

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

In Service Appeal No.1620/2023

Mian Sher Ali

...Petitioner

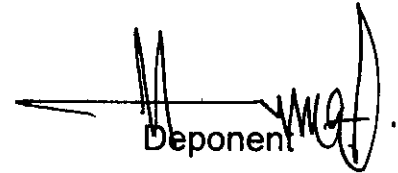
VS

Government of Khyber Pakhtunkhwa, & Others

.... Respondents

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Deponent

6-2-24

Sher Ali

BEFORE THE HON'BLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1620/2023

**Khyber Pakhtunkhwa
Service Tribunal**

MIAN SHER ALI WASHER/PRESSER

Diary No. 10962

VERSUS

Dated 31-1-2024

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE
SECRETARY OF TOURISM**

**PARAWISE COMMENTS ON BEHALF OF THAT THE RESPONDENT NO.3 SUBJECT AS
UNDER**

Respectfully Sheweth,

Preliminary objections:

- x. That the appellant has no cause of action to file the instant services appeal.
- xi. That the appeal in hand is not maintainable in its present form.
- xii. That the appeal is bad for mis-joinder/non-joinder of unnecessary and necessary parties.
- xiii. That under section 4(6) of Khyber Pakhtunkhwa Services Tribunal Act 1974, no appeal shall lie in the tribunal against an order or decision of a departmental authority regarding the fitness or otherwise of a person to be appointed to or to hold a particular post or to be promoted a higher post or cadre on this score alone the appeal is not maintainable.
- xiv. That the appeal is based on misrepresentation of facts, hence the appellant is estopped by his conduct to file the appeal.
- xv. That the appellant has got all his back benefits along with increments and salaries etc.
- xvi. That the appellant has already been conditionally regularized vide this department notification dated 21.01.2022 as a washer/presser in BS-05.
- xvii. That the appellant has not come to the court with clean hands.
- xviii. That the appeal is barred by law and limitation.

ON FACTS

1. Pertains to the record.
2. Pertains to the record.
3. Pertains to the record.
4. Correct to the extent that undersigned promoted petitioners but the department directed vide their letter No. SO(T)5-81/2016/7054-56 dated 22-06-2020 to hold these promotions in abeyance till final outcome of the Court proceedings filed by the department in Apex Court and in response thereto the undersigned implemented the direction of the department vide letter No.3(1)/2011/PAITHOM-ADMN dated 20-06-2020 (copies of the letters attached as Annexure-A).
5. Correct to the extent that they were paid salaries but later on later on their salaries were


corrigendum No. BO-III/FD/1-22/2021-22 dated 08-07-2021 (Copy attached as Annex-B) and later on they accepted their initial posts by accepting regularization orders issued by the department notification no. SO(Tourism)/5-81/2020/4950-88 dated 21-01-2022 (copy attached as Annex-C)

6. As mentioned above in Para.4
7. The formal inquiry was held against the undersigned for promoting petitioners whereas the inquiry officer has submitted his report attached herewith as (Annex-D) whereas the undersigned has submitted his reply to Competent Authority i.e. Chief Minister Khyber Pakhtunkhwa which is under process.
8. Recently the department issued direction to the undersigned to withdraw promotion orders vide letter No. SO(T)5-81/2022/Vol-III/5545-47 dated 29-12-2023 and in compliance thereto the undersigned issued letter No. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated 02-01-2024 and promotion orders have been withdrawn .
(Annex-E)

REPLY ON GROUNDS

- M. Pertains to record hence no comments.
- N. Pertains to record hence no comments.
- O. Pertains to record hence no comments.
- P. Pertains to record hence no comments.
- Q. Pertains to record hence no comments.
- R. Pertains to record hence no comments.
- S. Pertains to record hence no comments.
- T. Pertains to record hence no comments.
- U. Pertains to record hence no comments.
- V. Pertains to record hence no comments.
- W. Pertains to record hence no comments.
- X. Pertains to record hence no comments.

It is therefore requested that on acceptance of the instant Parawise comments the appeal of the appellant may kindly be dismissed.


Chief Instructor/Incharge PAITHOM
Khyber Pakhtunkhwa.
Respondent No 03.

BEFORE THE HON'BLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1620/2023

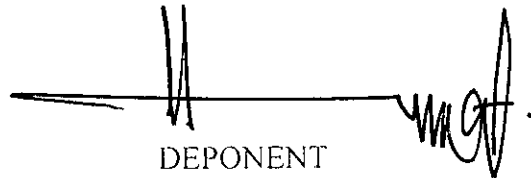
MIAN SHER ALI WASHER/PRESSER

VERSUS

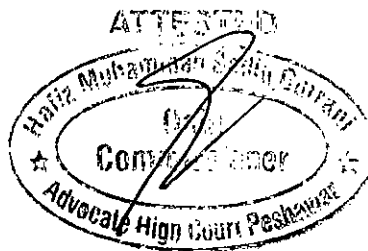
**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE
SECRETARY OF TOURISM**

Affidavit

I, Hurmat Yab Khan, Chief Instructor/Inchargh PAITHOM, Culture & Tourism Department, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of Parawise comments in the above services appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off.



DEPONENT
CNIC:35202-2818720-5
Cell No.03004581004





**PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM AND HOTEL MANAGEMENT**
Camp Office PAITHOM, DTS Building, Shagai, Saidu Sharif,
SWAT

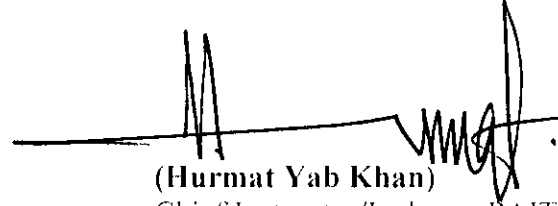


Ref.No.3(1)/2011/PAITHOM-ADMN/Vol-IV

Dated 10/01/2023

AUTHORITY LETTER

The undersigned hereby authorize Muhammad Javed, Section Officer, (Litigation), Culture & Tourism Department, Khyber Pakhtunkhwa to submit comments on behalf of the undersigned (Respondent No. 3) in the Services Tribunal Peshawar in Service Appeal No. 1618/2023 titled Mr. Akbar Ali, Waiter Vs Govt. of KPK and others. Service Appeal No. 1619/2023 titled Mr. Nasurullah Khan Vs Govt of KPK and others and Service Appeal No. 1620/2023 titled Mian Sher Ali Vs Govt. KPK and others.



(Hurmat Yab Khan)
Chief Instructor/Incharge PAITHOM



GOVERNMENT OF KHYBER
SPORTS, TOURISM, ARCHAEOLOGICAL
MUSEUMS DEPARTMENT
13-A, KHYBER ROAD, PESHAWAR CANTT.

W.A.
AFFAIRS &

No: SO (T)5-81/2016 / 7054-56
Dated Peshawar the 22nd June, 2020

To
The Incharge,
PAITHOM, Swat.

SUBJECT: i) APPROVAL OF PROMOTIONS
ii) ENDORSEMENT OF APPROVAL OF UP-GRADATION OF POSTS
UNDER HIGH COURT DECISION

I am directed to refer to your office letters No. 3(1)/2011/PAITHOM-
ADMN/Vol-IV dated: 19.02.2020 and No. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated:
13.02.2020 on the subjects noted above and to state that both the cases may be held
in abeyance till final outcome of the court proceedings as per directives of the
competent authority.

Section Officer (Tourism)

Copy forwarded for information to:

1. PS to Secretary, Sports & Tourism Department, Khyber Pakhtunkhwa.
2. PA to Additional Secretary-I, Sports & Tourism Department

Section Officer (Tourism)

Attested
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**PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM AND HOTEL MANAGEMENT**
Camp Office PAITHOM, Fizagat, SWAT



Ref No. 3(1)/2011/PAITHOM-ADMN

24/06/2020

OFFICE ORDER

Subject: **i) APPROVAL OF PROMOTIONS**
ii) ENDORSSEMENT OF APPROVAL OF UP-GRADATION OF POSTS
UNDER HIGH COURT DECISION

It is hereby notified to the all concerned that under directive of the Tourism Department vide letter No. SO(T)5-81-2016 dated 22-06-2020 the above mentioned office orders vide letter Nos. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated 19/02/2020 & 3(1)/2011/PAITHOM-ADMN/Vol-IV dated 19/02/2020 shall remain held in abeyance till final outcome of the court proceedings.

2. The promoted staff shall not get any benefit as otherwise available to them after promotion and shall remain in their previous scales and get the same salary as they were drawing before their promotions.

Copy for information to:

1. Section Officer (G). Tourism Department, Peshawar for information.
2. The Admin Officer PAITHOM
3. Mr. Alisha, Marketing Representative PAITHOM
4. Mr. Akbar Ali, Cashier, PAITHOM
5. Qari Nasrullah
6. Mian Sher Ali
7. Mr. Akbar Khan
8. Mr. Tahir
9. Mr. Israr Ali
10. Office File

Attested
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H
(HURMAT YAB KHAM)
Incharge/PAITHOM



PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM AND HOTEL MANAGEMENT

Office of In-charge PAITHOM, Fizatgat, SWAT



PAITHOM
Gateway to Excellence

Ref No. 3(1)/2011/PAITHOM-ADMN/Vol-IV

Dated: 19/02/2020

OFFICE ORDER

Subject: APPROVAL OF PROMOTION

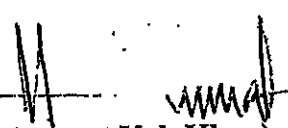
Powers of appointment, confirmation and promotion delegated under Rule 2(II) of governing rules of PAITHOM to the undersigned for posts in BS-1 to BS-15(copy attached). The applicants are most dutiful and have performed their task with devotion under the orders of the undersigned and now the court has also allowed them right of promotion.

The following staff is promoted as under;

Sr. No.	Name of the staff	Present designation with BPS	Promoted to Post with Scale
1.	Mr. Alisha	Waiter BPS-06. Having charge of Marketing Representative since 2011	Marketing Representative BPS-12
2.	Mr. Akbar Ali	Waiter BPS-06 Having charge of Cashier since 2011.	Cashier BPS-07
3.	Qari Nasrullah	Electrician Plumber BPS-05	Supervisor BPS-07
4.	Mian Sher Ali	Washer BPS-05	Laundry In-charge BPS-06
5.	Mr. Akbar Khan	Cook BPS-05	Chef Cook BPS-07

Their pay shall be fixed in higher scale with immediate effect.

Enclsd:As Above


(Hurmat Yab Khan)
Chief Instructor / In-charge

Copy to:

1. Section Officer (G), Tourism Department, Peshawar for information.
2. Mr. Alisha, Marketing Representative PAITHOM
3. Mr. Akbar Ali, Cashier, PAITHOM
4. Qari Nasrullah
5. Mian Sher Ali
6. Akbar Khan
7. Office File

Attested

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SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS & YOUTH
AFFAIRS DEPARTMENT.

Dated Peshawar 21st January, 2022

NOTIFICATION:

No. SO(Tourism)/5-81/2020/4852-88 Pursuant to the Peshawar High Court Mingora Bench decision in W.P No. 546-M/2017 dated 18.04.2018 read with COG No. 55-M/2019, W.P No. 507-M/2017 dated: 18.04.2018 read with COG No. 54-M/2019, W.P No. 655-M/2017 read with COG No. 53-M/2019 and W.P No. 250-M/2018 and in light of the opinion of Advocate General, Khyber Pakhtunkhwa contained in Letter dated: 25.02.2021 duly endorsed by Law Department, Khyber Pakhtunkhwa vide letter dated 04.03.2021, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to conditionally regularize the services of the following employees of Pakistan Austrian Institute of Tourism and Hotel Management (PAITHOM), Swat as Civil Servants, with effect from the dates mentioned against each, subject to final decision of the CPLAs No. 108-P/2021, No. 109-P/2021, No. 110-P/2021 and No. 58-P/2021 filed by Sports & Tourism Department, Khyber Pakhtunkhwa in the Supreme Court of Pakistan, under the terms and conditions mentioned below:

S#	Name of the Employee	Designation with BPS	Date Regularization of
1	Mr. Hurmat Yab Khan S/o Hammeeyat Yab Khan	Chief Instructor (BS-19)	22.10.2007
2	Mr. Liaqat Raza S/o Saïd Raza	Administrative Officer (BS-17)	17.10.2007
3	Mr. Waheed Murad S/o Murad Ali	Instructor (BS-17)	01.12.2011
4	Mr. Haq Nawaz S/o Aziz ur Rehman	Supervisor (BS-07)	01.07.2008
5	Mr. Ali Shah S/o Habibullah	Waiter (BS-06)	01.07.2008
6	Mr. Akbar Hussain S/o Mohammad Saeed	Waiter (BS-06)	01.07.2008
7	Mr. Akbar Ali Khan S/o Shah Wazir Khan	Waiter (BS-06)	01.07.2008
8	Mr. Nisar Ul Haq S/o Muhammad Rahim	Waiter (BS-06)	01.07.2008
9	Mr. Adil Shah Mian S/o Mian Muazam	Waiter (BS-06)	01.07.2008
10	Mr. Israr Ali S/o Sardar Ali	Waiter (BS-06)	01.07.2008
11	Mr. Abid Shah S/o Mian Muazam	Waiter (BS-06)	01.07.2008
12	Mr. Javed Iqbal Khan S/o Majeed Ullah Khan	Receptionist (BS-05)	01.07.2008
13	Mr. Nasrullah Khan S/o Shah Rasool	Electrician (BS-05)	01.07.2008
14	Mr. Asghar Shah S/o Farooq Shah	Room Attendant (BS-05)	01.07.2008
15	Mr. Tahir Khan S/o Pir Mohammad Khan	Room Attendant (BS-05)	01.07.2008
16	Mr. Mian Sher Ali S/o Mian Syed Zahir	Washer / Presser (BS-05)	01.07.2008
17	Mr. Arshad S/o Muhammad Zaman	Washer / Presser (BS-05)	01.07.2008
18	Mr. Mehboob-Ur-Rehman S/o Toti Khan	Washer / Presser (BS-05)	01.07.2008
19	Mr. Murad Ali S/o Qubad	Cook (BS-03)	01.07.2008
20	Mr. Mumtaz Ali S/o Gul Rahim	Cook (BS-03)	01.07.2008
21	Mr. Akbar Khan S/o Muhammad Ghani	Cook (BS-03)	01.07.2008
22	Mr. Abdul Khaliq S/o Fazal Muhammad	Office Attendant (BS-03)	01.07.2008
23	Mr. Ghafoor Rehman S/o Fazal-e- Subhan	Helper (BS-03)	01.07.2008
24	Mr. Sher Zaman S/o Muhammad Ghafoor	Gardner (BS-03)	01.07.2008
25	Mr. Naseeb Gul S/o Rozi Gul	Gardner (BS-03)	01.07.2008
26	Mr. Muqarrab Shah S/o Mohammad Qamar	Security Guard (BS-03)	01.07.2008
27	Mr. Mohibullah S/o Muhammad Ismail	Security Guard (BS-03)	01.07.2008

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TERMS AND CONDITIONS:

- i. The services of all the employees of Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM) shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
 - ii. They will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 and any other instructions which may be issued by the Government from time to time.
 - iii. They will not be entitled to TA / DA on appointment.
2. In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Judicial Stamp Paper duly attested by the Oath Commissioner should be produced in Sports, Tourism, Youth Affairs, Culture, Archaeology & Museums Department, Khyber Pakhtunkhwa and submit arrival within 15 days on the receipt of this Notification.

**Secretary to Government of Khyber Pakhtunkhwa
Sports, Tourism, Archaeology, Museums & Youth
Affairs Department**

Endst: No. & Date even:

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Registrar, Peshawar High Court, Mingora Bench, Swat.
3. Secretary, Law & Parliamentary Affairs Department, Khyber Pakhtunkhwa.
4. Secretary, Establishment Department, Khyber Pakhtunkhwa.
5. Secretary, Finance Department, Khyber Pakhtunkhwa.
6. Advocate General, Khyber Pakhtunkhwa.
7. Section Officer (Litigation), Sports, Culture & Tourism Department.
8. Chief Instructor / Incharge, Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM), Mingora, Swat.
9. Director General, Directorate of Tourist Services, Khyber Pakhtunkhwa.
10. District Accounts Officer, Swat.
11. PS to Secretary, Sports & Tourism Department.
12. Officers / officials concerned.

Attested
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J. [Signature]
21/11/22
SECTION OFFICER (TOURISM)

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SHOW CAUSE NOTICE

1. Muhammad Azam Khan, Chief Minister Khyber Pakhtunkhwa as Competent Authority under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Hurmat Yab Khan, Chief Instructor (BS-19), Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM) as follows:

- (i) The consequent upon the completion of inquiry conducted against you by the inquiry officer for which you presented your written defense before the inquiry officer.
- (ii) On going through the findings and recommendations of the inquiry report, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts / omission specified in rule-3 of the said rules:

"Guilty of Misconduct"

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of *withholding promotion and increments for a period of two years* under Rule-4 of the said rules.

3. You, are therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

5. A copy of findings of the inquiry report is enclosed.

M. Azam Khan
(MUHAMMAD AZAM KHAN)
CHIEF MINISTER, KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

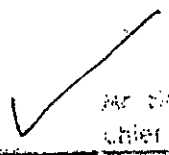
Mr. Hurmat Yab Khan,
Chief Instructor (BS-19),
Pakistan Austrian Institute of Tourism
& Hotel Management (PAITHOM)

Accepted
H

GOVERNMENT OF KHYBER PAKHTUNKHWA,
TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS
DEPARTMENT.
13-A, KHYBER ROAD, PESHAWAR CANTT:

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No SO (T)S-81/2022/Vol-III
Dated Peshawar the 13th September, 2023



Mr. Shamsul Yaqub Khan,
Chief Instructor,
Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM).

SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of Inquiry Report and Show Cause Notice, wherein the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) has tentatively decided to impose minor penalty of "withholding promotion and increments for a period of two years" under Rule-4 (1) (a) (ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in connection with the charges levelled against you.

Your reply to the Show Cause Notice shall reach to this Department within 14 days of delivery of this letter otherwise an ex-parte action shall be taken against you.

(AKHLAQ AHMAD)
SECTION OFFICER (TOURISM)

Encl: As Above.

Copy forwarded for information to:

1. PS to Secretary Culture & Tourism Department, Khyber Pakhtunkhwa.
2. PA to Additional Secretary, Culture & Tourism Department.
3. Master file.

(AKHLAQ AHMAD)
SECTION OFFICER (TOURISM)

Attested
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Report of inquiry proceedings against Mr. Hurmat Yab Khan Chief Instructor, Pakistan-Austria Institute of Tourism and Hotel Management

Preliminary

This inquiry report, hereinafter called report is based on inquiry proceedings, hereinafter called inquiry, conducted after Culture, Tourism, Archaeology & Museum Department Khyber Pakhtunkhwa, hereinafter called department, Notification No. SO (T)/5-81/PAITHOM/2023/3553-59 dated 30th May, 2023. This Inquiry has been initiated and completed against Mr. Hurmat Yab Khan, the Accused Officer hereinafter called AO who is posted as Chief Instructor at the Pakistan-Austria Institute of Tourism and Hotel Management, hereinafter called PAITHOM.

Proceedings of inquiry are annexed as Annexure-1 to this report in the form of inquiry Order Sheet. Letter No. PS to MBR-I/Inq/Tourism/13640-41 dated 05th June, 2023 sent to all concerned to attend inquiry on 26th June 2023 is annexed as Annexure-2. This inquiry has been made into three allegation communicated to all concerned vide Statement of Allegations which is annexed as Annexure-3 to this report. Reply of AO to Statement of Allegations is annexed as Annexure-4 to this report. Mr. Akhlaq Ahmed Section Officer of department assisted in inquiry as Departmental Representative, hereinafter called DR. Questionnaires framed by undersigned and replies of AO and DR are annexed as Annexures 5 and 6 respectively to this report.

The term Public Servant used in this report means a person as defined in Section-21 of the Pakistan Penal Code 1860 and is hereinafter called public servant. The term Civil Servant used in this report means a person as defined in the Section 2(b) of the North-West Frontier Province Civil Servants Act, 1973 and is hereinafter called civil servant.

Inquiry

During inquiry each one of the allegations, reply of AO to allegations and annexures, reply of AO in questionnaire, office record presented by DR and relevant notifications issued by Government of Khyber Pakhtunkhwa, hereinafter called government, from time to time were examined in detail following which finding against each allegation has been recorded as follow:

Attested
[Signature]

Allegation No-1.

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AO promoted 07 employees of PAITHOM vide Office Order dated 19.02.2020 and 02.03.2020, without prior approval of the Administrative Department, since the case of regularization of PAITHOM's employees was adjudicated before the court of law at that time:

AO promoted a total of seven (07) employees of PAITHOM in various pay scales through two separate orders (Annexures-7 and 8) as follows:

Order No	Date	No of employees promoted
3(1)/2011/PAITHOM/ADMN/Vol-IV	19-02-2020	5
3(1)/2011/PAITHOM/ADMN/Vol-IV	02-03-2020	2

2. These employees were appointed on contract basis as PAITHOM employees, hereinafter called employees, and were therefore public servants. In April 2011 PAITHOM was transferred to government after 13th Constitutional Amendment and services of employees were devolved accordingly. PAITHOM was taken over by department.
3. As a result of Dar-ul-Qaza Swat order dated 18th April, 2018 in a Writ Petition No 507-M/2017 and after dismissal of departmental appeal by department in the Supreme Court of Pakistan on 11th January, 2020 services of employees were regularized with back benefits vide department's Notification on 21st January, 2022. This regularization meant that employees became civil servants instead of public servants.
4. Immediately after dismissal of departmental appeal in the Supreme Court of Pakistan and almost two years prior to issuance of regularization notification by department, AO issued above promotion orders on 19th February and 2nd March 2020. He did not receive any advice of department in this matter nor did he approach it for consultation prior to issuing promotion orders.
5. Since the services of employees were regularized by Dar-ul-Qaza with back benefits therefore they were civil servants at the time of issuance of their promotion orders by AO regardless of the fact that their regularization notification was issued two years later by department.
6. AO in his reply and answers to questions has argued that he had issued these promotion orders on the basis of 'powers conferred upon' him under governing rules & regulations of 'PAITHOM', hereinafter called regulations, (Annexure-9). The subject of PAITHOM rules have been discussed in detail under third allegation. Here, it is sufficient to record that:
 - i. Regulations which were framed prior to devolution under Federal Ministry of Tourism, hereinafter called ministry, were no longer applicable to employees once they were regularized as civil

Attested
JL

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servants. Terms and Conditions of service and Promotion of civil servants are governed by the North-West Frontier Province Civil Servants Act, 1973 read with Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 which have not been applied in these cases.

- ii. Regulation No 12(II) conferred promotion powers upon Principal / Director (Annexure-10) whereas AO was and is Chief Instructor PAITHOM. He has been called Incharge PAITHOM in official correspondence but there is nothing on the record that he was entrusted with responsibility of Principal / Director as additional charge or even to look after this post.
- iii. Service regulations under Regulation Serial No. 12 (II) were never approved prior to or after devolution. Therefore even if employees are considered as public servant in February / March 2020 there were no service regulations under which they could be promoted.

7. Therefore the following irregularities have been noted on the part of AO:

- i. Promotion of seven (07) civil servants employees of PAITHOM vide Office without prior approval of department which resulted in violation of Rule 5 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.
- ii. Exercising of powers of Principal / Director without explicit orders by department to this effect.
- iii. Application of incorrect and unapproved service regulations in promotion process of employees who were civil servants.

Finding

The allegation stands proved against AO.

Allegation No-2.

You re-designated the post of Supervisor (BPS-07) to House Engineer (BPS-16) in favor of Mr. Haq Nawaz vide Officer Order dated 20.06.2013, without approval of the Administrative Department.

1. Immediately before devolution of PAITHOM to department Mr. Haq Nawaz was regularized as Supervisor in BPS-7 as public servant as evident from para-4 of Government of Pakistan Ministry of Tourism Memo No. 2(25)/2002-Plug (Pt-III) dated 9th February, 2011 (Annexure-II).
2. He was later regularized as civil servant along with other employees as a result of litigation noted above. But instead of accepting his regularization as Supervisor in BPS-7 he resorted to further litigation seeking for himself the post of House Engineer in BPS-16 on the grounds

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that Incharge PAITHOM had already promoted him to the post of House Engineer BPS-16 in 2013 through process of redesignation of the post of Supervisor BPS-7 as House Engineer BPS-16 vide letter No.3 (1)/2011/PAITHOM-ADMN on 20th June 2013 when services of employees were not yet regularized as civil servants in government.

3. AO has not denied this fact and has candidly admitted in his reply to allegation and in his reply to question No-3 that he has carried out this redesignation on the analogy of redesignation once carried out by department in 2012. Therefore it is evident that AO has carried out redesignation of the post Supervisor BPS-7 to House Engineer BPS-16. Therefore the following irregularities on the part of AO have been noted in this redesignation process.

- i. Irregular promotion from BPS-7 to BPS-16 under garb of redesignation. Redesignation is carried out in same BPS. Raising BPS of a same post is called upgradation. He thus carried out both upgradation and redesignation at the same time without due process.
- ii. Lack of authority to carry out such redesignation in absence of approved regulations for public servants as in 2013 PAITHOM employees were working as public servants not civil servants.
- iii. Negligence of duty as incharge PAITHOM to seek guidance and prior approval of department to issue redesignation / upgradation order under question if it was necessary at all though no relief was granted by any court in 2013 to beneficiary Mr. Haq Nawaz.
- iv. Exercising of powers of Principal / Director without explicit orders by department to this effect

Finding

The allegation stands proved against AO:

Allegation No-3.

You failed to perform your functions as assigned to you under the law / rules and did not frame / draft service rules for the employees of PAITHOM till date.

1. Prior to devolution, PAITHOM was governed by its regulations which were issued by ministry (Annexure-9). However no supporting service regulations were operational at that time under regulation number 12 (II).
2. It has come to fore that in June 2009 the Federal Ministry of Tourism constituted a committee to draft service rules for employees, hereinafter called rules (Annexure-12). On 16th February 2010, Board of Governors of PAITHOM, hereinafter called board, approved rules subject to proper signing of the draft by Convener and Secretary of board so that rules

Attested

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could be communicated to the Finance and Establishment Divisions for their concurrence (Annexure-13). However nothing has been found on the record that rules were either sent to Finance and Establishment Divisions or their concurrence to rules was received in PAITHOM prior to devolution in April 2011.

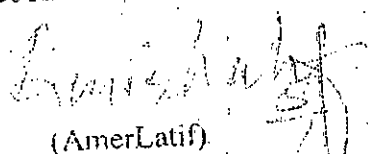
3. Instead, after devolution, on 24th July, 2011 rules were submitted to one Mr. Sajeed Hameed 'focal person' PAITHOM in Tourism Department Khyber Pakhtunkhwa 'for further perusal in the matter' (Annexure-14). DR in his reply in questionnaire has stated that 'as per available record draft rules of PAITHOM are not approved by competent forum'.
4. After regularization of employees as civil servants in 2020 these draft rules became irrelevant as these were meant for public servants and were to be approved by board. Under changed circumstances it became the mandate of Standing Service Rules Committee, hereinafter called SSRC, of department constituted under Services and General Administration Department Notification No. SGR. VI(E&AD)2-69/2003 dated 29th January, 2005 amended from time to time read with Rule 3(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Service rules framed by SSRC were required to be approved by government
5. Therefore no irregularity noted on the part of AO as the following facts have come to fore:
- AO had submitted draft service rules inherited from ministry in 2011 to focal person PAITHOM in department for approval of board which remained unapproved till regularization of employees as civil servants
 - Since regularization of employees in 2020, department has yet to convene meeting of SSRC to draft service rules for them

Conclusion

The allegation does not stand proved against AO.

Recommendations as requested by department

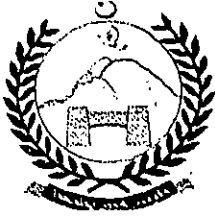
- In short run department should frame service rules for employees through SSRC.
- In long run department may improve over all operational performance including service conditions of PAITHOM by introducing legislation on the analogy of KP TEVTA Act 2012


(Amer Latif)
Inquiry Officer/ Member-1, Board of Revenue

Attested



13/16
12/11



GOVERNMENT OF KHYBER PAKHTUNKHWA,
CULTURE, TOURISM, ARCHAEOLOGY & MUSEUMS
DEPARTMENT.

13-A, KHYBER ROAD, PESHAWAR CANTT:

No. 50 (T)5-81/2022/Vol-III / 5545-47
Dated Peshawar the 29th December, 2023

To

The In-charge PAITHOM,
Pakistan Austrian Institute of Tourism & Hotel Management (PAITHOM).
Saidu Sharif Swat.

Subject: APPROVAL OF PROMOTION

Kindly refer to the subject noted above and state that the in-Charge PAITHOM carried out the promotions of seven employees in contravention of the rules and regulations of the Provincial Government vide office order No. 3(1)/2011/Paithom-Admn/Vol-IV dated 19.02.2020 & dated 02.03.2020. When the same came into the knowledge of the department through Writ Petitions and civil Appeals filed by other employees for similar treatment, the subject promotion orders were held in abeyance vide this department letter No. SO(T)5-81/2016 dated 22.06.2020 and a fact-finding inquiry was conducted against him for illegal exercise of powers. The inquiry officers established substantial facts in the preliminary and the subject fact-finding inquiry was followed by a full-fledged inquiry. The inquiry officers proved the following facts against the in-charge PAITHOM in their proceedings vide letter No. PS to MBR-I/Inq/Tourism/15971-76 dated 06.07.2023

- I. Promotion of (07) civil servants employees of PAITHOM vide office order without prior approval of the department which resulted in a violation of Rule 05 of the Khyber Pakhtunkhwa Civil Servants (Appointment, promotion, and transfer) Rules 1989.
- II. Exercising of powers of the Principal/Director without explicit orders by the Department to this effect.
- III. Application of incorrect and unapproved service regulations in the promotion process of employees who were civil servants.

2. Keeping in view the position explained above this department hereby withdraws the order of held in abeyance vide letter No. SO(T)5-81/2016 dated 22.06.2020 and declares the promotion orders of the employees of PAITHOM as null and void.

3. You are hereby directed to immediately withdraw the subject promotion orders of the seven employees which were conducted by you vide office order No. 3(1)/2011/Paithom-Admn/Vol-IV dated 19.02.2020 & dated 02.03.2020 and restore the subject employees to their original pay scales under intimation to this department, please.

M. J. Farid
SECTION OFFICER (TOURISM-I) 29/12

Encl: As Above.

Copy forwarded for information to:

1. PS to Secretary Culture & Tourism Department, Khyber Pakhtunkhwa.
2. PA to Additional Secretary, Culture & Tourism Department.
3. Master file.

Accepted
H

M. J. Farid
SECTION OFFICER (TOURISM-I) 29/12



**PAKISTAN AUSTRIAN INSTITUTE OF
TOURISM AND HOTEL MANAGEMENT**
Camp Office PAITHOM, DTS Building, Shagai, Saidu Sharif,
SWAT



Ref.No.3(1)/2011/PAITHOM-ADMN/Vol-IV

Dated 02/01/2024

OFFICE ORDER

1. Mr. Akbar Ali, Waiter
2. Mr. Alisha, Waiter
3. Mr. Israr Ali, Waiter
4. Mr. Nasarullah Khan, Electrician
5. Mr. Mian Sher Ali, Washer/Presser
6. Mr. Tahir Khan, Room Attendant
7. Mr. Akbar Khan, Cook

Subject: WTIHDRAWAL OF PROMOTION ORDER

In compliance to the departments letter No. SO(T)5-81/2022/Vol-III/5545-47 dated 29-12-2023 which is self explanatory wherein the undersigned is directed to withdraw the office order No. 3(1)/2011/PAITHOM-ADMN/Vol-IV dated 19-02-2020 & 02-03-2020. (Copy attached)

2. Therefore, the above mentioned office orders, issued by the undersigned, are hereby withdrawn and declared as null and void. The seven employees who were promoted vide above mentioned office orders shall be considered as not promoted and are restored to their original pay scales whereon they were regularized.

ENCLSD;AS ABOVE

(Hurmat Yab Khan)

Chief Instructor/Incharge PAITHOM

Cc to:

1. Section Officer (Tourism), Tourism Department, Govt. of Khyber Pakhtunkhwa
2. Office Copy

Attested

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