S/O Muhammad Javaid Iqbal	D.I.Khan/4
5 th	Zone-5	40 ✓	Syed Iltaja Hussain Shah S/O Syed Tufail Ahmad Shah	Abbottabad/1
6 th	Zone-1	32 ✓	Arshad Ali S/O Hakeem Said	Moh:Agy/1
7 th	Zone-2	25 ✓	Imad Khan S/O Tahir Shah	Charsadda/2
8 th	Zone-3	29 ✓	Yasar Ali S/O Muqarab Khan	Dir.Upper/3
9 th	Zone-4	19 ✓	Muhammad Asim khan S/O Muhammad Habib Khan	Kohat/4
10 th	Zone-5	57 ✓	Ahsan Aslam S/O Muhammad Aslam	Abbottabad/1
11 th	Zone-1	38 ✓	Fazal Ur Rehman S/O Badshah Khel	Khyber Agy
12 th	Zone-2	26 ✓	Nasr Ullah Khan S/O Karim Ullah	Mardan/2
13 th	Zone-3	31 ✓	Zakir Ullah S/O Noor Hani Gul	Malakand/3
14 th	Zone-4	23 ✓	Muhammad Imran S/O Abbas Khan	D.I.Khan/4

2. Recommendation in favour of the recommendee is provisional subject to their medical fitness and verification of all the documents / testimonials by your department.

3. Upto date zonal state will be as under:

	Zone-1	Zone-2	Zone-3	Zone-4	Zone-5	Total
Share	15	15	15	12	11	68
Adjusted	15	15	15	12	11	68
Balance	--	--	--	--	--	--

4. Inter-se-merit of the above recommendees is as under:-

Merit Order	Name with Father's Name	Domicile/ Zone
1.	Suliman Khan S/O Amir Laiq Khan	Dir.Upper/3
2.	Murad Khan S/O Taza Khan	Bannu/4
3.	Alamgir Khan S/O Mazullah Khan	Charsadda/2
4.	Mateen Ullah S/O Sami Ullah	D.I.Khan/4
5.	Shaukat Ali S/O Muhammad Amin	Swat/3
6.	Rizwan Ullah S/O Gul Zaman	Lakki Marwat/4
7.	Jahangir Khan S/O Inayat Ullah Khan	Mardan/2
8.	Saif Ul Islam S/O Wadood Shah	Charsadda/2
9.	Fayyaz Ullah S/O Gul	Swat/3
10.	Qaisar Rahim khan S/O Rahim Dad	Malakand/3
11.	Aasim Mumtaz S/O Muhammad Mumtaz	Mansehra/5
12.	Husnain Zeb S/O Jahan Zeb	Mansehra/5
13.	Zahid Ali S/O Fazli Raziq	Malakand/3
14.	Muhammad Adnan Javaid S/O Muhammad Javaid Iqbal	D.I.Khan/4
15.	Muhammad Riaz S/O Taslim Khan	Khyber Agy/1
16.	Aamir Shafique S/O Shafique Ahmed	Haripur/5
17.	Inam Khan S/O Muhammad Aziz	Bajaur Agy/1

78

18.	Zuaid Ur Rahman S/O Mehboob Ur Rahman	Charsadda/2
19.	Muhammad Asim khan S/O Muhammad Habib Khan	Kohat/4
20.	Aziz Ur Rehman S/O Ali Hussain	N.W Agy/1
21.	Muhammad Nisar S/O Shamrooz Khan	Moh:Agy/1
22.	Imran Khan S/O Mumtaz Khan	Charsadda/2
23.	Muhammad Imran S/O Abbas Khan	D.I.Khan/4
24.	Usman Ullah S/O Kobal Khan	F.R Bannu/1
25.	Imad Khan S/O Tahir Shah	Charsadda/2
26.	Nasr Ullah Khan S/O Karim Ullah	Mardan/2
27.	Rahmat Zeb S/O Bin Yamin	Dir.Upper/3
28.	Yasar Ali S/O Muqarab Khan	Dir.Upper/3
29.	Zakir Ullah S/O Noor Hani Gul	Malakand/3
30.	Arshad Ali S/O Hakeem Said	Moh:Agy/1
31.	Fazal Ur Rehman S/O Badshah Khel	Khyber Agy/1
32.	Syed Iltaja Hussain Shah S/O Syed Tufail Ahmad Shah	Abbottabad/5
33.	Ahsan Aslam S/O Muhammad Aslam	Abbottabad/5

5. Original applications (*with enclosures*) of the above thirty three (33) recommendees are enclosed herewith for your record.

6. Kindly acknowledge receipt the same.

Yours faithfully,

(GHULAM DASTAGIR AHMAD)
Director Recruitment

Encl: As above.

Annex-A



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

No. SO (Estt)/PHED/1-90/2010

Dated Peshawar, the November 12, 2011

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department Peshawar

Subject: APPOINTMENT OF SUB ENGINEERS.

Dear Sir,

I am directed to refer to the subject noted above and to state that the Chief Engineer PHED has reported that ex-Chief Engineer PHE (Mr. Allauddin) has appointed 24-Sub Engineers (BS-11) without observing procedures and formalities during the period from 10/2008 to 01/2010, copies of their appointment orders are enclosed herewith. However, appointment of Sub Engineers (BS-11) comes under the purview of Public Service Commission. The Department has thoroughly examined the case and has noted the following shortcomings in the case:-

1. No such requisition has been sent to the Public Service Commission.
2. NO NOC was obtained from the Public Service Commission.
3. No approval/sanction of the administrative department has been obtained for appointment of said Sub Engineers.
4. No Departmental Selection Committee was constituted.
5. The posts were also not advertized in the newspapers.

2. It is also added that the officer concerned has been retired from Govt service on 15.01.2010 and all the said Sub Engineers are still working in the Department.

3. In view of above, it is requested that this department may kindly be advised that what action is required to be taken by the Department at this stage.

Yours faithfully

(SHABBIR AHMED AWAN)
SECTION OFFICER (ESTT)

Sub Engineer

24 + 6 = 30

6

87 anographe



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG. DEPARTMENT

No.SO(Estt)/PHED/1-90/2012-13
Dated Peshawar, the December 24, 2013

To

The Secretary to Govt. of Pakhtunkhwa,
Establishment Department.

Subject:- APPOINTMENT OF SUB ENGINEERS

Dear Sir,

I am directed to invite your kind attention to this Department's letter No.SO(Estt)PHE/1-90/2010, dated 12th November, 2011 (copy enclosed) wherein advice was sought for action against 24-Nos Sub Engineers (BPS-11), appointed by the Chief Engineer (Mr.Alla ud Din, now retired) during the period from 10/2008 to 01/2010, without observing procedures & codal formalities. Similarly some of the stenotypist/stenographer has also been appointed (Copies of appointment orders issued are enclosed herewith for examination.

2. It is added that a reference bearing No.SO(Estt)PHE/1-90/2012, dated 24th May, 2013 (copy enclosed) was also made to the Anti-Corruption Establishment as the officer has since been retired from the service. However, ACE expressed inability on the grounds that there are no criminal proceedings involved in the matter and that the department may resolve the issue at his level.

3. In view of the above, I am to request as to what action is required to be taken at this stage.

Yours faithfully

SECTION OFFICER (ESTT)

ENDST: OF EVEN NO. & DATE

Copy forwarded to the:-

- 1) PS to Minister for PHE Department KPK Peshawar.
- 2) PS to Secretary PHE Department, KPK Peshawar.

SECTION OFFICER (ESTT)

Amex XI



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMIN. DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/15-3/09
Dated 30th January, 2014

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

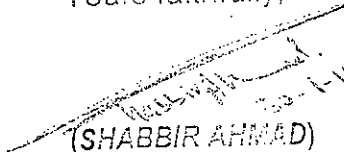
Subject: APPOINTMENT OF SUB ENGINEERS

Dear Sir,

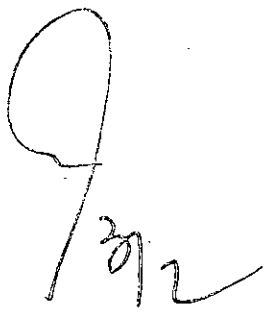
I am directed to refer to your letter No.SO (Estt)PHED/1-90/2012-13 dated 22-1-2014 on the subject noted above and to state that the appointment, promotion and transfer rules 1989 and recruitment policy of the Provincial Government is quite clear and the Department may look/examine the appointment of Sub Engineer in the light of the rules and policy of the Provincial Government and firm up their views for final decision and take necessary action if the appointment proved illegal and apprise the Supreme Court of Pakistan accordingly. Moreover the Department should also initiate disciplinary action against the officers who was/were involved in appointment of illegal Sub Engineer and brought him/them to the justice.

30 (E)

Yours faithfully,


(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

for 4/9




3/12
SOL (E)

ANNEXURE VIII

Annexure-XI



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/15-3/2009

Dated 17th March, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

Subject: ADVICE REGARDING STATUS OF APPOINTMENT.

f-112/c

Dear Sir,

I am directed to refer to your letter No.SO(Estt)/PHED/190/2012-13/321 dated 04-3-2014 on the subject noted above and to state the post of Sub Engineer is Provincial Cadre post and fall under the purview of Public Service Commission. The Department is not empowered to fill the post without the recommendation of Public Service Commission. Therefore the person so appointed on the post of Sub Engineer BPS-11, his appointment is irregular, illegal. However the Department should initiate disciplinary action against the officer/officers who was/were involved in appointment of such illegal appointment of Sub Engineers and brought him/them to the justice.

Yours faithfully,

(SHABEER AHMAD)
SECTION OFFICER (REG-V)

DS/AJ

18/3/14

S/E used
But up on

Precedent file
Supd

Annex XI

OFFICE OF THE DISTRICT ACCOUNTS OFFICER TANK

NO.DAO/TANK/APPOINTMENT/2010-11/805-11

Dated: 25/8/2011

To

The Accounts General,
Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: APPOINTMENT OF SUB ENGINEER BY DEPARTMENTAL AUTHORITY

MEMO:

Kindly refer to your letter No: H-24(110)/TANK/VOL-II/2010-11 dated 30.07.2010 on the subject noted above (copy enclosed)

It is again submitted that the department of the incumbent sub engineer has been failed to produce the requisite NOC by the Public Service Commission Khyber Pakhtunkhwa.

It is further stated that department of public health engineering is reluctant to decide/regularize the case of appointment of sub engineer in light of Para 13 & 14 of Khyber Pakhtunkhwa civil servants appointment/promotion transfer rule 1989

The original ¹⁴ appointment order has been made in contravention of Government laid down policy vide circulated notification No: SOR-VI/PKAD/1-10/2005/VOL-VI dated 15.11.2007

The contents of appointment order reveal that incumbent ¹³ sub engineer has been appointed on regular basis without recommendation of Public Service Commission Khyber Pakhtunkhwa (copy enclosed), NOC in case obtained is not being furnished by the department nor the appointment is modified in terms of Para 13 & 14 of appointment promotion and transfer rule 1989.

This office is of the view that the appointment of the sub engineer is invalid abinitio until reviewed as per your office clarification dated 30.07.2010. The presumption of this office if correct ² may be confirmed.

DISTRICT ACCOUNTS OFFICER
TANK

Copy forwarded to all concerned for information and further necessary action please

- (1) Secretary to the Government of PHE, Khyber Pakhtunkhwa, Peshawar
- (2) Chief engineer, PHE Department, Peshawar
- (3) District Coordination Officer, Tank
- (4) District Comptroller of Accounts, D.I.Khan
- (5) XEN, PHE, Tank
- (6) XEN, PHE, D.I.Khan

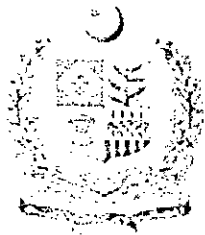
DISTRICT ACCOUNTS OFFICER
TANK

5071

2.2

344

Please file



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

No: H-24(110)/Tank/Vol-III/2010-11 / 1985

Dated: 06.2011

To

✓ The Chief Engineer,
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar.

Subject: Appointment as Sub Engineer by Departmental Authority.

Kindly find enclosed herewith copy (along with its enclosures) of DAO Tank Memo No. DAO/Tank/Apptt/2010-11/805-11 dated 26.05.2011 and letter dated 23.07.2010 on the above subject.

In light of S&GAD letter No. SOR-I(S&GAD)1-117/91(C) dated 12.10.1993, the appointment of Sub Engineer will continue to be made through the recommendation of Public Service Commission, where as Mr. Kashif Raza has been appointed without the recommendation of Public Service Commission vide office order No. 11/E-4/PHE dated 13.01.2010 which is contrary to the prevailing rules. The said officer was allowed salaries for the services recorded in light of Para-13 & 14 of NWFP Civil Servant (Appointment, Promotion and Transfer) Rules 1989, which provide that appointment can be made on adhoc basis for the period of six months.

It is therefore, requested to provide the recommendations of Public Service Commission or regularize the appointments from Establishment Deptt. in relaxation of rules or reconsider the appointment order for future course of action.

Any appropriate action taken in this regard may kindly be intimated, otherwise the salary of the official being irregular appointed will be discontinued.

Y. K. Muhammad
ACCOUNTS OFFICER (HAD)

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AD
in light of
Statement
of
the
status
of
the
official
and
promoting
him

Copy to:

1. Establishment Department Khyber Pakhtunkhwa, Peshawar
2. Deputy District Officer WS&S Tank
3. Mr. Kashif Raza, Sub Engineer office of Deputy District Officer Works & Services Tank(WS&S)
4. DAO Tank with reference to your letter referred above and intimate that why the Pay beyond 06 months was allowed without any consultation with high ups.

Sd/-
ACCOUNTS OFFICER(HAD)



Office of the
Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

No. 24(110)/Tank/Vol-II/2010-11/
To

Dated: 30.07.2010

The District Accounts Officer,
Tank.

Subject: APPOINTMENT OF SUB—ENGINEER BY DEPARTMENTAL
AUTHORITY

Kindly refer to your office letter No: DAO/TK/Appointment/2010-11/742-
44 Dated: 23-07-2010 on the above subject.

In the case if the necessary NOC has been obtained by the Public Service
Commission, then the case may be decided in the light of Para -13 & 14 of NWFP Civil
Servant (Appointment, Promotion, & Transfer) Rules 1989.

gud...
ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

Copy to:

1. Chief Engineer,
Public Health Engineering Deptt: Khyber Pakhtunkhwa Peshawar.

ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No

356/2016

Mr. Mohsin Ali S/O Muhammad Pervez
Ex-Sub Engineer, PHED

..... (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 TO 2.

Respectfully stated

Para-wise comments of the Respondent 1 to 3 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 shap.
- 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 unnecessary 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. Departmental Selection Committee (DSC) is not authorized to make recommendation for the appointment of Sub Engineer BPS-11 on regular basis. The unauthorized DSC without advertizing the Vacancies of Sub Engineers BPS-11, without conducting test and interview and without obtaining NOC from Public Service Commission appointed the appellant on the unlawful order of the Chief Minister Khyber Pakhtunkhwa. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgment dated 30/05/2016 (**ANNEXURE-V**).

According to ESTA Code (**Annexure-VI**) and Public Service Commission ordinance, (**Annexure-VII**), recruitment policy (**Annexure-VIII**) recruitment to posts of Sub Engineers BPS-11 falls within the purview of Public Service Commission. The appellant has not availed the opportunity to appear in the test and interview conducted by Public Service Commission advertized on 07.4.2011 (**Annexure-IX**). The appellant has come through back door and his appointment is against the norms of merit. Necessary sanction to condonation of the violation of codal formalities has not been accorded by the competent authority.

- 2). Incorrect. The Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa had actually wrongfully exercised powers by appointing the appellant on regular basis without the recommendation of Public Service Commission which is prerequisite for any appointment in BPS-11 and above according to ESTA Code and Public Service Commission Ordinance. On the report of Chief Engineer (South) Public Health Engineering Department Khyber Pakhtunkhwa , Secretary to Govt: of Khyber Pakhtunkhwa PHED forwarded the illegal appointment case of the appellant and other 23 Sub Engineers BPS-11 to establishment Department for advice on 12.11.2011 and 24.12.2013 (**Annexure-X**). The establishment department vide letter No SOR(E&AD)/15-3/09 dated 30.1.2014 and letter No SOR-V(E&AD)/15-3/2009 dated 17.3.2014 (**Annexure-XI**) declared the appointment as illegal.

District Account Officer Tank has also raised observation on illegal appointment of one of the Sub Engineer in his batch. Letters of District Accounts Officer Tank and Accountant General in this connection are presented for further clarification of the matter (**Annexure-XII**). The issue of illegal appointment of the appellant and 23 other Sub Engineers was raised in the Supreme Court of Pakistan on 15.1.2014 by some other terminated Sub Engineers in civil petition No 2026 and 2029 of 2013. The Supreme Court after hearing both the parties decided to finalize action against all illegal appointees within one Month.

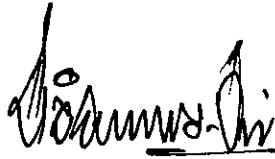
- 3) The appellant failed to submit reply of show cause notice well in time. The appellant had no legal proof regarding his appointment being appointed without advertisement, test/interview and recommendation of the Public Service Commission, illegally. After fulfillment of codal formalities, the appellant was correctly terminated, as illegally appointees has no rights to retain in service.
- 4) Being illegally appointed correctly terminated/relieved in light of direction of apex court judgment dated 15.1.2014 and subsequent reminder dated 07.2.2014.
- 5) Incorrect. The appellant failed to submit departmental appeal in stipulated period. There was also no weight-age/merit in reply of the appellant hence not considered. The appellant was appointed contrary to all prevailing rules without test interview advertisement on the post come within purview of Public Service Commission by wrong authority.
- 6) Pertain to record hence no comments.
- 7) Correct to the extent that service tribunal has remitted the case to department for giving opportunity of departmental appeal and personal hearing to the appellant.
- 8) Incorrect. The appellant authority given opportunity of departmental appeal and heard in person the appellant in light of orders of honourable court dated 30.12.2015. The appellant authority rejected the departmental appeal on merit as the appellant was appointed contrary to all prevailing rules i.e. without test interview advertisement and recommendation of Public Service Commission, as per Public Service Commission ordinance, ESTA Code, recruitment policy and advice of Establishment Department. The appellant was appointed from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa on violation of rules, wherein fundamental rights of deserved persons damaged as well as zonal quota allocation not followed.
- 9) Incorrect. The appellant did not come in the category of civil servant being illegally appointed contrary to prevailing rules/procedures by wrong authority on the post come within the purview of Public Service Commission. Show cause notice was served upon the appellant in which sufficient time was given to him to clarify his position. The appellant does not come under category of civil servant being illegally appointee. Therefore E&D rules 2011 and the appeal rules 1986 are not applicable in his case.

GROUNDS

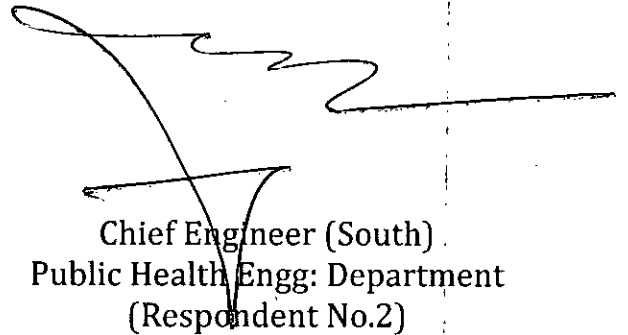
- i). Reply of the department in service appeal No.724/2014 of the appellant for Para I to IV are reiterated as under while Para VII not exist in the above appeal of the appellant reproduced as under (a,b,c & d)
- a) Incorrect. Chief Engineer Public Health Engg: Department is not the competent authority to make recruitment of Sub Engineers BPS-11 on regular basis against regular vacancy. According to ESTA Code and Public Service Commission Ordinance. The appointment of Sub Engineer will be made through the recommendation of Public Service Commission. The appellant was appointed on the unlawful order of the Chief Minister's Khyber Pakhtunkhwa which is against the norms of merit and contrary to the prevailing rules and Public Service Commission Ordinance.
- b) Incorrect. The appellant failed to submit reply in more than Two Weeks after issuance of show cause notice. The case of illegal appointment of Sub Engineer was sent to Establishment Department for advice. The Supreme Court of Pakistan in a civil petition had given one Month deadline to finalize action against all such illegal appointee. So on receiving decision from Establishment Department, Services of the appellant and others were terminated. As the appellant was appointed through back door, therefore E&D Rules 2011 and 1973 are not an applicable in case of appellant.
- c) Incorrect. The appellant was given sufficient time in show cause notice. The appellant was illegally appointed. He does not come under category of civil servant. As such E&D rules 2011 and check list of 1985 under #&D rules 2011 are not applicable in this case.
- d) Sub Engineers are appointed through the recommendation of Public Service Commission. There are no chances of nepotism and political interference in selection process of Public Service Commission. Protection to those who come through back door cannot be given. The previous Government has distributed the posts among their favorites including the appellant. The appellant should have applied to Public Service Commission on 07.4.2011 for regularization of his service. The appellant has missed this golden opportunity.
- ii) Incorrect. The Public Service Commission Ordinance, ESTA Code, recruitment policy as well as advice of Public Service Commission is clear that appointment of Sub Engineer come within the purview of Public Service Commission. In case the appointment of Sub Engineer was within the purview of DCO, the Chief Engineer was also not authorized to appoint Sub Engineer being Provincial Head of the Department. The appellant failed to avail the opportunity to appear in the test/interview conducted by Public Service Commission in 2011 and later on time and again.
- iii) The referred Judgment of Supreme Court of Pakistan pertains to petty employees like Chowkidar, Naib Qasid and Junior Clerks non commissioned posts recruited illegally in Semi Government Department i.e. Punjab Text Book Board. This Judgment is not applicable on the posts fill through Public Service Commission in the government Departments. The appellant was terminated on the basis of decision of Supreme Court of Pakistan dated 15.1.2014. The termination Order of the appellant is consistent with the Judgment of Supreme Court of Pakistan dated 17.3.2014 in constitution petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari verses EOBI.

The prescribed procedure in ESTA Code was never followed. The principal of natural justice has been violated. Applications were not invited through advertisement No interview and written test was got conducted.

- iv) Incorrect. Advertisement, test/interview is must for appointment under the rules. Appointment of Sub Engineers is within the purview of Public Service Commission as per Public Service Commission Ordinance, ESTA code, recruitment policy and advice of Establishment Department. The appellant was appointed through back door from the list received from Political Secretary to the then Chief Minister Khyber Pakhtunkhwa. The promulgation of reinstatement of sack employees Act 2010 not applicable to the illegal appointees like the appellant. Illegally appointee has no rights to retain in service and terminated in light of the judgment of the Apex court dated 15.1.2014 and subsequent reminder dated 7.2.2014.
- v) 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 appellant 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

356/2016

Mr. Mohsin Ali S/O Muhammad Pervez
Ex-Sub Engineer, PHED

..... (Appellant)

Versus

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

2. Chief Engineer Khyber Pakhtunkhwa
Public Health Engg: Department Peshawar.

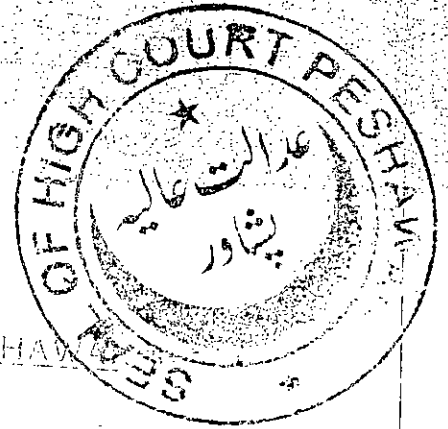
..... (Respondents)

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

Annex-I



IN THE PESHAWAR HIGH COURT, PESHAWAR

Case No. 271-P/2013

Plaintiff: [Faint text]

Defendant: [Faint text]

[Faint text regarding Public Health Engineering department, Peshawar Division, Peshawar]

[Faint text regarding Khyber Pakhtunkhwa]

[Faint text regarding Secretary, Civil Secretariat, Peshawar]

[Faint text regarding Engineering, Peshawar]

[Faint text regarding Peshawar Division, Peshawar]

[Faint text regarding Public Health Engineering, Peshawar]

[Faint text regarding Peshawar Division, Peshawar]

[Faint text regarding Peshawar Division, Peshawar]

[Faint text regarding Peshawar Division, Peshawar]

ATTEST

EXAMINER
Peshawar High Court

20 FEB 2013

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

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

JUDGMENT

Date of hearing: 2.10.2013.

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

Respondent/*Mr. Musarrat Ullah J.*

MUSARRAT ULLAH J. This judgment shall also decide
W.P. 663-P of 2013 entitled "Muhammad Nisar Khan Vs.
Govt." as common question of law and fact is involved in
both these petitions.

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

ATTEST

EXAMINE
Peshawar High

20 FEB 20

20 FEB 20
FEBRUARY 2020

are 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 Hayer and Mushtaq 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 final court from the respondents whereas their tenure is going to expire, hence necessitated the filing of instant constitutional petitions.

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

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

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

of the view that the petitioners and their families will stand

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

regularized. He maintained that the act of respondents is in

violation of judgments of superior courts rendered in various

cases. Further contended that the petitioners have become

average for appointment in any institution of the

Provincial/Federal Government, which fact is beyond their

control and if not regularized will spoil their future. Also

contended that there are vacant posts available against which

the petitioners can be accommodated. According to the

learned counsel, the impugned act of respondents is in

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

be directed to regularize the services of the petitioners like

other similarly placed employees.

4. Learned AAG controverted the arguments from other

side and straight away referred to the advertisement

dated 23rd April 2010 against which the petitioners were

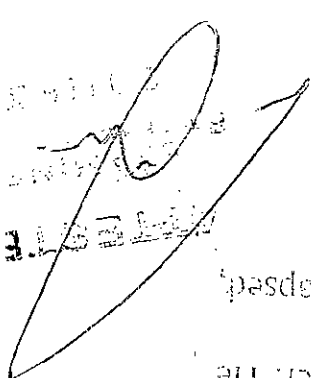
appointed as Sub-Engineers, wherein, it was clearly

mentioned that the term of appointment would be on adhoc

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

the Public Service Commission or whichever is earlier. He

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

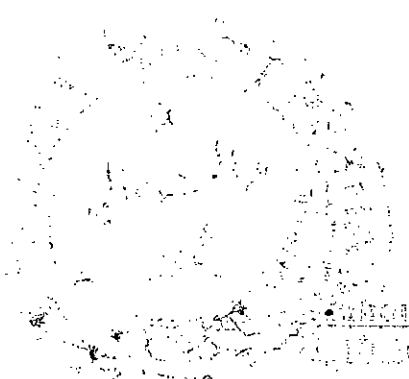
A handwritten signature in black ink is written over a rectangular stamp. The stamp contains the word "OFFICE" in a bold, sans-serif font, with some other illegible text above it.

whichever is earlier. The petitioners amongst others also participated in the test/interview. However, after due process, they were appointed on 3rd January, 2010. On 18.2.2012, the petitioners were re-appointed as Sub-Engineers as a stop-gap arrangement.

6. The petitioners are taking the shelter behind Act No. XVI of 2009 and can be pressed into service in case of those adhoc employees, who were holding the posts on 31st December, 2008 or till the commencement of the Act, which is not the case in hand, therefore, the plea taken is of no help to them. Moreover, the learned AAG produced a copy of the letter dated 1.7.2013 showing that those employees, who were retained by the respondent/department have also been terminated after the arrival of candidates from Public Service Commission.

Keeping in view the above discussion, we are of the considered opinion that the petitioners have failed to make out a case for interference in the constitutional jurisdiction of this court, hence this petition being without any legal substance is hereby dismissed.

Sd/- Nisar Hussain Khan - J
Sd/- Ms. Musarrat H. Siddiqi - J



RECORDED
10/2/2013

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court,
Authorised Under Art. 177
The Qanun-e-Shahadat

20 FEB 2014
20-02

PH 9082235
Fax 9220406

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

Islamabad, dated 15/1/2014.

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,

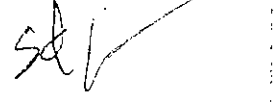
I am directed to enclose herewith a certified copy of the Order of
this Court dated 15.01.2014 dismissing the above cited civil petitions with
directions for information and further necessary action.

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

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:
(on court notice)

Sikandar Khan, Chief Engineer, PHEK, KPK.

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

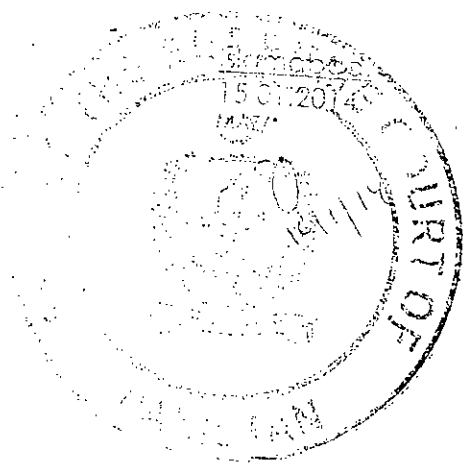
ATTESTED

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

Supintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal

Date of Presentation: 15-1-14

No. of Wards: 6

No. of Offices: 6

Registration Fee Rs: 5000

Copy Fee in: 3000

Court Fee Stamp: 8000

Date of Completion of Copy: 18/1/14

Date of Closure of Court: 18/1/14

Compared by: [Signature]

Received by: [Signature]

Fax:9220406

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131

Annex - III
REGISTERED

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

Islamabad, dated 7/1/2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

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

~~Subject:~~ 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.
Sikandar Khan, Chief Engineer, Public Health
Engineering Department, Peshawar,
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

Kaami/***

[Handwritten signature]

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

Yours faithfully,

dt. 16.01.2014

✓
Referring to earlier letter

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

de.



23

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

No. 03 KG-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

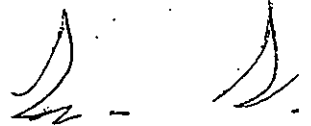
Reference:

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

In light of direction of honourable Supreme Court of Pakistan order da
15.1.2014 action against illegally appointees in Public Health Engg: Department Khy
Pakhtunkhwa has been finalized. Services of the 24-Nos Sub Engineers, 6-Nos St
typist/Stenographer and 2-Nos Data Entry Operator who were appointed with
advertisement and recommendation of Public Service Commission have been terminat
List attached for your good self perusal please.

DA/As above

ou


Chief Engineer (Sout

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)

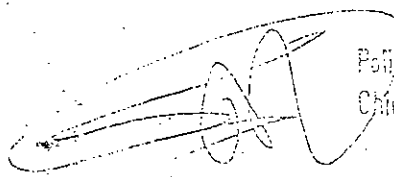
Annex IV
 11/11/11
 54

APPOINTMENTS AGAINST THE VACANT POSTS OF SUB ENGINEER / STENOGRAPHER & DEO.

It has come in to the notice of Honourable Chief Minister, NWFP, that a number of posts of Sub Engineer / Stenographers & 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 BFS-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 Honourable Chief Minister NWFP, has been pleased to direct to consider the application of the following persons 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:-

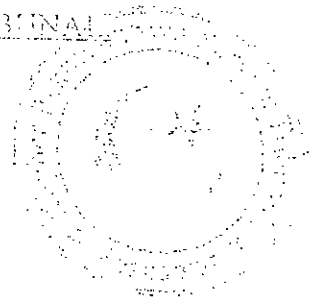
<u>S No</u>	<u>Name of Applicant</u>	<u>Name of Post</u>
1.	Mr. Tariq Nawaz Khan S/O Amir Nawaz Khan District Bannu.	Sub Engineer
2.	Mr. Muhammad Sajjad S/O Banut Khan District D.I.Khan.	-do-
3.	Mr. S.M. Ihsan Shah S/O S.M. Hassan Shah District D.I.Khan	-do-
4.	Mr. S.M. Ali Sajjad S/O S. Abid Hussain 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 Farzad 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. Ifikhar S/O Chainar Gul District Mardan.	-do-
26.	Mr. Noor Muhammad /O Jamroz Khan District Peshawar.	Stenotypist
27.	Mr. Aziz Ullah S/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	-do-
		D.E.O


 Political Secretary to
 Chief Minister NWFP

Ameer V

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

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



Aman 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

.. For appellant.
.. For respondents.

MR. PIR BAKHSH SHAIH
MR. ABDUL LATIF

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MR. PIR BAKHSH SHAIH, 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 5.03.2013, hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

Arguments heard and record perused.

AT PESHAWAR
17/05/2016
MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

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 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(DPS-11).

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 Compete Departmental Promotion/Selection Committee which is not the case of the appellant. In t

... 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 04.03.2011 was unlawful, therefore, the same was rightly withdrawn/canceled through impugned order dated 05.03.2013. Consequently, there is no merit in this appeal to attract for the purpose of the Tribunal, hence the appeal is dismissed. File be consigned to the record.

ANNOUNCED
30.05.2016

Sd/- P. B. Bhatnagar, Member
Sd/- Abdul Latif, Member



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Accountant General
Khyber Pakhtunkhwa Peshawar
Phone: 091 9211250-54

2007/6

No. 24(110)/Tank/Vol-II/2010-11/
To:

Dated: 30.07.2010

The District Accounts Officer,
Tank.

Subject: APPOINTMENT OF SUB-ENGINEER BY DEPARTMENTAL
AUTHORITY

Kindly refer to your office letter No: DAO/TK/Appointment/2010-11/742-
44 dated: 23-07-2010 on the above subject.

In the case if the necessary NOC has been obtained by the Public Service
Commission, then the case may be decided in the light of Para -13 & 14 of NWFP Civil
Servant (Appointment, Promotion, & Transfer) Rules 1989.

gudh
ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.

Copy to:

Chief Engineer,
Public Health Engineering Deptt: Khyber Pakhtunkhwa Peshawar.

ACCOUNTS OFFICER (HAD)
KHYBER PAKHTUNKHWA PESHAWAR.