

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter of Service Appeal No. 7856/2021 of Shaheen Iqbal Water Management Officer o/o District Director On Farm Water Management Peshawar

.....**Appellant**
Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 1879

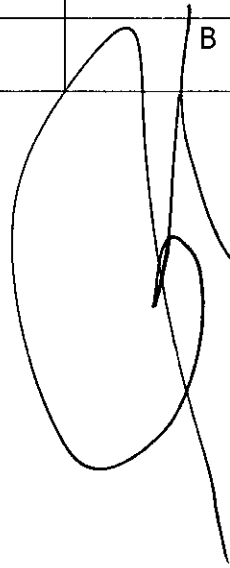
Dated 8/11/2022

1. Chief Secretary to Government of Khyber Pakhtunkhwa Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Finance department.
3. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Coop: Department, Peshawar.
4. Director General, Agriculture, Livestock and Cooperation Deptt: Govt. of Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

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DEPONENT

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.....**Appellant**

VERSUS


1. Chief Secretary to Government of Khyber Pakhtunkhwa Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Finance department.
3. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Coop: Department, Peshawar.
4. Director General, Agriculture, Livestock and Cooperation Deptt: Govt. of Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth:

Preliminary Objections

- 
1. That the appellant has no cause of action.
 2. That the appellant has no locus standi.
 2. The appeal is premature.
 3. That due to concealment of material facts and misstatement the appeal is liable to be dismissed.
 4. The appeal is badly bared by time and not maintainable in eyes of law.
 5. That the appeal is bad for miss-joinder and non-joinder of necessary and proper parties.

COMMENTS

1. Correct to the extent that the appellant is serving as Water Management Officer (BPS-17) in On Farm Water Management wing of Agriculture department.
2. Pertains to record hence need no comments.
3. Pertains to record hence need no comments.
4. That in pursuance to decisions of Provincial Cabinet in the meetings held on 24.05.2018 and 15.10.2018 regarding approval / authorization of Technical Allowance (@ rate of 1.5 times of the initial Basic Pay Scale) the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide notification dated 19.10.2018 sanctioned technical allowance to the Engineers holding Engineering

12/19

qualification from the accredited engineering program of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Department.

As the appellant is not working in any of the department mentioned in the ibid notification, therefore, the expectancy of the appellant regarding grant of Technical Allowance is out of place and he has not been deprived in any way (copy of Finance Department notification dated 19-10-2018 attached **Annex-A**)

5. Incorrect, the position regarding allowing Technical Allowance to the Engineers serving against the sanctioned posts in Technical Department has categorically highlighted in Para-4 of the comments.

Beside this, the Engineers of Technical Department having specific nature job which are carried out by the Engineers in their concerned departments. While the job/duty of Engineers working in Agriculture Department is just desk type having no application of Engineers skill and do not involve practically in any type of construction work like constructions/maintenance of buildings, Roads, Residential & Non-Residential Accommodations maintenance, repair of Roads, Building etc. therefore, the stance taken by appellant in the Service Appeal is not justified.

6. As explain in Para-5 above.

7. The petitioner himself admitted that his departmental appeal has been dismissed by the concerned competent authority (Copy of order dated 29-07-2020 attached **Annex-B**)

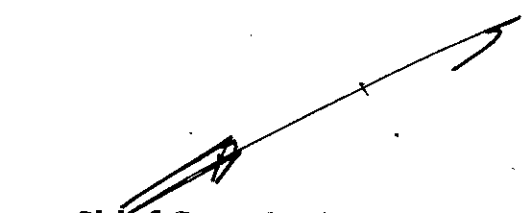
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GROUNDS

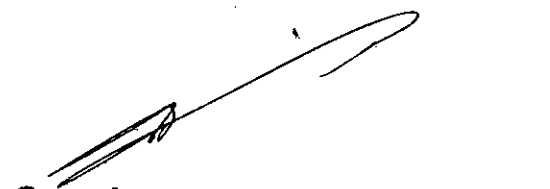
- A. Incorrect, the impugned notifications dated 19.10.2018 and impugned order dated 29.07.2020 are according with law, rules & facts on record.
- B. Incorrect, notifications dated 19.10.2018 and impugned order dated 29.07.2020 are not in violation of law and rules and no inequality has been done to the appellant.
- C. Incorrect, the impugned notification and impugned order are according to norms of justice and no fundamental rights of the appellant has been violated.
- D. Incorrect, the notifications and orders issued regarding technical allowance to the engineers are in accordance with the law, rules & policy of the Government.
- E. As explained in Para-4 & 5 above.
- F. Incorrect, the impugned notifications are according to norms of justice and dictum of the apex courts.

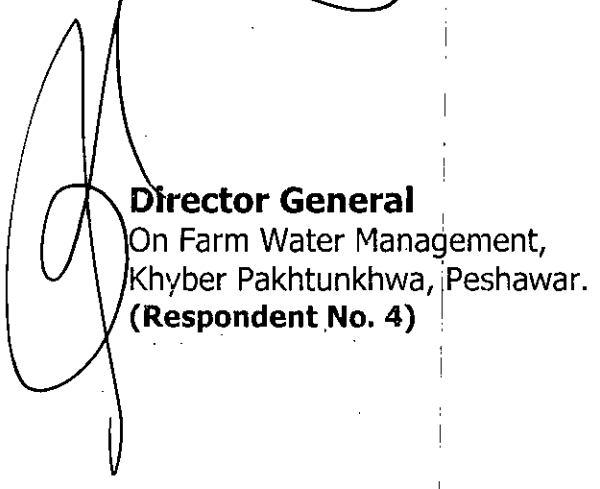
G. That Respondents also seek permission of this court to advance further grounds during arguments.

In light of the above facts, it is prayed that appeal of the appellant may kindly be dismissed with cost.


Chief Secretary
Govt. of Khyber Pakhtunkhwa
Peshawar
(Respondent No. 1)


Secretary
Govt. of Khyber Pakhtunkhwa
Finance Department
Peshawar
(Respondent No. 2)


Secretary
Govt. of Khyber Pakhtunkhwa
Agriculture, Livestock & Coop: Deptt.,
Peshawar
(Respondent No. 3)


Director General
On Farm Water Management,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 4)

In the matter of Service Appeal No. 7856/2021 of Shaheen Iqbal Water Management Officer o/o District Director On Farm Water Management Peshawar

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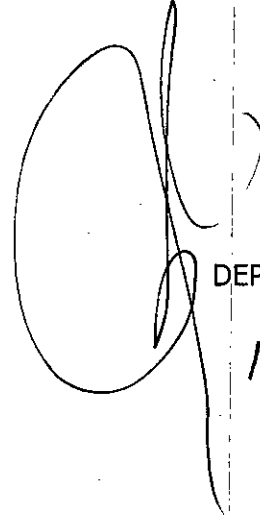
VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa Peshawar.
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.....Respondents

AFFIDAVIT

I, Javid Iqbal **Director General On Farm Water Management Khyber Pakhtunkhwa, Peshawar** do hereby solemnly declare and affirm that the respondents have not suppressed the facts and actual position of the case from this honourable Tribunal. The contents of affidavit and reply both are true and correct according to my knowledge, belief and nothing has been concealed from this Tribunal.



DEPONENT

14202-7345424-7





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Government of Khyber Pakhtunkhwa
Finance Department
(Regulation Wing)

Dated Peshawar the 19th October, 2018

NOTIFICATION

No FD (SO SR-II) 8-7/2018-19: The Government of Khyber-Pakhtunkhwa has been pleased to sanction Technical Allowance as per the following rates to Engineers holding Engineering qualification from the accredited engineering programme of Higher Education Institutions (HEI) / Universities duly recognized by Higher Education Commission (HEC) and registered with Pakistan Engineering Council (PEC), serving against the sanctioned posts in the C&W, Irrigation, Public Health Engineering and Local Government Departments, Govt. of Khyber-Pakhtunkhwa with effect from 1st November 2018 :-

S.#	Pay Scales	Initial Basic Pay of Pay Scales 2017	Rate of Technical Allowance Per Month (@ 1.5 initial Basic Pays as per Pay Scales 2017)
i.	Engineers in BS - 20	Rs 69,090/-	Rs 1,03,635/-
ii.	Engineers in BS - 19	Rs 59,210/-	Rs 88,815/-
iii.	Engineers in BS - 18	Rs 38,350/-	Rs 57,525/-
iv.	Engineers in BS - 17	Rs 30,370/-	Rs 45,550/-

2. The above allowance will be admissible subject to the following conditions:-
- It will not be counted towards pension or gratuity.
 - It will not be admissible in any kind of leave as well as posting against OSD and leave reserve posts.
 - The Engineers in receipt of such allowances other than regular allowances as classified under major object A012-1 A012-2 shall be entitled to one of the allowances, whichever is more beneficial.
 - It will not be admissible to deputationists.

Secretary to Government
of Khyber Pakhtunkhwa
Finance Department

Endst: No & Date Even

- The Accountant General, Khyber Pakhtunkhwa, Peshawar
- The Additional Chief Secretary P&D Department
- The Principal Secretary to Chief Minister, Khyber-Pakhtunkhwa
- All the Administrative Secretaries to Govt of Khyber-Pakhtunkhwa
- All the Divisional Commissioners in Khyber-Pakhtunkhwa
- All The Deputy Commissioners in Khyber-Pakhtunkhwa
- All the District Accounts Officers in Khyber-Pakhtunkhwa
- Director, FMIU, Finance Department
- PSO to Chief Secretary, Khyber-Pakhtunkhwa, Peshawar
- All Budget Officer, Finance Department
- PS to Secretary Finance Department
- PS to Special Secretary Finance Department
- Assistant Director (HR Data Base) Finance Department
- PA to Additional Secretary (Regulation) Finance Department
- PA to Deputy Secretary (Regulation-II), Finance Department

(Naeem Tabassum)
Section Officer (SR-II)

19/10/18



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Peshawar, Dated the 29th July, 2020

OFFICE ORDER:

No.FD/SOSR-II/8-7/2020 Whereas, the Provincial Government of Khyber Pakhtunkhwa sanctioned Technical Allowance to the tune of 1.5 Initial Basic Pay per month as per Pay Scale of 2017 to the only Four Works Department i.e. C&W, Irrigation, Public Health Engineering & Local Govt Departments Engineers from BS-17 to BS-20 as per rates mentioned therein vide Finance Department Notification No.FD(SOSR-II)8-7/2018-19 Dated 19-10-2018 in pursuance of the approval of the Provincial Cabinet.

And whereas, the Engineers cadre of certain departments requested through proper representation for grant of the above allowance on the analogy of the Engineers of the Four Works Departments which was examined but not entertained, being not based on merit, in light of the approved cabinet decision and policy accordingly.

And whereas, following non-maintainability of their request by the Provincial Government the engineers of the Agriculture Department filed a Writ Petition No. No. 5877-P/2018 titled "Zahid Rabbani & Others VS Chief Secretary Khyber Pakhtunkhwa & Others" in the Peshawar High Court, Peshawar in which they prayed for grant of the said allowance to their cadre on the analogy of the Engineers of Four Works Department.

And whereas, the Honourable Peshawar High Court, Peshawar in its judgment Dated: 21-11-2019 and referred the case to Chief Secretary, Khyber Pakhtunkhwa to look into the matter and make decision within the shortest possible time in accordance with the relevant law, rules on the subject.

And whereas, accordingly the Committee constituted by the Provincial Government under the Chairmanship of Minister Finance, examined the Court directions in the above Writ Petition in light of decision of the Provincial Cabinet on the subject and regretted the aforementioned allowance on the following grounds:

- I. That the Engineers working in 04 Departments i.e. C&W, Irrigation, PHE and LG&RD Department, to whom Technical Allowance has been allowed by the Provincial Government vide Notification No. FD(SOSR-II)8-7/2018-19 dated 19th October, 2018 are dealing totally with the infrastructure of the Province/Provincial Government. They are practically involved in Engineering Works like construction of Roads, Buildings, Canals, Drains and other construction/engineering works etc, throughout their duty hours and perform duties at field outside their offices. On many occasions they work overtime. While the Petitioners are not performing duties cited hereinbefore.
- II. That the office timings for field formation are not fixed rather depends upon the quantum of work & number of sites which they visit/inspect. These inspections/visits include far flung areas in same Districts, consumes time, energy and resources and

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Deputy Registrar
04 AUG 2020

application of technical/engineering skills. In case of defect/deficiency or any mis-happening observed therein, the concerned engineer is held responsible for the loss/consequences. It is worth to mention that the Petitioners do not undertake these duties as well.

- III. That apart from field work these engineers also manage the office work before start of project like preparation of Project Estimates and Contract/ Agreements etc. all these documents are technically checked by the engineers. Besides, field Engineers are fully committed with Engineering and Field/Office work and no relaxation for availing even Gazzetted holidays, whereas engineers of the other than 04 Departments are not engaged with field work, only performing official assignment of duties and fully relax to avail all holidays whereas the Petitioners are performing normal duties in agriculture department.
- IV. That similarly, the job/duty of Engineers working in Agriculture Department is just desk type, having no application of Engineering skill and do not involve practically in any, type of construction work like constructions/maintenance of buildings, Road, Residential & Non Residential Accommodations, Maintenance & Repair of Roads, Bridges, Ferries, Tunnels, Rope-ways, cause ways etc.

And whereas, the matter was thereafter considered threadbare by Chief Secretary who also concurs with aforesaid observation, and now, in light of the above intelligible differentia exist amongst the engineers who are granted "Technical Allowance" and the Petitioners, therefore, the Petitioners being not entitled as per facts, Cabinet Decision, Policy and recommendations of the Committee on the subject, the prayer of the Engineers Cadre of the concerned department made in the above mentioned Writ Petition filed in the Peshawar High Court, Peshawar is regretted, being not worthy of consideration and against the spirit of the Cabinet Decision of the Provincial Government of Khyber Pakhtunkhwa on the subject.

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Deputy Registrar

04 AUG 2020

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA

Endst: of Even No. & date:

- 1. The Registrar, Peshawar High Court, Peshawar with reference to the above mentioned Writ Petition.
- 2. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
- 3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law, Human Rights & Parliamentary Affairs Department.
- 4. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
- 5. The Special Secretary-I, Finance Department.
- 6. The PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 7. Master File.


SECTION OFFICER (SR-II)