19.09.2017 Learned counsel for the appellant present. Learned Deputy District Attorney alongwith Muhammad Siddique, Admn. Officer for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.10.2017 before D.B.

Member
(Executive)

Member
(Judicial)

06.10.2017 Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney on behalf of the official respondents present. Vide separate/common judgment of today of this Tribunal placed on file appeal bearing No. 333/2016 titled Tariq Nawaz Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, the present appeal and the connected appeals are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2017

(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

10. 09.08.2017 Appeal bearing No. 379/2016 was fixed for final hearing before this D.B for today. Reader of this court produced the file of instant appeal today being connected one and stated that the file was misplaced earlier. Learned counsel for the appellant present. Seeks adjournment. Adjourned. To come up for arguments alongwith connected appeal on 18.08.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Muhammad Hamid Mughal)
Member

18.08.2017 Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Muhammad Siddique, Admn. Officer for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.09.2017 before the D.B.

Member

Chairman

14.11.2016 Counsel for the appellant and Addl: AG alongwith Mr. M. Yaseen, Supdt for respondents present. Rejoinder submitted. To come up for arguments on 28.03.2017.

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

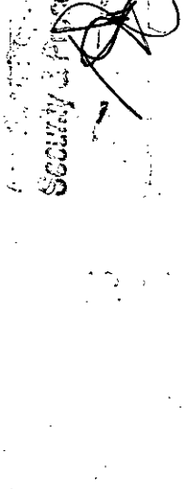
28.03.2017 Counsel for the appellant, Additional AG and Senior Government Pleader alongwith M/S Aftab Ahmed, A.O & Muhammad Yasin, Superintendent for the respondents present. Arguments partially heard. To come up for remaining arguments on 29.03.2017 before this D.B.

Member Chairman

29.03.2017 Counsel for appellant, Additional AG & Senior Government Pleader alongwith Mr. Aftab Ahmed, A.O & Mr. Muhammad Yasin, Superintendent for respondents present. Learned Additional AG requested for adjournment. Adjourned for remaining arguments to 11.04.2017 before D.B.

Member Chairman

13.4.2016 Counsel for the appellant present. Learned counsel for the appellant argued that Identical appeals No. 290, 291 , 292 of 2016 have already been admitted to regular hearing and requested that this appeal may also be admitted to regular hearing.



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

Chairman

01.06.2016 Counsel for the appellant, M/S Muhammad Yaseen, Supdt. Muhammad Ali Supdt and Kamran Shahid, Asstt. alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 10.08.2016 before S.B.

Chairman

10.08.2016 Clerk to counsel for the appellant and Mr. Muhammad Yaseen, Supdt alongwith Addl: AG for respondents present. Written reply submitted on behalf of respondents No.2 and 3. The learned Addl: AG relied on the same on behalf of respondent No.1. The appeal is assigned to D.B for rejoinder and final hearing on 14.11.2016.

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 332/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31.03.2016	The appeal of Mr. Ishtiaq Ahmad presented today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	01-04-2016	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 13-04-2016 CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. 3321 /2016

Ishtiaq Ahmad

..... *Appellant*

Versus

Government of Khyber Pakhtunkhwa etc

.....*Respondents*

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Appellant

Through

Ijaz Anwar
Advocate, Supreme Court of Pakistan

Sajid Amin
&
Yousaf Khan
Advocate High Court, Peshawar

Dated 31-3-16.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. 332 /2016

Ishtiaq Ahmad S/O Tehmeed Ullah,
(Sub Engineer, Public Health Engineering Department,Mardan)
R/O Mohallah Piran, Utmanzai, Tehsil & District Charsadda

..... ***Appellant***

VERSUS

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar

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

3. **Chief Engineer (South)**
Public Health Engineering Department,
Government of Khyber Pakhtunkhwa, Peshawar

.....***Respondents***

APPLEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 14-02-2014 VIDE WHICH THE SERVICES OF THE APPELLANT HAVE BEEN TERMINATED.

PRAYER IN APPEAL

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 14-02-2014 OF THE RESPONDENTS MAY KINDLY BE DECLARED AS ILLEGAL, UNLAWFUL, ARBITRARY AND VOID AB INITIO AND THE APPELLANT MAY KINDLY BE REINSTATED INTO HIS SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth,

The Appellant humbly submits as under:-

1. That the appellant, being duly qualified, after going through the required procedure, was appointed as Sub Engineer (B-11) vide appointment order dated 15-01-2010 on the terms and conditions mentioned therein.
   (Copy of the educational documents & order is annexed as Annexure-A).

2. That the appellant was serving the department to the best of his abilities and to the satisfaction of his superiors when all of a sudden he was issued with a back dated joint show cause notice. The plea raised in the show cause notice was that some adhoc employees approached the August Supreme Court of Pakistan for the reinstatement/ regularization of their services. During the pendency of the said petition, the counsel for those petitioners maintained that his clients were removed from service while others were left, to which the then Chief Engineer had replied that the cases of those appointees are underway. The Hon'ble Apex court directed to finalize action and submit a report to that effect.
   (Copies of the verdict of the Apex court dated 15.01.2014 is annexed as Annexure-B).

3. That in the garb and misleading statement and verdict before the Apex court, the appellants were issued the alleged back dated show cause notice, although the same was never mandated. In reply to show cause notice, the respondent No.3 was requested to extend time for him to file a reply, but the respondent No. 3, was determined with all malafide to terminate the appellant among others unlawfully, terminated the appellant vide order dated 14-02-2014.
   (Copy of order dated 14-02-2014 and application for time extension to show cause is annexed as Annexure-C).

4. On arrival of the aforesaid judgment of the Apex court, the respondents sought guidance from the E & A department for further course of action vide letter No. SO (Estt) PHED/1-9/2012-13 dated 22-01-2014. In response, the E&A department vide letter No. SOR-V(E&AD)/15-3/09 dated 30-01-2014 advised that necessary action be initiated against the officers who were involved in the appointment after conducting proper inquiry into the case. It was binding upon the respondents to act upon the advice of the E&A department, where they instead of acting upon the advice, terminated the appellant without fulfillment of legal requirements of inquiry etc to establish the charges against the appellant which is not only a formality but a mandatory requirement of law. (Copy of letter No. SOR-V (E&AD)/15-3/09 dated 30-01-2014 is annexed as annexure-D).

5. That the appellant submitted his departmental appeal, however, it was not responded, hence the appellant approached the Hon'ble Peshawar High Court, Peshawar in a W.P. No. 615-P/2014 who vide its order dated 26-02-2014 observed that the instant petition relates to the terms and conditions of the service, therefore the appellant should seek his remedy before proper forum, the W.P. was dismissed accordingly.
   (Copy of writ and order dated 26-02-2014 is annexed as Annexure-E).

6. That feeling aggrieved, the appellant moved the August Supreme Court through a civil petition, but the August Supreme Court directed the appellant to approach this Hon'ble Tribunal which shall decide the appeal as mandated in law.

   (Copy of the order in C.P No. 551/2014dated 28-04-2014 is annexed as Annexure-F).

7. That the appellant approached this Hon'ble tribunal through a service appeal No. 792/2014 which appeal was remanded through order dated 30-12-2015 with the observations that the departmental appeal be decided within two months.
   (Copy of appeal and order dated 30-12-2015 is annexed as Annexure-G).

8. That while dealing with the departmental appeal, all the 31 appellants including the present appellant were assembled in a hall and they were told by the respondent No.2 that all his sympathies lie in favour of the appellants and he is going to restore them, but despite all stated above, their appeals were dismissed vide order dated 03-03-2016. It is worth to mention here that the respondent No. 2 disclosed during the interview that there is huge pressure upon him by the Minister for PHE not to restore the appellants even if they deserve re-instatement.
   (Copy of order No. SO(Estt)/PHED/1-90/2013-14.Vol-II dated 03-03-2016 is annexed as Annexure-H).

9. That Appellant feeling aggrieved of the order dated 14-02-2014 and 03-03-2016 prefers this Appeal, *inter alia*, on the following:

GROUNDS OF APPEAL

1. That the impugned orders of the respondents are against the law on the subject, illegal, void ab intio and arbitrary, hence liable to be struck down.

2. That the impugned termination(s) is the result of discrimination and against the fundamental rights guaranteed under the constitution of the Islamic Republic of Pakistan, 1973, hence liable to be set aside.

3. That the impugned orders of the respondents is the sheer violation of article, 25 of the Constitution of the Islamic Republic of Pakistan, 1973, hence liable to be set aside.

4. That the impugned orders of the respondents are against the spirits of the natural justice, hence untenable.

5. That there is great malafide on the part of the respondents in terminating the appellant, hence the same needs setting aside.

(5)

6. That the termination of the appellant is based on the misconceived judgment of the August Supreme Court, of Pakistan and the said judgment never mandated the termination of the appellants, hence termination of the appellant is nullity in the eyes of law.

7. That the August Apex court was mislead by the department, hence all the proceedings against the appellant are in violation of the order of the Apex court, law of the land and natural justice, hence liable to be set aside.

8. That the appellant has served the department for almost five years with zeal and dedication and has got vested rights and the termination of services at the one stroke of pen is unjust, unfair, arbitrary, unlawful, hence liable to be set aside.

9. That the impugned termination order(s) is against the principles of locus poenitentiae, hence liable to be struck down.

10. That any other ground not specifically raised herein may be allowed at the time of arguments

It is therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 14-02-2014 of the respondents may kindly be declared as illegal, unlawful, arbitrary and void ab initio and the appellant may kindly be reinstated into his service with all back benefits

Appellant

Through

Ijaz Anwar
Advocate, Supreme Court of Pakistan

Sajid Amin
&
Yousaf Khan
Advocate High Court, Peshawar

Dated .03.2016

(6)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2016

Ishtiaq Ahmad

..... Appellant

Versus

Government of Khyber Pakhtunkhwa etc

.....Respondents

AFFIDAVIT

I, **Ishtiaq Ahmad** S/O Tehmeed Ullah, (Sub Engineer, Public Health Engineering Department,Mardan) R/O Mohallah Piran, Utmanzai, Tehsil & District Charsadda do solemnly affirm and declare on oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

AMJED SHAHEEN OATH COMMISSIONER Distt: Courts Peshawar

Deponent

(7)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2016

Ishtiaq Ahmad

..... Appellant

Versus

Government of Khyber Pakhtunkhwa etc

.....Respondents

Addresses of the parties

Addresses of the Appellant

Ishtiaq Ahmad S/O Tehmeed Ullah,
(Sub Engineer, Public Health Engineering Department,Mardan)
R/O Mohallah Piran, Utmanzai, Tehsil & District Charsadda

Addresses of the Respondents

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar

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

3. **Chief Engineer (South)**
   Public Health Engineering Department,
   Government of Khyber Pakhtunkhwa, Peshawar

Appellant

Through

Ijaz Anwar
Advocate, Supreme Court of Pakistan

Sajid Amin
&
Yousaf Khan
Advocate High Court, Peshawar

Ann: "A" (8) ~~Annexure-IV~~

~~17~~

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

No. 10 /E-4/PHE

Dated Peshr 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. Ishtiaq Ahmad S/O Tahmeed Ullah R/O Mohallah Piran P.O Utmanzai Tehsil & District Charsadda 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, Mansehra before reporting himself for duty to the O/O Deputy District Officer Water Supply & Sanitation Mansehra 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 Mansehra, 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 Mansehra.
2) District Accounts Officer Mansehra.
3) Mr. Ishtiaq Ahmad S/O Tahmeed Ullah R/O Mohallah Piran P.O Utmanzai Tehsil & District Charsadda.

CHIEF ENGINEER

Attested

(9)

Annexure-III

(16)

Serial No. 12209

Roll No. 15754

NWFP BOARD OF TECHNICAL EDUCATION

PESHAWAR (PAKISTAN)

Diploma of Associate Engineer

Year 2005

(~~Annual~~ / Supplementary)

Certified that Mr./Miss. ISHTIAQ AHMAD

Son/Daughter of Mr. TAHMEED ULLAH

Registration No. PIT/P/E/2001-11846

of PESHAWAR INSTITUTE OF TECHNOLOGY, PESHAWAR

has passed the Diploma of Associate Engineer Electrical *Technology Examination held by the N.W.F.P. Board of Technical Education, Peshawar, in the month of* November, 2005.

He/She secured 2262 *Marks out of* 3550 *and has been placed in Grade* 'B'.

In recognition thereof, this

Diploma of Associate Engineer

is awarded to him/her at Peshawar on the 1st *day of* August, 2006.

ASSISTANT SECRETARY

SECRETARY

This certificate/diploma is issued without any alteration or erasure

Attested

DIPLOMA OF ASSOCIATE ENGINEER ISSUED BY THE BOARD OF TECHNICAL EDUCATION IS HELD EQUIVALENT TO F.A./F.Sc. (PRE-ENGINEERING) OF THE BOARDS OF INTERMEDIATE AND SECONDARY EDUCATION IN THE COUNTRY (PAKISTAN) *VIDE* A BOOK OF EQUIVALENCY OF EDUCATIONAL CERTIFICATES IN PAKISTAN PUBLISHED BY THE GOVERNMENT OF PAKISTAN MINISTRY OF EDUCATION, INTER BOARD COMMITTEE OF CHAIRMEN ISLAMABAD.

CHECKED & VE[illegible]TED

Dealing Clerk 6/10/13

Asstt: S[illegible]tary
KPK, BTE, [illegible]shawar

Typed / Prepared

Chec[illegible]

Annexure-VIII

(25)

Ann: 'B' (10)

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. (in CP. 2026/13)
Muhammad Nasir Ali and others. (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

C.E.P.H.E. Deptt. (South)
Diary No. 48
Date 28-01-2014
Case No.
E.P.H.E. (S)

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

Attested

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

SEAL OF THE SUPREME COURT OF PAKISTAN
Islamabad
15.01.2014

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

GR No: 640/14 Civil/Criminal
Date of Presentation: 15-1-14
No. of Words: 600
No. of Folllies: 6
Requisition Fee Rs: 6-00
Copy Fee in: 3-00
Court Fee stamps: 9-00
Date of Completion of Copy: 17/1/14
Date of delivery of Copy: 18-1-2014
Compared by/Prepared by:
Received by:

Add. Engr

Ann: "C" (12) (22)

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, 0300-9535 8603.
3.	Mr. S. Muhammad Ihsan Shah	Sub Engineer, 0345 5518060
4.	Mr. S. Muhammad Ali Sajjad	Sub Engineer,
5.	Mr. Abdul Samad	Sub Engineer, 03449847092
6.	Mr. Shaukat Ali	Sub Engineer, 0300-9099910. (0322)
7.	Mr. M. Ali Noor	Sub Engineer, 0315 9643498.
8.	Mr. Irshad Elahi	Sub Engineer, 0346 7845606.
9.	Mr. Hussain Zaman	Sub Engineer,
10.	Mr. Salim Nawaz	Sub Engineer, 03419998066
11.	Mr. S.Ashfaq Ahmad	Sub Engineer,
12.	Mr. Murtaza Ali	Sub Engineer,
13.	Mr. Sahar Gul	Sub Engineer, 0342-9408270.
14.	Mr. Ishfaq	Sub Engineer, 03339331389.
15.	Mr. Abdul Shahid	Sub Engineer, 0345 9526307.
16.	Mr. Kashif Raza	Sub Engineer, 03347238580.
17.	Mr. Waqaṣ Ali	Sub Engineer, 0345 5349334.
18.	Mr. Muslim Shah	Sub Engineer, 0345-9501616.
19.	Mr. Ishtiaq Ahmad	Sub Engineer, 03339156613
20.	Mr. Zuhib Khan	Sub Engineer, 0314-5398029
21.	Mr. S. Hassan Ali	Sub Engineer, 03339059020.
22.	Mr. Mohsin Ali	Sub Engineer,
23.	Mr. Muqtada Qureshi	Sub Engineer, 0345-9197123.
24.	Mr. Ishfaq Ahmad	Sub Engineer, 03469474856.
25.	Mr. M. Qaiser Khan	Sub Engineer, 0333-9883738.
26.	Mr. Nomanullah	Senior Scale Stenographer, 03149899305.
27.	Mr. M. Imran	Steno Typist,
28.	Mr. M. Jamil	Steno Typist,
29.	Mr. Iftikhar	Steno Typist,
30.	Mr. Shah Khalid	Steno Typist, 0334-9282095.
31.	Mr. Aziz Ullah	Steno Typist, 0345-8111343.
32.	Mr. Farhan Ullah	Steno Typist,
33.	Mr. Farman Ali	Data E/Operator,
34.	Mr. Murtaza Qureshi	Data E/Operator, 0345-9088522

Subject: SHOW CAUSE NOTICE

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

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

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

Attested

(23)

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

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

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

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 FATA works 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)

(13)

Annexure - VII

(24)

بخدمت جناب چیف انجینئر پبلک ہیلتھ انجینئرنگ ڈیپارٹمنٹ

پشاور

جناب عالی!

گذارش کی جاتی ہے کہ آپ کی

طرف سے مجھے آج مورخہ 06/02/14 کو شوکاز نوٹس ملا ہے۔

جس میں مجھے Reply کرنے کے لئے 07 دن کی مہلت ملی ہے۔

مگر شوکاز میں تاریخ 31/01/14 درج ہے۔

آپ سے گذارش ہے کہ 07 دن کی مہلت

06 فروری سے شمار کئے جائے تاکہ مجھے جواب کرنے کا مکمل

موقع ملے۔ جس کے لئے میں شکر گزار رہوں گا۔

آپ کا تابعدار

استاد واحد

06/02/2014

Attested

(14)

Annexure - I

(14)

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

No. 21 / E-4 /PHE,
Dated Peshawar, the 14 /02/2014

To

Mr. Ishtiaq Ahmad s/o Tahmeed Ullah
Sub Engineer P.H.Engg Division
Mardan

Subject: **TERMINATION FROM SERVICE**

Your recruitment in PHED made vide this office letter No.10/E-4 /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-I (S&GAD)1-117 /91(e) 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)

Attested

(15) ~~Annexure-IX~~ (97)

To

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

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 thereby 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**

(16) 28

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/PHE 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

(17) (29)

B. That it is pertinent to mention that by notification vide No.SO(O&N)E&AD/8-16/2000 dated 01.08.2001 the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated (now repealed) and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts vide notification No.SO(Estt:)W&S/13-1/77 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W&S Department.

C. That when the posts in BPS-01 to 15 in W&S Department were declared **District Cadre Posts including the post of appellant** then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of Sub Engineers (B-11) in the W&S Department and done accordingly. In such circumstances the plea of Chief Engineer (South) regarding non fulfilling the requirements of recommendation of **Public Service Commission, Khyber Pakhtunkhwa** in the cases of appellant is unjustified, unreasonable, malafide and without lawful authority and not sustainable under the law and rules.

D. That in view of clause 5 of the appointment order of each appellant, his service was placed on probation for a period of two years extendable upto three years which the appellant has completed satisfactory becoming a confirmed employee of the office Chief Engineer. At the time of passing of impugned order the appellant has rendered more

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.

Attested

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

(20) (32)

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

Yours Sincerely,

~~Ishtiaq Ahmad~~ Tahmeed ullah
Ishtiaq Ahmad S/o ~~Tamhedullah~~,
Sub Engineer, PHE Division, ~~Charsadda~~ Mardan

Dated: 27 / 2 /2014

Home Address

Mohallah Piran killay & P.O Utmanzai
Tehsil & Distt Charsadda

Annis D (21) Annexure-I

Immediate/Court Case

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

No.SOR-V(E&AD)/15-3/09 (18)
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.

Yours faithfully,

(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Attested

Annexure-A

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IN THE PESHAWAR HIGH COURT PESHAWAR Ann: "E" 22

WRIT PETITION No. 615-P/2014

1. Tariq Nawaz Khan S/o Ameer Nawaz Khan,
Sub Engineer, Office of
Public Health Engineering Division, Karak

2. Muhammad Sajad Khan S/o Banat Khan,
Sub Engineer, PHE Division Kohat.

3. Syed Muhammad Ihsan Shah S/o
Syed Muhammad Hasan Shah,
Sub Engineer, PHE Division Haripur.

4. Syed Muhammad Ali Sajjad
S/o Syed Abid Hussain Shah,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar

5. Abd-ul-samad S/o Abd-ul-Mueed,
Sub Engineer PHE Division, But Khela.

6. Shaukat Ali S/o Ghulam Qadar,
Sub Engineer PHE Division, Karak.

7. Muhammad Ali Noor S/o Syed Noor Muhammad,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.

8. Irshad Elahi S/o Shah Nawaz,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar

9. Saleem Nawaz,
Sub Engineer, PHE Division, DI Khan.

10. Syed Ishfaq Ahmad S/o Syed Jamil-ud-Din,
Sub Engineer, PHE Division, Mingora, Swat

11. Murtaza Ali S/o Abdul Haq,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.

12. Kashif Raza S/o Abid Hussain,
Sub Engineer, PHE Division, DI Khan.

13. Waqas Ali S/o Farzand Ali,
Sub Engineer, PHE Division, Haripur.

14. Muslim Shah S/o Mahmood Shah,
Sub Engineer, PHE Division, Mardan.

PETITIONERS

FILED TODAY
Deputy Registrar

ATTESTED
For EXAMINER
Peshawar High Court
19 MAR 2014

15. Zohaib Khan S/o Jahanzeb Khan,
Sub Engineer, PHE Division, Mansehra.

16. Syed Hassan Ali S/o Syed Ajmal Shah,
Sub Engineer, PHE Division, Buner.

17. Mohsin Ali S/o Muhammad Parvez,
Sub Engineer, Office of the Chief Engineer
PHE, Peshawar.

18. Muhammad Qaisar Khan S/o Babu Jan,
Sub Engineer, PHE Division, Upper Dir.

19. Ishtiaq Ahmad S/o Tamhedullah,
Sub Engineer, PHE Division, Charsadda.

20. Hassan Zaman S/o Syed Zaman,
Sub Engineer, PHE Division, Temargara.

21. Abd-ul-Shahid S/o Abd-ul-Azeem,
Sub Engineer, PHE Division, Upper Dir.

22. Sameullah S/o Khuda Bakhash,
Sub Engineer, PHE Division, DI Khan.

23. Ishfaq Ahmad S/o Muhammad Shoaib,
Sub Engineer, PHE Division, Charsadda.

24. Muqtada Qureshi S/o Afsar Ali Qureshi,
Sub Engineer, PHE Division, Sawabi.

25. Naumanullah S/o Amanullah,
Stenographer, Office of the Chief Engineer
PHE, Peshawar.

26. Shah Khalid S/o Wafadar Khan,
Stenographer/Stenotypist, Office of the
Chief Engineer PHE, Peshawar

27. Farman Ali S/o Juma Gul,
Data Entry Operator, Office of the
Chief Engineer PHE, Peshawar

28. Muhammad Iftikhar S/o Chinar Gul,
Stenotypist, Office of the Chief Engineer
PHE, Peshawar

29. Murtaza Qureshi,
Assistant, Office of the Chief Engineer
PHE, Peshawar.

30. Farhan Ullah S/o Aziz Ullah,
Stenotypist, Office of the
Executive Engineer
PHE Division, Bannu.....Petitioners

Versus

FILED TODAY
Deputy Registrar
25 FEB 2014

ATTESTED
EXAMINER
Peshawar High Court
MAR 2014

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1. Government of Khyber Pakhtunkhwa,
through Chief Secretary,
Civil Secretariat, Peshawar.

2. Secretary;
Govt: of Khyber Pakhtunkhwa,
Public Health Engineering
Department, Peshawar.

3. Chief Engineer (South)
Public Health Engineering Department,
Khyber Pakhtunkhwa, Peshawar.

4. Chief Engineer (North)
Public Health Engineering Department,
Khyber Pakhtunkhwa, Peshawar .....Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth,

The brief facts giving rise to the present petition are as under:-

1. That petitioners had applied against the vacant posts of **Sub Engineers, Stenotypists and Data Entry Operators** in the office of respondent No.3. The petitioners were in possession of higher qualification in addition to prescribe qualification for their opted posts. After observing the codal formalities, on the recommendation of **Departmental Selection Committee** they were appointed against their opted posts on regular basis on different dates. Copy of the **appointment orders** are attached as *Annex: A1-A21.*

2. That after completing the requisite formalities including medical fitness certificate, the petitioners joined duties at their respective places of postings. The respondent department also maintained the service books of each petitioner and necessary entries have been made therein from time to time. The extracts of service book are attached *as Annex: B.*

3. That the petitioners are regular employees of the respondent department working against the permanent posts since their respective appointments having more than five years service at their credit with excellent service

Attested

ATTESTED
EXAMINER
Peshawar High Court
14 MAR 2011

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PESHAWAR HIGH COURT, PESHAWAR
FORM "A"
FORM OF ORDER SHEET.

Court of
Case No

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	26.02.2014	W.P No.615-P/2014. Present:- Mr. Khushdil Khan, Advocate for petitioners. ********** **MALIK MANZOOR HUSSAIN, J:-** Through instant petition, the petitioners are invoking Constitutional jurisdiction of this Court and prays as follows:- 1. *Declare the act of respondent No.3 against the fundamental rights as guaranteed under chapter 1 of part II of the Constitution, 1973.* 2. *Direct the respondent No.3 to act in accordance with law and rules on subject and also treat the petitioners in accordance with law and rules and their appointments be treated as legal and valid for all purposes.* 3. *Set aside the impugned order of termination issued on 14.02.2014 being malafide, unlawful, unjustified and violative of principle of*

HIGH COURT PESHAWAR

ATTESTED
EXAMINER
Peshawar High Court.
1 MAR 2014

natural justice.

2. Briefly, the facts as per contents of instant petition are that the petitioners were appointed as sub-Engineers (BPS-11) in Public Health Engineer Department, Government of Khyber Pukhtunkhwa, Peshawar. While hearing Civil Petitions No.2016/2013 and No.2029/2013, the August Supreme Court of Pakistan take notice of illegal appointments in the petitioners Department, directed the Chief Engineer of the Department to finalize the action against illegal appointees. For convenience, it would be appropriate to reproduce the relevant para of Judgment dated 15.01.2014 of August Apex Court, which is as under:-

> ***"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 at various stages and they are still in service.***

EXAMINER
Peshawar High Court,
1 MAR 2014

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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".

In pursuance thereof show cause notices were issued and ultimately through impugned order dated 18.02.2014 the services of petitioners were terminated.

3. At the very outset the learned counsel for the petitioners was confronted with the legal position with respect to the fact that the petitioners, who claims themselves to be civil servants under Civil Servant Act 1973, whether their termination orders does not come within ambit of *terms and condition of service*, and whether the petition is maintainable under barring Provision of Article 212 of the Constitution, 1973? There was no plausible explanation in this regard. The Provision of Article 199 of the Constitution through which the remedies are sought by the petitioners are subject to the Provision of Article 212(3) of the Constitution. It is

ATTESTED
EXAMINER
Peshawar High Court
MAR 2014

well settled by now that even illegal orders, or order without jurisdiction, regarding Civil Servant, can only be challenged in the proper forum established under the law.

4. Admittedly termination orders of the petitioners related to terms and condition of their services, therefore, Constitutional petition under Article 199 is not maintainable by virtue of article 212 of the Constitution and Section 4 of Service Tribunal Act 1973.

In view of what has been observed above, this petitioner is dismissed being not entertainable, however petitioners are at liberty to seek their remedies before proper forum if so advised.

Announced.
26.02.2014

JUDGE

JUDGE

Sd/- Yahya Afridi. J

Sd/- Malik Manzoor Hussain. J

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorised Under Article 87
Qanun-e-Shahadat Order 1984

Date of Presentation of Application	11-03-14
No of Pages	12
Copying fee	
Urgent Fee	
Total	24.00
Date of Preparation of Copy	11-03-14
Time Given For Delivery	11-03-14
Date of Delivery of Copy	11-03-14

Annexure-XII

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Ann: "F" 29

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE TASSADUQ HUSSAIN JILLANI, HCJ
MR. JUSTICE SH. AZMAT SAEED

CIVIL PETITION NO. 551 OF 2014
(On appeal from the judgment dated 26.2.2014 passed by the Peshawar High Court, Peshawar in WP No. 615-P/2014).

Tariq Nawaz Khan and others

... Petitioners

VERSUS

Government of KPK through Chief Secretary, Peshawar and others

... Respondents

For the Petitioners: Mir Aurangzeb, ASC

For the Respondents: N.R.

Date of Hearing: 28.04.2014

ORDER

TASSADUQ HUSSAIN JILLANI, CJ.- Petitioners are civil servants and they challenged the order terminating their services in a Constitution petition which stands dismissed vide the impugned order mainly on the ground that the said petition was not maintainable in view of Article 212 of the Constitution read with Section 4 of the Service Tribunal Act, 1973. The only ground being taken by the learned High Court to invoke Article 199 of the Constitution is that the competent authority in the department had passed the order of termination of petitioners' services pursuant to a judgment of this Court and the learned Service Tribunal may be diffident to decide the case independently and in accordance with law.

2. We are afraid, the apprehension of the petitioners is misconceived. In the event of filing the appeal, the Service Tribunal shall decide the appeal as mandated in law. Disposed of in terms noted above.

Sd/- Tassaduq Hussain Jillani, CJ
Sd/- Sh. Azmat Saeed, J

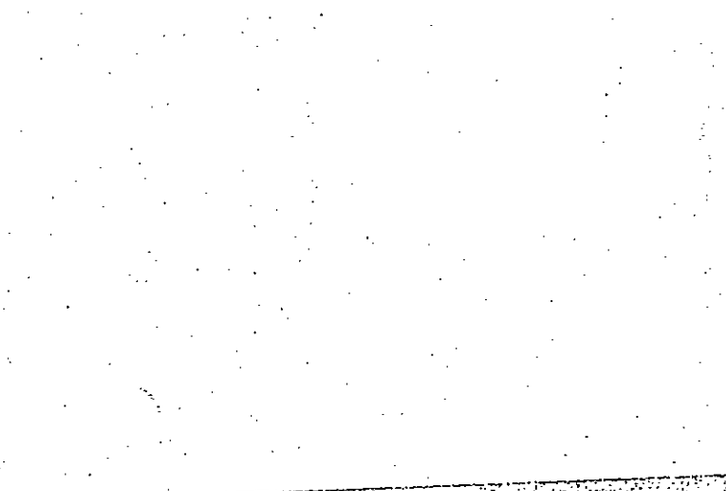
Islamabad, the
28th of April, 2014
Not Approved For Reporting

Certified to be True Copy

29/4/14

Superintendent
Supreme Court of Pakistan
Islamabad

Attested


Civil/Criminal
Copy:
Copy:

Ann: "G" (30)

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
1.		

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 Ai, -do-
5. 726/2014, Kashif Raza, -do-
6. 727/2014, Syed Muhammad Ali Sajjad, -do-
7. 728/2014, Muhammad Ali Noor, -do-
8. 729/2014, Irshad Elahi, -do-
9. 750/2014, Murtaza Qureshi, (Isaac Ali Qazi, Adv:)
10. 783/2014, Syed Ishfaq Ahmad, (M. Asif Yousafzai)
11. 784/2014, Ishfaq Ahmad, -do-
12. 785/2014, Murtaza Ali, -do-
13. 786/2014, Amir Muqtada Qureshi, -do-
14. 787/2014, Abdus Samad, -do-
15. 788/2014, Hussain Zaman, -do-
16. 789/2014, Abdul Shahid, -do-
17. 790/2014, Waqas Ali, -do-
18. 791/2014, Muhammad Iftikhar, (Isaac Ali Qazi,Adv.)
19. 792/2014, Ishtiaq Ahmad, -do-
20. 793/2014, Shaukat Ali, -do-
21. 794/2014, Muhammad Sajjad, -do-
22. 795/2014, Tariq Nawaz, -do-
23. 796/2014, Ishfaq Ahmad, -do-
24. 797/2014, Noman Ullah, -do-
25. 803/2014, Aziz Ullah, (Aslam Khan Adv.)
26. 810/2014, Muslim Shah, (M.Asif Yousfzai,Adv)
27. 811/2014, Syed Hassan Ali -do-
28. 812/2014, Zohaib Khan, -do-
29. 829/2014, Qaiser Khan, -do-
30. 867/2014, Farman Ali, -do-
31. 868/2014, Shah Khalid, (Isaac Ali Qazi, Adv)

Versus

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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.

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

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

> "2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, KPK is present in Court, he states that although many other illegal appointees in his department have been removed from service, but against many others such action is in process of various stages and they are still in service.
>
> 3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from to-day and submit his report

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

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

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

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

3. The content of your appointment orders reveal that you have been appointed without recommendation of the Public Service Commission of Khyber Pakhtunkhwa. No NOC obtained from the Public Service Commission for

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

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

5. Arguments heard ad record perused.

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

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested

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.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

Attested

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

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

ATTESTED

EXAMINER
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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

Attested

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mandated in law. Evidently no charge sheet has been issued to the appellants nor opportunity of personal hearing has been provided to them and instead show cause notice was served on them. It is apparent from record that the impugned order has been passed quite in haste. After the impugned order, the respondent department vide letter No. 03/G-4-A/HC/PHE dated 17.2.2014 intimated to the Registrar Supreme Court of Pakistan that in pursuance of order dated 15.1.2014, a total of 24 Sub Engineers, 6 steno typist/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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested

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

ANNOUNCED
30.12.2015.

Sd
Pir Bakhsh Shah
member

Sd
Abdul Latif
member

Certified to be ture copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 5-1-2016
Number of Words 3200
Copying Fee 18-0
Urgent
Total 18-0
Name of Copyist
Date of Completion 7-2-2016
Date of Delivery of Copy 7-2-2016

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

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

Ann: "H" (38)

To,

Mr. Ishtiaq Ahmad
S/o Tehmeedullah
R/o Mohallah Piran, Utman Zai,
Tehsil & District Charsadda

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE ORDER No. 21/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.10/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.792/2014 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.

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

ENDST: NO & DATE AS ABOVE:

Copy forwarded to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.29/ST, dated 05.01.2016 for information.
2. Senior Govt Pleader, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to his No.(SR.GP)E&AD/1-5/Lit/Appeal/2013/492-95, dated 06.01.2016.
3. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.

SECRETARY TO
GOVERNMENT OF KHYBER
PAKHTUNKHWA PHED
(APPELLATE AUTHORITY)

Ann: "I" (39) ~~Annexure-XIII~~

(49)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated ~~Peshawar, the~~ November 05, 2001.

O R D E R

NO.SO(E)W&S(C&W)13-2/2000:- Consequent upon the merger of defunct Public Health Engineering, Physical Planning and Housing and Communication & Works Departments into Works & Services Department vide Notification No.SO(O&M) E&AD/8-16/2000, ~~Dated 01-08-2001~~, the Governor NWFP is pleased to approve the formation of its two establishments of Frontier Highways Authority and Chief Engineer Works & Services, and accordingly the offices of Chief Engineers North and South (C&W Department) and Chief Engineer PHED stand abolished with immediate effect.

BRIGADIER (RRTD)
SAFDAR HUSSAIN AWAN
SECRETARY

~~ENDST. NO.SO(E)W&S(C&W)13-2/2000Dated Peshawar, the~~ Nov 05, 2001.

Copy forwarded to the:-

1) All Administrative Secretaries in NWFP, Peshawar.
2) Secretary, NWFP, Public Service Commission, Peshawar.
3) Secretary to Governor, NWFP, Peshawar.
4) HQ PMCS C/O HQrs Engineers 11 Corps Peshawar Cantt.
5) Accountant General, NWFP, Peshawar.
6) All Additional Secretaries/Deputy Secretaries and S.Os in Works & Services Department.
7) All DCOs in NWFP.
8) All Heads of Attached Departments in NWFP.
9) All heads of Autonomous/Semi Autonomous Bodies in NWFP.
10) The Registrar, Peshawar High Court, Peshawar.
11) Director Information NWFP, Peshawar.
12) Manager, Government Printing Press, Peshawar.
13) All P.Ss to Provincial Ministers, NWFP, Peshawar.
14) P.S. to Secretary W&S Department.

(SD) A.G.PR. Peshawar

(SYED HIDAYAT JAN)
SECTION OFFICER (ESTABLISHMENT)

P.F.
08/X/01

(40) Annexure XLV

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

(50)

Dated Peshawar, the March 22, 2005

NOTIFICATION

No.SO(E)W&S/13-1/77: The competent authority is pleased to order the declaration of provincial cadre posts of BPS-1 to BPS-15 of the Works & Services Department as district cadre posts with immediate effect on the following terms and conditions:-

1) Permanent transfer to the districts will be made on domicile and seniority basis.

2) In case the personnel of that particular district being more than the sanctioned strength, the deployment will be on the basis of seniority and the junior most over-flow will be posted temporarily to the other districts of the province till such time vacancies occur in the districts of their domicile.

3) All such employees of the above status working in FATA but belonging to settled districts will be adjusted as per their seniority in the relevant cadre and the over-flow will continue working in FATA till such time vacancies occur in their districts of domicile.

4) The domicile of the female officials will be counted under the wedlock policy and such employees will be given one time, irreversible choice to opt for the districts of their spouse or their own. In case of spouse being a government employee and his transfer to another district, inter-district transfer of the female officials will be allowed subject to availability of vacancy in the desired district.

5) Subsequent to the permanent transfer of all BPS-15 and below staff to the districts, further transfers and service matters including appointments, within the districts, shall be made by the District Government in light of the District Government Rules of Business, 2001.

6) All cases of transfers from one district to another will be decided and ordered upon by the Secretary W&S Department as per rules / policy.

7) Seniority for the purpose of promotion to the posts of provincial cadre will be maintained at Secretariat level.

It is further to mention here that the district governments will deal with the cases of these employees as per clause 6(B) of District Government Rules of Business. They (the District Govt.) will also adopt a mechanism in such a manner that their inter-se-seniority is not affected.

SECRETARY

(50) A

No. SO(R)W&S/13-1/77: Dated Peshawar the

Copy forwarded to the:-

1) Accountant General NWFP Peshawar.
2) Secretary to Chief Minister NWFP, for information.
3) Chief Engineer, Works & Services Peshawar.
4) All District Coordination Officers in NWFP.
5) Chief Engineer (FATA), W&S Peshawar.
6) All Executive District Officers W&S in NWFP.
7) PS to Secretary W&S Department.
8) O/O File.

(GHAFOOR SHAH)
SECTION OFFICER (STT-II)

25/3

(91) Annexure-IV

(51)

No.SOR-V(E&AD)1-368/2005(SE)
Dated Pesh: the 2nd May, 2007.

Annex-II

NWFP Public Service Commission
03 MAY 2007
DIARY NO. 2543

To

The Secretary,
NWFP Public Service Commission,
Peshawar.

SUBJECT:- REQUISITION FOR FILLING IN THE 20 VACANT POSTS OF SUB-ENGINEERS (B-11) IN THE WORKS & SERVICES DEPARTMENT.

Dear Sir,

I am directed to refer to the letter of Works & Services Deptt: bearing No.SO/W&S/11-268/2005 dated 26-09-2005 (copy enclosed) on the above cited subject and to state that the requisition made by the Works & Services Department for filling in the above captioned 20 posts of Sub-Engineers (BS-11) may kindly be considered as withdrawn.

Yours faithfully,

2/5/07.

(MUSHARAF KHAN)
SECTION OFFICER (Reg-V).

Encls: (As-above).

Endst: of even No & Date.

Copy for information is forwarded to:

1. Secretary to Govt. of NWFP Works & Services Department, Peshawar.
2. Addl: Secretary (Estt), Establishment Deptt: Government of NWFP.

SECTION OFFICER (Reg-V).

D/R. pl, put up my position
D/S DS-IX

بعدالت سروس ٹریبونل ...

2 منجانب

بنام اشتیاق احمد

موزخہ - - - - - - -
مقدمہ - - - - - - -
دعویٰ - - - - - - -
جرم - - - - - - -

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ آں مقام پشاور کیلئے اعجاز اللہ، ساجد امین، یوسف خان مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 31-3-16 ماہ ______ 20

گواہ شد ______ العبد ______

بمقام ______ ... کے لئے منظور ہے۔

Ishtiaq Ahmad

Accepted

accepted

BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 332/2016

Mr. Ishtiaq Ahmad S/O Tehmeedullah
Ex-Sub Engineer, PHE Divn: Mardan. ..... (Appellant)

Versus

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

...Respondents

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 TO 3

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 usnecessary 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 2013before the August Supreme Court of Pakistan. Though the August Supreme Court of Pakistan dismissed the same and directed the department to finalize the action against the illegal appointees within one month, vide judgment dated 15.1.2014 (**Annexure-II**) and subsequent reminder dated 07.02.2014 (**Annexure-III**). The appellant was appointed from a list submitted by Political Secretary to then Chief Minister Khyber Pakhtunkhwa (**Annexure-IV**). Upon completion of the legal formalities i.e. issuance of Show Cause Notice etc, the action was taken against the appellant.

ON THE FACTS.

(1) Incorrect. The appellant was illegally appointed through a list received from Political Secretary to the than Chief Minister Khyber Pakhtunkhwa without recommendation of Public Service Commission, test interview and advertisement. The appointment of Sub Engineer is in purview of Public service Commission. The Chief Engineer was not in power to appoint the appellant.

(2) Denied as drafted as one wrong or any number of wrongs cannot be made bases to justify an illegal action. The post of Sub Engineer BPS-11 comes in the purview of Public Service Commission according to the Public Service Commission Ordinance and ESTA Code, (Copy of the Public Service Commission Ordinance and the concerned rules of the ESTA code and recruitment policy is attached as **ANNEXURE-V, VI & VII**), therefore, the then Chief Engineer was not competent to appoint the Appellant. Similar case of Sub Engineer vide Service Appeal No.1331/2013 was dismissed by honourable court vide judgement dated 30/05/2016 **Annexure-VIII.**

Upon the direction of the August Supreme Court and on completion of legal formalities, the appellant was removed from service. It is pertinent to mention that the department had already initiated proceedings against the then Chief Engineer and other DSC members (Copy of letters in this respect are attached as **ANNEXURE-IX**).

(3) incorrect. On the direction of apex court order dated 15.1.2014 and subsequent reminder dated 07.2.2014 proper show cause notice issued to all illegally appointees including the appellant. As the appellant was illegally appointed contrary to all prevailing rules/procedure i.e. recommendation of Public Service Commission, test interview and advertisement. There was no weight age in his reply of show cause notice hence terminated.

(4) Incorrect. In the advice of the Establishment Department it has clearly been mentioned that appointment is in the purview of Public Service Commission (**ANNEXURE-X**). In light of advice of the Establishment Department, Public Service Commission Ordinance, ESTA Code, recruitment policy, after giving opportunity of show cause notice the appellant was terminated being illegal appointed. Further to above in light of advice of Establishment Department proceeding against the than Chief Engineer and other DPC members has been initiated.

(5) Denied as drafted. A show cause notice was issued to the appellant but the same was never replied in stipulated time, hence the termination order was validly issued, as the appellant was not come in the category of civil servant. The appellant was illegally appointed and the department was in the obligation to take action, on the direction of the August Supreme Court, against such illegal appointees, in letter and spirit.

(6) Pertain to record as no comments.

(7) Correct to the extent that the case was remanded by the Service Tribunal to the department for giving opportunity to the appellant for departmental appeal and personal hearing which was accordingly given to the appellant in the stipulated period.

(8) Denied as drafted. The appellant including the other 31-Nos illegally appointed from the list provided by the Political Secretary to then Chief Minister, contrary to all prevailing rules without recommendation of Public Service Commission, test interview and advertisement. There was no merit/weight age in reply of the appellant, hence departmental appeal was rejected by the appellant authority on merit and according to rules.

GROUNDS

(1) Incorrect. The impugned order has been issued on the direction of Supreme Court of Pakistan for finalizing action against all such illegal appointees. Fact is that the appellant was illegally appointed without Advertisement, test, interview and merit and without recommendation of Public Service Commission.

(2) Incorrect. No discriminatory treatment has been meted out with the appellant. Since promulgation of Public Service Commission Ordinance all the posts of Sub Engineer have been filled through the recommendation of Public Service Commission. One wrong if made in the past cannot be referred as precedent for doing another wrong. According to ESTA Code Advertisement for any vacancy is compulsory, statement of the appellant is totally false and may be considered as confessional statement of wrong doing in case of his recruitment.

(3) Incorrect. The appellant was not a regular civil servant appointed through back door. As such the appellant service cannot be protected.

(4) Incorrect. The appellant was illegally appointed by unlawful authority contrary to all prevailing rules/procedures and was not come in category of civil servant. As such the appellant service cannot be protected.

(5) Incorrect. There is no malafide of the respondent. The respondent take action correctly in the light of direction of the Apex Court against the appellant who was illegally appointed, contrary to all prevailing rules/procedures.

(6) Incorrect. The appellant misconceived the judgment of Apex Court. The appellant was illegally appointed without the recommendation of Public Service Commission, test/interview and advertisement. In light of direction of Apex Court dated 15.1.2014 and subsequent reminder dated 7.2.2014 to take action against illegally appointees the appellant being illegally appointees was terminated.

(7) As above.

(8) Incorrect. Illegally appointees has create no legal right to retain in service. As one wrong cannot be justified for another wrong. The appellant was given opportunity of show cause notice, but the appellant failed to produce legal documents regarding his legality of his appointment.

(9) Incorrect. The appellant was illegally appointed contrary to rules and procedures without recommendation of Public Service Commission as the appointment of Sub Engineer come in purview of Public Service Commission Ordinance, ESTA code and recruitment policy. The illegal appointees has no legal rights to retain in service.

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

In this case article 25 of the constitution has been violated by not giving equal right of opportunity to the citizen of the Khyber Pakhtunkhwa and FATA having the requisite Qualification zonal allocation formula has been violated. Appointment of the appellant is without lawful authority and of no legal effect. It is therefore humbly prayed that in view of the above written reply, the appeal of the 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. 332/2016

Mr. Ishtiaq Ahmad S/O Tehmeedullah
Ex-Sub Engineer, PHE Divn: Mardan. ..... (Appellant)

Versus

1. Chief Secretary to Govt: of Khyber Pakhtunkhwa Civil Sectt: Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa Public Health Engg: Department Peshawar.
3. 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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re: Service Appeal No. 332/2016

Ishtiaq Ahmad *Versus* **Government of KPK & 2 Others**

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Appellant

Through

Ijaz Anwar
&
Yousaf Khan,
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

(1)

In Re: Service Appeal No. 332/2016

Ishtiaq Ahmad

.....Appellant

Versus

Government of Khyber Pakhtunkhwa & 2 Others

.....Respondents

REJOINDER TO PARAWISE COMMENTS FILED BY RESPONDENTS-1 TO 3

Respectfully Sheweth,

The Appellant humbly submits as under:

Reply to the preliminary Objections:

1. Misconceived, frivolous, thus, denied. The Appellant has got very strong cause of action.
2. Denied. Instead it is the Respondents who have been estopped by their own conduct as the Appellant has been appointed and kept remained in service for more than five years.
3. Denied. Appeal is in proper form, thus, has been admitted for full hearing.
4. Denied for being misconceived. The Appellant *locus standi* infatal.
5. Frivolous, thus, denied. As the allegations in the Show Cause Notice with all due respect pointing towards the short comings of the Respondents.
6. Denied. In fact it is the respondents who are dragging the appellant in the courts of law.
7. All necessary parties have been arrayed as necessary party.
8. The Appeal is in accordance with law and within time, hence, the objection is not maintainable.
9. Misconceived, thus, denied. Under the law and the orders of the Hon'ble High Court and Apex Supreme Court of Pakistan per se suggest that no Court or Forum other than this Hon'ble Service Tribunal is to entertain this Appeal.

Brief History:

Infact some of the *ad hoc* employees of Public Health Engineering Department had challenged their termination *vide* W.P No. 271/2013 which was dismissed. Their C.Ps Nos. 2026, 2029 of 2013 against the Hon'ble Peshawar High Court were also dismissed. However, at the time of losing legs before the apex Court, the Petitioners Counsel tried to persuade purportedly of discrimination by stating in general terms that there were certain other illegal appointments made by the department against which no action had been taken yet. On which the Supreme Court, obviously, as a matter of principle observed that, if that be a case, then action was ought to be taken by the department against such appointments.

On arrival of the aforesaid judgment of the Supreme Court, the learned Secretary PHE Department sought the guidance, *for further course of action*, from the Secretary Establishment and Administration Department *vide* letter No. SO (Estt) PHED/1-90/2012-13 dated 22-1-2014. In response, the E&A Department *vide* letter No. SOR-V(E&AD)/15-3/09 dated 30.01.2014 **(Annexure-I)**advised that necessary action be taken and in case the appointments proved illegal the Hon'ble Supreme Court of Pakistan may be apprised accordingly. Moreover, *the Department should also initiate disciplinary action against the officers who were involved in the illegal appointments and brought them to the justice*. That instead of acting upon the advice of the E&A Deptt, to take action against the officers who have allegedly made illegal appointments, if there be any, the Respondents under fear of being proceeded for their misdeed, they out of panic have with great haste & against the advice of E&A Department issued Show Cause Notice in back date to the appellant and without any enquiry and issuance of charge sheet / statement of allegation and mandatory opportunity of hearing the Appellant was terminated. Here it is worth to add that the said observation of the Apex Court in case of aforesaid "*ad hoc* employees" have been subsided by the August Supreme Court of Pakistan dated 28.04.2014 in C.P No. 551/2014 by the Bench headed by the then Honourable Chief Justice Tassaduq Hussian Jilani where-in it was observed that:

"Tassaduq Hussain Jillani, CJ:- *Petitioner are civil servants and they challenged the order terminating their service in a Constitution petition which stands dismissed vide the impugned order mainly on the ground that the said petition was not maintainable in view of Article 212 of the Constitution read with Section 4 of the Service Tribunal Act, 1973. The only ground being taken by the learned High Court to invoke Article 199 of the Constitution is that the competent authority in the department had passed the order of termination of petitioners' service pursuant to a judgment of this Court and the learned Service Tribunal may be diffident to decide the case independently and in accordance with law.*

2. *We are afraid, the apprehension of the petitioners is misconceived. In the event of filing the appeal, the Service Tribunal shall decide the appeal as mandate in law. Disposed of in terms noted above".*

To put the record straight, the following fatal irregularities have been committed by the Respondents which has made the impugned Order *void ab initio*, without lawful authority and of no legal effect.

a) It was binding upon the Respondents to act upon the advice of the E&A Department, where he did not act in accordance with the said advice and for *malafidely* reasons to escape or save either themselves or an officer of their rank and file, terminated the Appellant with undue haste and no pre-requisite

enquiry and other pre-requisites The Appellant was terminated in a very harsh, abrupt and unlawful manner.

b) The Respondent-3 while terminating the Appellant on 14.02.2014, not even waited for completion of the period of 15 days for reply which was to be over by 20.02.2014.

c) The Respondent-3 without observing legal requirements of conducting proper enquiry into the case and to establish the charges, if any, against the Appellant and giving him opportunity of personal hearing etc. to the Appellant terminated him.

d) In spite of the fact that the Appellant was appointed by the Competent Authority on recommendation of the Departmental Selection Committee and he was having a continuous service of five and a half years at his credit, terminating his Services in such a slip- shod manner is unjust.

e) As conducting of inquiry & giving fair and proper opportunity of hearing is not only a formality but a mandatory requirement of law as laid down in 2000 SCMR 1743.

f) In this way the terms and conditions set with the Applicant at the time of his appointment were utterly disregarded.

g) The order of termination was illegal as it was not specified therein that under what Law/ Rules the Authority could resort to the penalty of 'termination' *as there is no provision of termination in the disciplinary Laws where the Appellant could be made to suffer for fault / irregularity, if any, on the part of the Respondent Department.*

h) As regards the direction of the August Supreme Court of Pakistan, the Respondent-3 himself made a statement before the August Supreme Court of Pakistan and then made direction of the August Supreme Court of Pakistan a pedestal for the impugned action against the Appellant while incorrectly interpreting & applying the general order of the Apex Court with regard to illegal appointments in the Respondent Department upon the Appellant.

i) In this connection a reference is made to the order passed by the Hon'ble Supreme Court of Pakistan dated 28.04.2014 in C.P No. 551/2014 where in the Apex Court itself has clarified / interpreted its direction in the following words *"apprehension of the Petitioners is misconceived. In the event of filing the Appeal, the Service Tribunal shall decide the appeal as mandated in law".*

j) No action has been taken against the purported, alleged and illegal appointments if any, as advised by the Establishment and Administration Department.

On The Facts:

Para-1. Not Correct while para 1 of the appeal is correct. The Appellant was highly skilled and qualified appointed against the regular vacant post of Sub

Engineer by the competent authority after fulfillment of all the requisite formalities of test / Interview etc. The Appellant had no access either to any politician or to the Chief Minister Secretariat to involve them for his recruitment. Therefore, the Appellant denies his relevancy to the list and believes that the list is not genuine and has been fabricated by the department to prove the appointments as politically motivated. The list therefore, needs to be verified from the concerned authority / office as it is an unattested Photostat copy, hence, cannot be accepted in its present shape. Moreover, after abolition of C&W & PHE Departments and their merger into a single organization of W&S Department vide W&S Department order NO. SO(E) W&S(C&W)13-2/2000 dated 05-11-2001**(Annexure-II)** and Notification No. SOEW&S/13-1/77 dated 22-03-2005**(Annexure-III)** and Establishment Department Notification dated 02-11-2002(**Annexure-IV**) as well as under section 6(b) District Government Rules of Business 2001 (**Annexure-V**), the posts in the department from BPS-1 to BPS 15 were declared as District Cadre Posts. Hence it remained no longer in the preview of Public Service Commission to fill in such post through them.

Para-2-3. Not correct. In fact, the Appellant in his appeal has not pinpointed any wrongs on the part of officers rather he has simply stated that way and procedure adopted by the Deptt in the appointment of the others, was incidentally adopted in appointment of the appellant. Moreover, after devolution it remained no more the responsibility of the PSC to make appointment for District Govts. In this connection reference is made to the W&S Notification Dated 22.03.2005 attached as **(Annexure-III above)** whereby the competent authority has declared the provincial cadre post from BPS-1 to BPS-15 of the Department as district cadre posts. Therefore, the E&A Deptt, vide letter No. SOR- V (E&AD) 1-368/2005 (SE) Dated 02.05.2007 (**Annexure-VI**) with drawn the requisition made by the Deptt for filling in the 20 vacant post of Sub Engineers.

From the aforementioned notification Dated 22.03.2005 it is clear that the post of Sub Engineers stenos, DEOs etc of District Government Rules of Business 2001 were declared as district cadre post and under section 6(b) of the District Government Rules of Business 2001, DCOs were competent to appoint and regulate their post, appointment, management and other affairs. However, by the time when these instructions become operative, the district / local Governments have consumed their tenure and fresh elections were not held. Since, the provincial Government has already devolved the posts to the District Governments which were not in existence and also the provincial Govt. has not revoked the above notification dated 22.03.2005.

Moreover, being newly born, the District Governments having no capacity/ strength could not be able to handle the establishment matters entrusted to them. In the circumstances and being a parent organization, the officers of respective Chief Engineers have made the subject appointments, after authorization by the competent authority *vide* Notification dated 30.04.2008 (**Annexure-VII**) so as to avoid breakage in their functions as they were responsible to perform these functions. Moreover, the Secretary PHE (Respondent No.2), while reinstating two of the terminated employees i.e. Mr. Muhammad Jamil, Steno (B-12) PHE, Tank and Suleman Draftsman B-11, vide his Order No. SO(Estt)PHED/1-90/2013-14/Volume-II dated 09.05.2016 and even No. dated 10-08-2016 **(Annexure-VIII & IX)** respectively has mentioned that they were appointed by the then DCO, Tank by virtue that he had the powers of appointing authority in respect of officials in BPS-1 to BPS-15 u/s 6(b) of the District Government Rules of Business, 2001 from which it appears that the worthy Secretary is convinced that these posts belong to District cadre. However, it is strange that the Secretary PHE is considering the post of the Appellant i.e. Sub Engineer as provincial cadre Post. Moreover, the case of the Sub-engineers Service Appeal No. 1331/2013 dismissed by this Hon'ble Tribunal vide its Judgment dated 30.05.2016, being a case of promotion has no relevancy to the case of the Appellant as the case of the Appellant pertains to appointment.

As stated in the brief history, the Supreme Court has never directed to terminate the Appellant. It is also wrong that legal formalities have been completed in the case of termination of the Appellant. As the termination affected without fulfillment of the legal formalities of inquiry, issuance of charge sheet and providing the opportunity of personal hearing etc. Instead of completion of legal formalities only a Show Cause Notice was issued and that too in a back date and the Appellant was terminated unlawfully and unfairly in utter disregard to the instructions of E & A Department to the PHE Department vide their advice letter dated 30-01-2014 **(Annexure-I above).** As regards, the initiation of departmental proceedings against the officers, it is not correct. As without a simple letter by the Chief Engineer Respondent No.3 to the Secretary PHE no further efforts on the part of Respondents towards the logical end of the case exist/ available on record. In fact it was binding upon the department to conduct detail inquiry, to establish the charges & to take disciplinary action against the culprits, if any, but all in vain.

Para-4. Not correct. Advice of E&A Department sought for earlier in the matter was conveyed to respondents vide letter dated 30-01-2014 (Annexure-I

above) which was not acted upon in its letter and spirit. The second advice of the E&A Department bearing No. SOR-V(E&AD)15-3/2009 dated 17.03.2014 (Annexure-X) pertains to the case of Sub-Engineers and not to the post of Sub Engineer possessed by the Appellant. Also in the second advice the E&A Department has not given any direction with regard to the termination of the Appellant. Rather, in the advice, the department has been directed to initiate disciplinary action against the responsible officers. Moreover, the second advice is contradictory to the earlier advice issued by the E&A Department on 30.01.2014**(Annexure-I above)** to the Notifications dated 22-03-2005 **(Annexure-III above).** Besides the second advice of E&A department, also over rules the section 6(b) of the District Govt. Rules of Business 2001 which provides that DCOs were the appointing authorities for the district cadre posts which fact has also been admitted by the Secretary PHE Respondent No. 2 in his reinstatement orders mentioned above. Also no disciplinary proceedings can be initiated against the responsible officers if any. The Respondent No.3 wrote only a letter to the secretary of the department to take disciplinary actions against the officers. The Secretary Office moved a summary to the Minister PHE proposing therein action against officers through NAB who made preliminary investigation into the matter with no further action by the NAB or by the department against the officers which shows that there was no illegality whatsoever in the process of appointment of the appellant. In the enquiries conducted by the Anti-Corruption establishment are also silent in this regard no irregularity/ illegality in the process of the appointment could be proved, hence filed.

Para-5. Not correct, hence, denied. The Show Cause Notice was issued in a back date as on receipt of the notice, the given time for reply was expired even then the Appellant submitted his Reply to the Show Cause Notice but his services were terminated on 14.02.2014 in a hurry, harsh and illegal manner. If the Appellant was not a regular employee then the Act of 2009 was applicable to him. Also no inquiry, whatsoever, could be held by the department to prove the appointment of the Appellant as illegal, therefore, it is not justified to say that his appointment was illegal. The apex Court has not given any direction for termination of the Appellant.

Para-6. The Respondents have offered no comments.

Para-7. The Hon'ble Tribunal had remanded the case to the Appellate Authority of the department (Respondent-2) vide its direction on 30.12.2015 with direction to decide the departmental appeal of the Appellants strictly in accordance with law / rules within two months. In case the Appellate authority found that any of the Appellants had been unlawfully terminated

or terminated by mis-conceiving order of the August Supreme Court of Pakistan dated 15.01.2014 and facts of particular case and leads the authority to accept such an appeal, the said decision is required to be taken with full justification and shall have to be intimated to the Registrar of August Supreme Court of Pakistan. The Respondent No.2, therefore, called for all the 32 terminated employees on 08-02-2016 for personal hearing just to complete the formality as it is not possible to hear the stance of all the Appellants at a time by the authority. The Respondent No. 2 thus, just to fulfill the formality, rejected the Appeals through a non-speaking order.

Para-08. Misconceived, thus, denied, as stated in the earlier paras, the Appellant has not approached to any political figure for his appointment. The list shown to have been provided by the then Political Secretary is fake and has been fabricated by the department to prove the appointment as politically motivated whereas after devolution, Public Service Commission has to play no rule in the appointments against the posts borne on District Cadre. The Appellant was duly qualified and appointed on merit against the regular vacant post of Sub Engineer after completing all the requisite procedure of test, interview etc. as and when asked by the department. It is not correct that there was no weightage in reply of the Appellant. Infact no time for reply was given, therefore, not only the prevailing rules but the natural justice and fundamental rights protected under the Article 25 of the Constitution were violated.

Grounds:

(A) Not correct. The Supreme Court of Pakistan has never given the direction to terminate the Appellant as the Appellant duly qualified and after necessary test / interview etc. he was appointed as Sub Engineer by the competent authority. There has been conducted no inquiry to prove the appointment as illegal. After devolution it remained no more purview of the Public Service Commission to make recommendations to the District Governments for appointments which fact has been admitted by the Secretary PHE (Respondent No. 2) in the reinstatement orders of two of the terminated employees.(Annexure- VIII & IX).

(B) Not correct. As all such post were borne on the district cadre. This fact has also been admitted by the Secretary PHE (Respondent No.2) in his orders of reinstatement mentioned above. Hence, it there are clear contradictions in Respondents reinstatement orders and dismissal/ termination orders. Moreover, the Appellant has not pinpointed the wrong doings in the department rather he has mentioned that, as a matter of practice, the department for the last 15 years

are so, has been making appointments through the same procedure as incidentally has been adopted in the appointment of the Appellant.

(C) The Appellant being duly qualified was appointed against the vacant post of Sub Engineer on merit by the competent authority. After completing the prescribed probation period of two years he became a regular civil servant and his services were liable to be protected under the Civil Servant Act, 1973.

(D) Not correct. The Appellant was legally appointed on merit by the competent authority as he was duly qualified for the post and cleared / gone through all the formalities of test / interview etc. As per the terms and conditions of the appointment letter and successful completion of the probation period of two years, the Appellant became a regular Civil Servant of the department as per the prevailing rules, therefore, his services were protected under the Civil Servant Act, 1973. Besides, no departmental inquiry could be conducted to prove the appointment as illegal. Through enquiries conducted by the NAB & Anti-Corruption establishment, appointments could not be proved as illegal.

(E) Not correct. As the action of the Respondent No.3 is based on mala fide, as the mandatory requirements of law, detailed in below were not completed while terminating, the Appellant:-

(i) No Charge Sheet / Statement of allegations were issued.

(ii) No inquiry was conducted.

(iii) A Show Cause Notice was issued in the back date meaning thereby that no time for reply could be provided.

(iv) Opportunity of personal hearing was not given.

(v) Termination order was issued in a hurry, harsh, abrupt and unlawful manner/.

(vi) The remarks of august Court were misconceived.

(vii) The Respondent No.3 made a complaint to the Supreme Court himself and then made the general remarks of the Court as basis for termination of the Appellant, thus, acted as a complainant, counsel and judge in the same case which is an utter violation of the norms, law of the land and natural justice.

(viii) The Respondents have attached a fake, false and fabricated letter along with their comments just to show that the letter was received from the then Political Secretary to Chief Minister Khyber Pakhtunkhwa to prove the appointments as illegal.

(ix) The Show Cause Notice and termination orders of about 50% employees issued by the Chief Engineer (South) (Respondent-3) for which he was not competent as these employees were not working under him but were under the jurisdiction of Chief Engineer (North).

(F) Not Correct as the Judgment of the august Court has not been misconceived by the Appellant rather it has been misconceived by the Respondents as cleared by

the August Court in the second verdict on 28.04.2016. The Appellant duly qualified and after going through the requisite requirements of the department such as test, interview, etc. was appointed on merit against the regular vacant post of Sub Engineer . After an unblemished and continued service of $5^{1/2}$ years, the Appellant was illegally terminated on 14.04.2014.

(G) No comments have been offered by the Respondents.

(H) Needs no rejoinder as explained above except that the Appellant has earned annual increments, his proper service book, ACR & personal file were maintained..

(I) Needs no rejoinder as already explained above except that if the appointment of the Appellant was illegal then necessary action against the responsible officers should have been initiated / taken by the competent authority. Since, no such action has been taken which shows that appointment was legal. The Department, through enquiries conducted by the NAB & Anti-Corruption establishment could not find any irregularity or illegality in the appointment of the appellant.

(J) Needs no rejoinder.

No violation of the Article 25 of the Constitution is involved in the case as not only the Appellant but he along with 32 others belonging to different Districts, Zones and FATA were appointed on merit against the regular vacant posts by the competent authority after conducting necessary test and interview etc. The Respondents while terminating the Appellant unheard and without inquiry / charge sheet etc. have violated Article 10 of the Constitution under which fundamental rights of all citizens are protected.

Prayer: Considering the above submissions, it is, therefore, most respectfully prayed that by way of acceptance of this Appeal, this Hon'ble Tribunal may please set aside the impugned Order of the termination and reinstate the Appellant with all back benefits.
Or any other relief deemed appropriate by this Hon'ble Tribunal under the circumstances may also be granted.

Appellant

Through

Ijaz Anwar
&
Yousaf Khan,
Advocates, Peshawar

AFFIDAVIT

As per instructions of my client, it is declared on oath that the contents of this Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Advocate

(10) Annexure – I

Immediate/Confidential

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: 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.

Yours faithfully,

(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Annexure- II

(11)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the November 05, 2001.

O R D E R

NO.SO(E)W&S(C&W)13-2/2000:- Consequent upon the merger of defunct Public Health Engineering, Physical Planning and Housing and Communication & Works Departments into Works & Services Department vide Notification No.SO(O&M) E&AD/8-16/2000, Dated 01-08-2001, the Governor NWFP is pleased to approve the formation of its two establishments of Frontier Highways Authority and Chief Engineer Works & Services, and accordingly the offices of Chief Engineers North and South (C&W Department) and Chief Engineer PHED stand abolished with immediate effect.

BRIGADIER (RETD)
SAFDAR HUSSAIN AWAN
SECRETARY

ENDST. NO.SO(E)W&S(C&W)13-2/2000Dated Peshawar, the Nov 05, 2001.

Copy forwarded to the:-

1) All Administrative Secretaries in NWFP, Peshawar.
2) Secretary, NWFP, Public Service Commission, Peshawar.
3) Secretary to Governor, NWFP, Peshawar.
4) HQ PMCS C/O HQrs Engineers 11 Corps Peshawar Cantt.
5) Accountant General, NWFP, Peshawar.
6) All Additional Secretaries/Deputy Secretaries and S.Os in Works & Services Department.
7) All DCOs in NWFP.
8) All heads of Attached Departments in NWFP.
9) All heads of Autonomous/Semi Autonomous Bodies in NWFP.
10) The Registrar, Peshawar High Court, Peshawar.
11) Director Information NWFP, Peshawar.
12) Manager, Government Printing Press, Peshawar.
13) All P.Ss to Provincial Ministers, NWFP, Peshawar.
14) P.S. to Secretary W&S Department.

ISO A-G, PR. Peshawar

P F
08/X/01

(SYED HIDAYAT JAN)
SECTION OFFICER (ESTABLISHMENT)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

(12)

Dated Peshawar, the March 22, 2005

Anx. III

NOTIFICATION

No.SO(E)W&S/13-1/77: The competent authority is pleased to order the declaration of provincial cadre posts of BPS-1 to BPS-15 of the Works & Services Department as district cadre posts with immediate effect on the following terms and conditions:-

1) Permanent transfer to the districts will be made on domicile and seniority basis.

2) In case the personnel of that particular district being more than the sanctioned strength, the deployment will be on the basis of seniority and the junior most over-flow will be posted temporarily to the other districts of the province till such time vacancies occur in the districts of their domicile.

3) All such employees of the above status working in FATA but belonging to settled districts will be adjusted as per their seniority in the relevant cadre and the over-flow will continue working in FATA till such time vacancies occur in their districts of domicile.

4) The domicile of the female officials will be counted under the wedlock policy and such employees will be given one time, irreversible choice to opt for the districts of their spouse or their own. In case of spouse being a government employee and his transfer to another district, inter-district transfer of the female officials will be allowed subject to availability of vacancy in the desired district.

5) Subsequent to the permanent transfer of all BPS-15 and below staff to the districts, further transfers and service matters including appointments, within the districts, shall be made by the District Government in light of the District Government Rules of Business, 2001.

6) All cases of transfers from one district to another will be decided and ordered upon by the Secretary W&S Department as per rules / policy.

7) Seniority for the purpose of promotion to the posts of provincial cadre will be maintained at Secretariat level.

It is further to mention here that the district governments will deal with the cases of these employees as per clause 6(B) of District Government Rules of Business. They (the District Govt.) will also adopt a mechanism in such a manner that their inter-se-seniority is not affected.

SECRETARY

Attested

(57) A

No. SO(E)W&S/13-1/77: Dated Pe...

Copy forwarded to the:-

1) Accountant General NWFP Peshawar.
2) Secretary to Chief Minister NWFP, for information.
3) Chief Engineer, Works & Services Peshawar.
4) All District Coordination Officers in NWFP.
5) Chief Engineer (FATA), W&S Peshawar.
6) All Executive District Officers W&S in NWFP.
7) PS to Secretary W&S Department.
8) O/O File.

Ghafoor Shah

(GHAFOOR SHAH)
SECTION OFFICER (STT-II)

25/3

9c

It is
governments will
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District Govt.) will
their inter-se-senior

Copy For...

Annex IV

(13)

GOVERNMENT OF N.W.F.P.
ESTABLISHMENT DEPTT.

NO.SOS.POOL(E&AD)1-10/2002

Dated 08.4.2006

To

The Secretary to Govt. of NWFP,
W & S Department.

Subject: ADJUSTMENT OF SUB ENGINEERS IN W&S DEPTT, NWFP PESH.

Dear Sir,

P-392/c

I am directed to refer to Local Govt Deptt letter No.SO(LG-I)4-116/Pool/05 dated 16.02.2006 on the subject noted above and to state that posts in B-1 to L.15 in W&S Deptt have been declared as district cadre posts vide Notification No.1(Estt)W&S/13-1/77 dated 22.3.05. The district cadre posts are outside the purview of Public Service Commission vide Estt Deptt Notification dated 02.11.2002 (copy enclosed). Neither W&S Deptt was required to place requisite before the Public Service Commission nor the Public Service Commission was required to advertise these posts.

Keeping in view the above mentioned position, I am directed to request you to kindly withdraw your requisition from the Public Service Commission and intimate the district where these posts are lying vacant so as to adjust the surplus Sub-Engineers available in the Surplus pool against these vacant posts as per section-11A of the NWFP Civil Servant Act, 1973 and Surplus Pool Policy.

Yours faithfully,

(AKHTAR SAEED TURK)
Section Officer (S.Pool)

Enc: as above

Copy to the:-

1. Secretary, NWFP Public Service Commission, Peshawar w.r.t. his advertisement dated 27.10.2005 for similar action please.
2. Section Officer (E), Local Govt. Deptt. NWFP for information.

Section Officer (S.Pool)

(84) V

Ann : V

District's Rules of Business

General

1. Short title and commencement.

(1).These rules may be called the North West Frontier Province District Government Rules of Business, 2001.
(2) It shall come into force at once.

2. Definitions.

(1) In these rules unless the context other-wise requires.
1. "body corporate" means a body having perpetual succession and a common seal with power to sue and be sued:
2. "budget" means an official statement of income and expenditure for a financial year:
3. "business" includes all work done by a local government:
4. "component" means the officers mentioned in column 2 of schedule 1 to the Ordinance:
5. "convenor" means the convenor of the Council concerned.
6. "Federal Government" means the Government of Islamic Republic of Pakistan.
7. "financial year" means the year beginning from the 1st day of July and ending on the 30th day of June next following.
8. "Government " means the Government of the North West Frontier Province:
9. "Governor" means the North West Frontier Province:
10. "Ordinance" means the North West Frontier Province Local Government Ordinance,2001(NWFP Ord, XIV of 2001)
11. "Schedule" means a Schedule to these rules:
12. "Secretariat" means the Secretariat of Council: and
13. "Section" means a section of the Ordinance.
(2) Words and expressions used in these rules but not defined shall have the same meanings assigned to
them in the Ordinance the North West Frontier Province Government Rules of Business, 1985 or any
other Provincial law for the time being in force.

3. Composition of Departments and allocation of Business.

1. The composition of the offices and groups of officers shall be the same as provided in section 14 of the Ordinance read with the First Schedule thereof, and may be varied in accordance with the provisions of the aforesaid section.
2. The business of the offices shall be distributed amongst the Department s in accordance with Schedule-1:
Provided that any particular subject or matter of an office may be transferred from , or reallocated to an office, in accordance with the section 14.
3. A Zilla Nazim shall be assisted by the District Coordination Officer.

4. Organization of Officers.

1. The Organization of various offices shall be the same as provided in the Ordinance or, where the Ordinance has not so provided as determined by Government.
2. The Executive District Officer shall by means of standing orders distribute the work of the officers subordinate to him.

5. Secretariat of District Government.

1. There shall be a secretariat of the District Government headed by the District Coordination Officer and comprising of the decentralized departments or groups of departments as shown in the First Schedules to the Ordinance .
2. Each decentralized group of departments shall be headed by an Executive District Officer appointed or nominated by Government for the purpose.
3. Each Executive Officer shall be responsible to Zilla Nazim through the District Coordination officer and shall channelize his correspondence through him.

6. Deputation of civil servants and power of District Coordination Officers.

1. The civil servants posted in the decentralized departments shall continue to be civil servants for all intents and purposes of the relevant civil servants laws and the rules framed there under with the modification that.
(a) all civil servants in BPS-16 to BPS-20 shall be appointed by Government or the Federal Government as the case may be and posted decentralized Department from time to time.
(b) the District Coordinating Officer shall have the powers of the appointing authority in respect of the officers/officials in BPS-1 TO BPS-15:
Provided that no vacancies are to be filled in by way of direct recruitment or transfers and the officers/officials of the surplus pool are to be absorbed /adjusted against the vacancies.
2. No civil servant shall be transferred from his post in a district except under the orders of the Government.
Provided that the District Coordination Officer, or as the case may be, the Executive District Officer, may suo moto or on the initiation of the Nazim initiate disciplinary proceedings against a civil servant for his inefficiency or malpractices and submit the outcome of the proceedings to competent authority for decision.
3. In disciplinary matters, the Zilla Nazim, in case of officers in BPS-19 and District Coordination Officer, in the case of officers in BPS-16 to BPS-18, shall refer the cases to the competent authority for decision under the North West Frontier Province . Removal from Service (special Powers Ordinance 2000(N.W.F.P Ord.No.V of 2000), through the administrative Secretary concerned.

7. General procedure for disposal of business.

1. The channel for obtaining or transmitting the orders of the Zilla Nazim is the Executive District Officer or an officer specifically authorizes in this behalf by the District Coordination Officer.
2. All orders shall be passed in writing where a verbal order is given .it should be reduced to writing at the earliest opportunity by the officer receiving it.
3. If any doubt or dispute arises as to the Department to which a case properly pertains, the matter shall be referred to the District Coordination Officer for decision.
4. Detailed instructions for the disposal of business in the District administration shall be issued by the District Coordination Officer.
5. If any order happens to contravene a law, rule or policy, it shall be the duty of the nest below officer to point out this to the authority passing the order.
6 While submitting a case for the orders of the Zilla Nazim ,it shall be the duty of the Executive District Officer/District Coordination Officer to suggest a definite line of action.

8. Office administration and record .

The manual of instructions for Provincial Civil Secretariat issued by the Chief Secretary of Government from time to time shall , mutates mutandis , be applicable to the secretariat of the District Government and the District Coordination Officer shall have the powers to issue instructions in addition there to and not in derogator of the instructions already issued.

9. Official language.

Attested

No.SOR-V(E&AD)1-368/2005(SE)
Dated Pesh: the 2nd May, 2007.

(16)

Ann: VI

NWFP Public Service Commission
03 MAY 2007
DIARY NO. 2543

To

The Secretary,
NWFP Public Service Commission,
Peshawar.

SUBJECT:- REQUISITION FOR FILLING IN THE 20 VACANT POSTS OF SUB-ENGINEERS (B-11) IN THE WORKS & SERVICES DEPARTMENT.

Dear Sir,

I am directed to refer to the letter of Works & Services Deptt: bearing No.SO/W&S/11-268/2005 dated 26-09-2005 (copy enclosed) on the above cited subject and to state that the requisition made by the Works & Services Department for filling in the above captioned 20 posts of Sub-Engineers (BS-11) may kindly be considered as withdrawn.

Yours faithfully,
2/5/07
(MUSHARAF KHAN)
SECTION OFFICER (Reg-V).

Encls: (As-above).

Endst: of even No & Date.

Copy for information is forwarded to:

1. Secretary to Govt. of NWFP Works & Services Department, Peshawar.
2. Addl: Secretary (Estt), Establishment Deptt: Government of NWFP.

pl. put up the position
D/R. 8/5 DS DS-IX

SECTION OFFICER (Reg-V).

Attested

Ann VII

(19)

GOVERNMENT OF N.W.F.P.
WORKS & SERVICES DEPARTMENT
Dated Peshawar the April 30, 2008

NOTIFICATION

No.E&A/W&S/11-23/2001. In continuation to this deptt: Notification of even No. dat 24.01.2002, the competent authority has been pleased to direct that the postings & transfers personnel from BPS-1 to 16 PS-16 henceforth will be carried out by the Chief Engineer W& & Chief Engineer PHE W&S in the respective cadres of W&S & PHE W&S as the case may in line with the Govt: policy and completing all codal formalities. However the postings/transfe of officers in BPS-17 & above shall rest with the W&S Deptt:

SECRETARY TO GOVT: OF NWFP
WORKS & SERVICES DEPARTMENT

Endst: No.E&A/W&S/11-23/2001 Dated: 30.04.2008.

Copy forwarded to the:-

1. Chief Engineer, Works & Services Peshawar.
2. Chief Engineer PHE W&S Peshawar.
3. All Deputy Secretaries, Works & Services Department, Peshawar.
4. Section Officers (Estab-I & II) Works & Services Deptt:
5. P.S.to Secretary, Works & Services Deptt:
6. P.A.to Additional Secretary Works & Services Deptt:

(MUHAMMAD SIYAR KHAN)
SECTION OFFICER (GENERAL)

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

(18)

Dated Peshawar the May 09, 2016 Annx VIII

ORDER

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

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

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

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

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

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

SECRETARY

ENDST: NO & DATE AS ABOVE:

Copy forwarded for information & necessary action to the:-

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

SECTION OFFICER (ESTT)

Annx. IX

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

(19)

Dated Peshawar the, August 10, 2016

ORDER

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

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

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

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

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

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

SECRETARY

ENDST: NO & DATE AS ABOVE:

Copy forwarded for information & necessary action to the:-

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

SECTION OFFICER (ESTT)

Attested