12.07.2017 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saddique, Administrative Officer for present. Arguments heard. To come up for order on 24.07.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Ahmad Hassan)
Member

12. 24.07.2017 Learned counsel for the appellant present. Learned Deputy District attorney on behalf of respondents present. Vide our separate judgment of today placed on file bearing appeal No. 289/2016 titled Amir Muqtada Qureshi Ex-Sub Engineer Versus The Secretary, Public Health Engineering Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others, the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.07.2017

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

11.04.2017

Counsel for the appellant present. Mr. Muhammad Yasin, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents also present. The present appeal was partially heard by D.B comprising of Chairman and Mr. Muhammad Amin Khan Kundi Learned Member (Judicial) but today the said D.B is not available. The office is directed to put up the instant appeal before a D.B in which both the above mentioned officers are sitting. To come up for arguments on 08.05.2017 before D.B.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

8.05.2017

Clerk of counsel for the appellant and Addl. AG for the respondents present. Due to strike of the bar counsel for the appellant is not available. To come up for final hearing for 24.05.2017 before D.B.

Member

Chairman

24.05.2017

Counsel for the appellant Mr. Muhammad Siddique, Admin Officer alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Gul Zeb Khan)
Member

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.

Appellant Deposited
Security & Process Fee

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. **321/2016**

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. Murtaza Ali presented today by Mr. Muhammad Asif Yousafzai 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. 321 /2016

Murtaza Ali V/S PHE Department, KPK.

.....

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S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-05
2.	Copy of Appointment Order	- A -	06
3.	Copy of Medical Fitness Certificate.	- B -	07
4.	Copy of Arrival Report.	- C -	08
5.	Copy of Service Book	- D -	09-14
6.	Copy of Judgment	- E -	15-16
7.	Copy of Show Cause Notice	- F -	17-18
8.	Copy of Reply	-G-	19-20
9.	Copy of Termination order	H	21
10.	Copy of Appeal	I	22
11.	Copy of High Court	J	23-26
12.	Copy of Supreme Court Judgment	K	27
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APPELLANT

THROUGH:

(M. ASIF YOUSAFZAI),

(TAIMUR ALI KHAN),

&

(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 321 /2016

Mr. Murtaza Ali, Ex-Sub-Engineer,
Public Health Engineering Division,
Malakand.

APPELLANT

VERSUS

1. The Secretary, Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Engineer (South), Public Health Engineering, Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer, Public Health Engineering Division Malakand.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 3.3.2016 RECEIVED BY APPELLANT ON 10.03.2016 PASSED BY RESPONDENT DEPARTMENT IN PURSUANT TO THE DIRECTION OF THIS AUGUST TRIBUNAL DATED. 30.12.2015 WHICH WAS PASSED IN APPEAL NO. 785/2014.

.....

PRAYER:

Filed to-day
Registrar
31/3/16

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 3.3.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant was appointed as Sub Engineer on the recommendation of Departmental Selection Committee by the competent authority vide order dated 11.01.2010. The appellant got his medical fitness certificate and reported his arrival on 10.02.2010. **(Copy of Appointment Order, Medical Fitness Certificate and Arrival Report are attached as Annexure-A, B and C**).

2. That it is also worth to mention here that the proper service book of the appellant was also maintained by the respondent department in which all relevant entries are record. (**Copy of Service Bok is attached as Annexure-D).**

3. That in other cases of a different nature, the Supreme Court passed an order on 15.1.2014, wherein the Chief Engineer Mr. Sikandar Khan gave statement that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one month against the illegal pending cases against the illegal appointees. (**Copy of Judgment is attached as Annexure-E**).

4. That the Chief Engineer to save his skin issued as Omni bus show-cause notice and adopted a slipshod manner for removing the appellant from service. (**Copy of the Show cause notice is attached as Annexure-F).**

5. That the appellant submitted a reply to the show cause notice in which the appellant has explained the details and rebutted the objections/allegations leveled against him with full reasons and justification which were not taken in consideration at all. (**Copy of Reply and Show Cause Notice are attached as Annexure-G**).

6. That on 14.2.2014 the appellant was terminated from service without following proper procedures and codal formalities. The appellant also filed an appeal against the termination order on 27.2.2014 and waited for statutory period but no reply has been received. **(Copy of Order and Appeal are attached as Annexure-H and I)**.

7. That the appellant and other colleagues also went a Writ Petition before the Peshawar High Court Peshawar in Writ Petition No.615-P/2014 which was decided on 26.2.2014 and the Writ Petition of the petitioner was dismissed for having no jurisdiction as they were civil servants. Then the appellant went an appeal before the august Supreme Court of Pakistan, which was heard on 28.4.2014 and while dismissing the appeal of the petitioner, the Honorable Supreme Court observed that the Service Tribunal shall decide the appeal as mandatory in law. **(Copy of High Court and Supreme Court Judgment are attached as Annexure-J and K)**.

8. That the appellant filed an Appeal bearing No.785/2014 against termination from service. That the said appeal was finally heard by the Honorable Tribunal on 30.12.2015 and the Honorable Tribunal was kind enough to accept the appeal and remitted the case to respondent department to proceed against the appellant strictly in accordance with law after giving him opportunity of personal hearing and gave direction to the appellate authority to decide the departmental appeals of the appellant strictly accordance with law rules/rules and considering each of the appeal on its merit. **(Copy of judgment is attached as Annexure-L).**

9. That after the judgment of the august tribunal, the appellate authority rejected the departmental appeal in summary manner by violating the directions of the Tribunal given in its judgemnt and passed the impugned order dated: 3.3.2016 which was recived by appellant opn 16.03.2016 **(Copy of the order is attached as Annexure-M)**.

10. That now, the appellant comes to this august Honorable Tribunal on the following grounds amongst the others:

GROUNDS:

A) That the impugned order dated 3.3.2016 is against the law, facts, norms of justice and principle of fair play and material on record.

B) That the impugned order and attitude of respondent department is in sheer violation of Article 4, 25 and 38 of the constitution.

C) That the respondents not deal the appellant as per law and rules and not considering the appeal on its merit and rejected the departmental appeal of the appellant for no good grounds which is clearly violation of the judgment of Hon'ble Tribunal.

D) That the appellant has been condemned unheard and treated according to law and rules because being a civil servant of the province, the appellant has not been dealt with E&D Rules 2011 and removed from service in a slipshod manner.

E) That neither the appellant was served with charge sheet and statement of allegation nor regular enquiry was conducted in the matter so much so the respondents also violated the rules-5 (1) (a) of E&D Rules 2011. Whereby it was mandatory under the law to pass the speaking order for dispensing with the enquiry. Thus, the lacking such procedure the impugned order is liable to be set aside.

F) That even the termination order has not in existence because there is no word "Termination" is provided in the relevant law and rules.

G) That according to the Government Notification dated 8.4.2006 all posts from BPS-1 to BPS-15 in PHE department were declared as Distt: Cadre post which was not within purview of Public Service Commission that is why the allegations of being non recommendee of the PSC is not a good ground.

H) That the appellant possesses the prescribed qualification and got his appointment as per law and rules.

I) That as far as the NOC from the PSC is concerned that is also not correct keeping in view the Department Notification dated 30.4.2008 wherein the Chief Engineer were authorized for making appointment form BPS-1 to BPS-15 through Departmental Selection Committee.

J) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such cases the Hon'ble Supreme Court of Pakistan has held the department responsible and reinstated the poor employees.

K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT
Murtaza Ali

THROUGH:

(M. ASIF YOUSAFZAI),

(TAIMUR ALI KHAN),

&

(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR.

Annexure A

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

No. 23 /E-4/PHE
Dated Pesh: the 11 /01/2010

6

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. Murtaza Ali S/O Abdul Haq R/O Village & P.O Totakan District Malakand 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, Malakand before reporting himself for duty to the Deputy District Officer Water Supply & Sanitation Malakand, 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 Malakand within one month of the receipt of this offer and produce original certificates in connection with his qualifications, domicile and age.

After Left

SUB DIVISION P.H.E BATKHELA

ATTESTED

CHIEF ENGINEER

Copy to the :-
1) Superintending Engineer PHE Circle Swat.
2) Deputy District Officer WS&S Malakand.
3) District Accounts Officer Malakand.
4) Mr. Murtaza Ali S/O Abdul Haq R/O Village & P.O Totakan District Malakand.

Attested

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
MALAKAND AT BATKHELA

CHIEF ENGINEER

Annex - B

N.W.F.P. Med: No.4

MEDICAL CERTIFICATE

(7)

- > Name of Official Mr.Murtaza Ali
- > Father, s Name. Abdul Haq
- > Caste or race. Muslim / Pakistani
- > Residence. Totakan Distt: Malakand
- > Date of birth. 20.10.1986 According to NIC
- > Exact height by measurement 5'-5"
- > Personal mark identification. Mole on left side neck
- > Signature of the official
- > Signature of head of office.

Seal of office

EXECUTIVE ENGINEER PUBLIC HEALTH ... DIVISION MALAKAND ...

I do hereby certify that I have examine Murtaza Ali for employment in the office of the **Public Health** and cannot discover that he/she had any disease communicable or other constitutional affection or bodily infirmity except. Nil.

I do not consider this as disqualification for employment in the office of **Public Health** Her/his age according to her/his own statement 23 Years, and by appearance/ general development is about 24 years.

Impressions

Small Fig:	Ring Fig:	Middle Fig:	Index Fig:	Thumb.

Date: **10.02.2010**
12:14 PM

Attested

S.D.O
P.H.E SUB DIVISION
BATKHELA.

8/6/2010

Medical Superintendent,
DHQ, Hospital Batkhela
Medical Superintendent
D.H.Q Hospital Batkhela

ATTESTED

C

(8)

The Executive Engineer,
P.H.E Division Malakand.

SUBJECT:- **ARRIVAL REPORT.**

R/Sir,

On my appointment as Sub Engineer Vide Chief Engineer, P.H.E Department NWFP Peshawar letter No.23/E-4/PHE dated 11/01/2010, I hereby submit my arrival report for duty today on 10/02/2010 afternoon please.

YOURS Obediently

Dated 10-02/2010

Murtaza Ali
Sub Engineer

Attested.

S.D.O
P.H.E SUB DIVISION
BATKHELA.

ATTESTED

D

P

(For use in Police Department only)

9

Heirs:

1.

2.

3.

Verification Roll No. dated received back

Left Thumb Impression

Qualification	Date	Qualification	Date
English		First Arts	
Pushto		B.L. Or B.A.	
Urdu		Pleadership examiantion	
Plan-drawing		Training School Final examiantion	
Finger Print		Other qualification:—	
Drill Instructing			
Court Duties			
Reserve Duties			
ATTESTED			

N.B.—Line to be drawn under the qualification possessed.

(10)

Note: The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

1. Name: MURTEZA ALI

2. Race: AFGHAN

3. Residence: Village & P.O. Sakhan Hisar Baba Tehsil Batkhela Distt. Malakand.

4. Father's name and residence: ABDUL HAQ.

5. Date of birth by Christian era as nearly as can be ascertained: 05-10-1986.

6. Exact height by measurement: 5-6"

7. Personal marks for identification: -Nil-

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger		Ring Finger	
Middle Finger		Fore Finger	
Thumb			

9. Signature of Government Servant:

10. Signature and designation of the Head of the Office, or other Attesting Officer. Attested

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVIS
MALAKAND AT BATKHELA

S.D.O
P.H.E SUB DIVISION
BATKHELA.

ATTESTED

(11)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signat[illegible] Governme[illegible]
SUB ENGINEER (BPS-II) Rs. 4115-275-12365			Rs. 4115/-			10-2-2010 (A.N)	
SUB ENGINEER BPS-II 4115-275-12365			Rs. 4390/-			1-12-2010 (F.N)	
	S.D.O P.H.E SUB DIVISION [illegible]						
Sub Engineer BPS-II (6665-465-20410)	7/b/11		Rs. 7065/- P.M.			01-7-2011 F.N	

(12)

9	10	11	12	13			14	15
				Leave				
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
					Period	Government to which debitable		
	Appointed as Sub Engineer ... u/o Chief Engineer PHE ... Office ... No. ... /E-4/PHE dated 11-01-2010. (Reported ... for duty on ...-02-2010 A.N)							
						EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MALAKAND AT BATKHELA		
						T-49 date 05-10-2010 ... 10-02-2010 Rs.31450. Allowances Rs. ... = 21058 to 30-09-2010 as Arrears. in 10-2010 through Computer ...		
Attested S.D.O PHE SUB DIVISION BATKHELA	...-11-2010 A.N	Annual Increment ...						ATTESTED
			EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MALAKAND AT BATKHELA				EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MALAKAND AT BATKHELA	
	30-6-2011 A.N	...						
			EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MALAKAND AT BATKHELA				EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MALAKAND AT BATKHELA	

(13)

1	2	3	4	5	6	7	
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment	Signa... Governm...
Sub Engineer BPS No. 11 (6600-460-20400)	Temp/	Yes	7520/- P.M.		—	1/12/2011 (A.N.)	
do	—	Yes	Rs. 7980/- P.M.	—	—	1/12/2012 (F.N.)	
do	—	—	Rs. 8440/- P.M.	—	—	1/12/2013 (F.N.)	
Attested							

SDO
... Sub Division
...

9	10	11	12	13			14	15
				Leave				
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure or praise of the Government Servant.
					Period	Government to which debitable		
	30-11-2011 (A.N.)	Annual Increment Granted						
			Sd/-					
						Service verified for the period from ...-2011 to 30-11-2011 (A.N.) from the office copies of Pay Bills & A...		
							Sd/-	
	30-11-2012 (A.N.)	Annual Increment Granted						
			Sd/- EXECUTIVE ENGINEER P. H. Engg: Division MALAKAND					
Attested Sd/- SDO P.H.E SUB DIVISION BATKHELA.	30-11-2013 (A.N.)	Annual Increment Granted					Service verification for the period from 1-12-2011 to ...-2013 from the office copies of Pay Bills & A...	
							Sd/- EXECUTIVE ENGINEER P. H. Engg: Division MALAKAND	

(E)

16

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

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

C.E.P.H.E Deptt. (South)
Diary No. 480
Date 28-01-014
Case No.
C.E.P.H.E. (S)
S.E. (S)
Director (S)
Design. (S)
A.O.
D.D.O

(16)

though many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali, J.
Sd/- Ejaz Afzal Khan, J

Certified to be True Copy

17/1/14

Superintendent
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT OF PAKISTAN

CR No: 140/14 Civil/Criminal
Date of Presentation: 15-1-14
No. of Words: 650
No. of Folios: 6
Requisition Fee Rs: 6.60
Copy Fee in: 3.12
Court Fee stamps: 9.72
Date of Completion of Copy: 17-1-14
Date of delivery of Copy: 18-1-14
Compared by/Prepared by:
Received by:

ATTESTED

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

No. 32 /E-4/PHE

Dated Peshawar, the 21 /01/2014

To

1. Mr. Tariq Nawaz — Sub Engineer,
2. Mr. Sajjad Khan — Sub Engineer,
3. Mr. S. Muhammad Ihsan Shah — Sub Engineer,
4. Mr. S. Muhammad Ali Sajjad — Sub Engineer,
5. Mr. Abdul Samad — Sub Engineer,
6. Mr. Shaukat Ali — Sub Engineer,
7. Mr. M. Ali Noor — Sub Engineer,
8. Mr. Irshad Elahi — Sub Engineer,
9. Mr. Hussain Zaman — Sub Engineer,
10. Mr. Salim Nawaz — Sub Engineer,
11. Mr. S.Ashfaq Ahmad — Sub Engineer,
12. Mr. Murtaza Ali — Sub Engineer,
13. Mr. Sahar Gul — Sub Engineer,
14. Mr. Ishfaq — Sub Engineer,
15. Mr. Abdul Shahid — Sub Engineer,
16. Mr. Kashif Raza — Sub Engineer,
17. Mr. Waqas Ali — Sub Engineer,
18. Mr. Muslim Shah — Sub Engineer,
19. Mr. Ishtiaq Ahmad — Sub Engineer,
20. Mr. Zuhib Khan — Sub Engineer,
21. Mr. S. Hassan Ali — Sub Engineer,
22. Mr. Mohsin Ali — Sub Engineer,
23. Mr. Muqtada Qureshi — Sub Engineer,
24. Mr. Ishfaq Ahmad — Sub Engineer,
25. Mr. M. Qaiser Khan — Sub Engineer,
26. Mr. Nomanullah — Senior Scale Stenographer,
27. Mr. M. Imran — Steno Typist,
28. Mr. M. Jamil — Steno Typist,
29. Mr. Iftikhar — Steno Typist,
30. Mr. Shah Khalid — Steno Typist,
31. Mr. Aziz Ullah — Steno Typist,
32. Mr. Farhan Ullah — Steno Typist,
33. Mr. Farman Ali — Data E/Operator,
34. Mr. Murtaza Qureshi — Data E/Operator,

Assistant Director Admin
Oil & Gas Facilitation Unit
FATA Secretariat Peshawar

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/E&AD/1-10/2005/Vol-VI dated 15.11.2007.

ANNEXED

18

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 W&S 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)

Assistant Director Admin
Oil & Gas Facilitation Unit
FATA Secretariat Peshawar

ATTESTED

To,

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

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Subject: - **SHOW CAUSE NOTICE.**

Ref: - Your No.32/E-4/PHE dated 21.01.2014 received by me on 04/02/2014 which shows that the same has un-lawfully and malafidely been issued by you in the back date.

It is submitted that I am working in PHE Division Malakand as Sub Engineer and is only under the controlling authority of the worthy Chief Engineer (North) PHED as competent authority. Therefore, the Show Cause Notice issued to me under your signature on that reason too as un-authorized and un-lawful. However, Para wise explanation is submitted as under: -

1. In this connection your attention is invited to E.AD letter No.SOS-Pool(E&AD)/1-10/2002 dated 08/04/2006 declaring the posts in B-1 to B-15 in W&S Department (i.e C&W and PHE) as District Cadre posts and outside the purview of P.S.C. Therefore W&S Department as directed neither to place any such requisition before the P.S.C nor the P.S.C was required to advertise such posts (Annexure-I). The E&A Department, vide letter No.SR-V(E&AD)/1-368/2005/(SE) dated 02/05/2007 addressed to P.S.C and copy there of endorsed to Secretary W&S Department, further stated that the requisition made by the W&S Department, for the filling in the vacant posts may be considered as withdrawn (Annexure-II). In the circumstances, the recommendation of P.S.C for appointment against such posts, were uncalled for.
2. My appointment against the post was made by the Competent Authority as I having the prescribed qualifications for the same. Hence there involve no contravention to Govt: Policy.
3. As explained in the above Para's, it was not be purview of P.S.C to make recommendation against their Posts, therefore there was no need of N.O C etc: from them. From the above letters it reveals that requisition for the vacant posts was made, but the same was withdrawn by the E&A Department. Therefore, the Secretary W&S Department vide his Notification No.E&A/W&S/11-23/2001 dated 30.04.2008 assigned assigned all the Establishment matters of officials from BPS-1 to BPS-15 to the respective Chief Engineer of the C&W and PHE Wings of W&S Department (Annexure-III). Therefore, his approval/sanction for appointment against such posts was not required. Moreover my appointment was made by the competent authority through DSC.
4. As a candidate and junior employee of the Department, I do no know about any violation of codal formalities in the process of appointment. However, if there is some lapse in procedure, that is supposed to be tackled by the concerned hands with the competent forum for rectification/regularization, rather to proceed against me without any fault of mine at this belated stage/time where I have spent the useful part of my life of about years and have since crossed/near to cross the upper age limit of 30 year and have been overaged. It is added that I am not party in the case of Mashtaq Ahmad & Other C.P No.2026/13 & Muhammad Nisar Ali & other CP No.2029/13, therefore the decision of the Honourable Supreme Court of Pakistan dated15.01.2014 is not applicable upon me.
5. Govt of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification No.SO SR-III/FD/12-1/2005 dated 27/02/2013 that the under said act all civil servants appointed to a service on or after 1st july 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension (ANNEX-IV).

In view of above explanation, it is very humbly prayed that the charges may be dropped.

Yours Obediently,

ATTESTED

Dated 18/02/2014.

Murtaza Ali
Sub Engineer
PHE Division Malakand

Copy to the: -

1. Registrar, Supreme Court of Pakistan Islamabad with reference to C.Ps No.2026 & 2029 of 2013.
2. Registrar Peshawar High Court Peshawar w/r to W.Ps No.271-P & 663-P of 2013 w/r to above. They are requested to direct the Chief Engineer (South) PHE Peshawar to avied from taking such drastic & one side action i.e without proper equiry & approtunity of hearing etc: as required under the law/ natural justice.
3. PS to Secretary PHE Department Peshawar.

Dated 18/02/2014.

MURTAZA ALI
Sub Engineer
PHE Division Malakand

ABBOTTABAD

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

No. 17 /E-4 /PHE,
Dated Peshawar, the 14 /02/2014

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To

Mr. Murtaza Ali s/o Abdul Haq
Sub Engineer P.H.Engg Division
Malakand at Batkhela

Subject: TERMINATION FROM SERVICE

Your recruitment in PHED made vide this office letter No.23/E-4 /PHE dated 11.01.2010 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)1-1.7 /9.c) dated 12.10.1993. in this case NOC was not obtained from Public Service Commission before issuance of your appointment order. A requisition for filling up these posts were not placed with Khyber Pakhtunkhwa Public Service Commission and you have not qualified test and interview conducted by the Public Service Commission during this period. As such your appointment without recommendation of the Public Service Commission is invalid and unlawful.

Engineer (North) Department Shawar 18/18 17-2-14 E-2

3. Approval from Administrative Secretary was not obtained by the appointing authority before making your appointment.

4. Departmental selection committee was not constituted by the Administrative Secretary.

5. You have also failed to reply to the show cause notice issued vide this office No. 32/E-4 PHE dated 21.01.2014 in your defense with in stipulated period.

6. The above mentioned irregularities committed by the appointing authority in your appointment process prove that you were illegally appointed and there is no justification to retain you in the service of PHED. You are therefore terminated from the Post of Sub Engineer with immediate effect.

Chief Engineer (South)

Copy forwarded to:

1. The Secretary to Govt of Khyber Pakhtunkhwa Public Health Engg. Department Peshawar
2. PS to Minister for Public Health Engg: Department Khyber Pakhtunkhwa Peshawar
3. The Accountant General Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer (North) Public Health Engg. Department Peshawar.
5. The Chief Engineer (FATA) Works & Services Department Peshawar.
6. All Superintending Engineers Executive Engineers in South North, PHE Engg. Department
7. All District Accounts Officer in Khyber Pakhtunkhwa

ATTESTED

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(22)

To,

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

Subject: - **APPEAL AGAINST THE TERMINATION ORDER NO.17/E-4/PHE DATED 14/02/2014.**

R/Sir,

Most respectfully i beg to say that the Chief Engineer (South) has issued termination order vide letter under subject for which my submission is as under :-

1. I was appointed by the Chief Engineer vide office order No 23/E-4/PHE Daled 11/01/2010 with the condition No.1 to 8 my appointment was made on the recommendation of DPC dated 02/12/2009 as mentioned in the said office order as per Para-5 of the said office order I successfully completed upto 3 years probation period my appointment made on regulat basis and not adhoc nor Contract, therefore my status is not equal to that case for which APPEX court given decision.
2. Before issuing any Govt: letter/order the competent authority satisfied himself that this order/letter will be prove in the Court of Law, hence this was responsibility of the competent authority to before issuing of any order he is resposible for issuing my unlawful order not me.
3. I already have given reply of my show cause notice within stipulated time.
4. Obtaining of N.O.C form P.S.C is the responsibility of PHE Department not by me.
5. It is further pointed out that the Govt: of Khber Pakhtunkhwa Finance Department (Regulation wing) No.SOR-III/FD/12-1/2005 dated 27/02/2013 the Provincial Assembly passed the act, all civil servants appointed to a service are post on or after 1st july 2001 shall be deemed to have been appointed on regular basis and will be eligible for pension/ deduction of G.P fund.
6. Furthermore the Chief Engineer (South) has given full statement APPEX Court and not base on fact.

In light of above it is requested that my appeal may please be admitted and the Cheif Engineer (South) be directed to withdrawn my termination order otherwise i will be knocking the door of law.

Yours Obediently,

Murtaja Ali
Sub Engineer
PHE Division Malakand

Copy to the: -

1. Chief Engineer (South) PHE Department Peshawar
2. Cheif Engineer (North) PHE Department Peshawar
3. Registrar Supreme Court Peshawar
4. Registrar Peshawar High Court Peshawar
5. Registrar Service Tribunal Peshawar

ATTESTED

Murtaja Ali
Sub Engineer
PHE Division Malakand

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*

ATTESTED
EXAMINER
Peshawar High Court
31 MAY 2014

ATTESTED

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.*

ATTESTED
Peshawar High Court
3 . 4 2014

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

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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

Sd/- Yahya Afridi J

JUDGE

Sd/- Malik Manzoor Hussain J

No. 1995
Date of Presentation of Application 31-5-14
No of Pages 12
Copying Fee 1
Urgent Fee
Total 24
Date of Preparation 31-5-14
Date Given for Delivery 31-5-14
Date of Delivery of Copy 31-5-14
Received By

CERTIFIED TO BE TRUE COPY
Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Qanun-e-Shahadat Order 1984
31 MAY 2014

ATTESTED

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22

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
Sd/-

Certified to be True Copy

29/4/14

Superintendent
Supreme Court of Pakistan
Islamabad

ATTESTED

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ 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.

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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ATTESTED

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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

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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

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

Service Tribunal,
Peshawar

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 misconceived 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

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

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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

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

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

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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

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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 true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation	01-01-2016
Number of Words	3200
Copying Fee	18
Urgent	18
Total	
Name of Copyist	06-01-2016
Date of Delivery	06-01-2016

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'M' (36)

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

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

To,

Mr. Murtaza Ali
S/o Abdul Haq
Village & P/o Totakan
District Malakand Agency

Subject: **DEPARTMENTAL APPEAL AGAINST CHIEF ENGINEER (SOUTH) PHE ORDER No. 17/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.23/E-4/PHE dated 11-01-2010.

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.785/2014 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

ATTESTED

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) 03/03
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

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P.K Service Tribunal, Peshawar

Murtaza Ali (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

P.H.E Deptt: (Respondent)
(Defendant)

I/We Murtaza Ali

Do hereby appoint and constitute ***M.Asif Yousafzai, Advocate, Peshawar***, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/ Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

_____
(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

&

Syed Noman Ali Bukhari

&

TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE HON.BLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No 321/2016

Mr. Murtaza Ali S/O Abdul Haq
Ex-Sub Engineer PHE Divn, Malakand. ..... (Appellant)

Versus

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

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

3. Deputy District Officer Water Supply and Sanitation, Malakand.

...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 unnecessary parties.

8). That the appeal is barred by Law & limitation

9). That this Honourable Service Tribunal has no jurisdiction to entertain the present appeal.

BRIEF HISTORY

A writ petition bearing No W.P 271-P/2013 was filed by Mr. Mushtaq Ahmad, etc, for extending benefits of regularization, before the Peshawar High Court order, Peshawar and the same was declined by the Peshawar High Court, (Copy of the judgment dated 2.10.2013 is annexed as (**Annexure-I**). The said petitioners then moved a Civil Petition No 2026 and 2029 of 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.

1-5). 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 is attached as (**Annexure V & VI**), therefore, the then Chief Engineer was not competent to appoint the Appellant. This was the reason that the name of the appellant was never included in the Seniority list of Sub Engineers and the same was never challenged by the appellant. (Copy of the Seniority list are annexed as (**Annexure-VII**). 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**).

6). Incorrect. The appellant failed to produce recommendation letter issue by Public Service Commission regarding his selection for the post of Sub Engineer and also failed to produce sanction accorded by the competent authority regarding condonation of violation of codal formalities in his appointment. Therefore his reply was not considered.

7) Incorrect. The Apex court directed for finalizing action against all such illegal appointees on 15.1.2014. As the appellant was illegally appointed therefore he was terminated from service. There was no weight-age in his appeal.

8). Pertains to court record, hence needs no comments.

9). Correct.

10). Incorrect. The appellant was given an opportunity to submit departmental appeal and personal hearing. Accordingly the appellant has submitted departmental appeal and heard personally by appellant authority. The appellant was illegally appointed contrary to all relevant rules without fulfillment of codal formalities i.e. without recommendation of Public Service Commission and advertisement, test and interview. Hence there was no weight-age in his department appeal and therefore the appellant authority dismissed his departmental appeal.

GROUNDS

A). Incorrect. The appellant was illegally appointed without fulfillment of requisite codal formalities. There was no weight-age in his departmental appeal. Hence his departmental was liable to dismiss.

B). Incorrect. The appellant was treated accordingly to law. In light of judgment of Service Tribunal dated 30.12.2015 the appellant was given opportunity of department appeal and personal hearing. The appellant failed to produce any legal documents in his defense, as he was appointed illegally without recommendation of Public Service Commission, advertisement contrary to Public Service Commission ordinance, ESTA Code and recruitment policy. Thus his name was not included in the seniority list of Sub Engineers and does not fall in the category of civil servant. Therefore E&D rules are not applicable in this case, being illegally has no legal right and one wrong cannot be justified through another wrong.

C). Incorrect. The appellant was given full opportunity according to judgment of service tribunal dated 30.12.2015 but the appellant failed to produce documentary proof regarding the legality of his appointment. As the appellant was illegal appointed violating all codal formalities, hence his department appeal was rejected by the appellant authority having no weight-age.

(D) Incorrect. The appellant was given full opportunity of Departmental appeal and personal hearing in the light of Service Tribunal Judgment dated 30.12.2015. The appellant failed to produce any legal documents in his defense. As the appellant was not appointed on the recommendation of the Public Service Commission and all requisite codal formalities has been violated in his appointment. Therefore his name was not included in the seniority list of Sub Engineer and does not fall in the category of civil servant. Therefore E&D rules are not applicable in this case of illegal appointment.

(E) Incorrect. The case illegal appointment of Sub Engineers and others was submitted to Establishment Department for advice. The Establishment Department extended advice and declared these appointments as illegal. The appellant appointed violating of codal formalities i.e. Public Service Commission ordinance, ESTA Code and recruitment policy. The action against illegal appointees was required to finalize within one month period as per direction of Apex Court Judgment 15.1.2014 and subsequent reminder dated 7.02.2014. The E&D rules are not applicable in this case of illegal appointment.

(F) Incorrect. The appellant was appointed without fulfillment of requisite codal formalities and without recommendation of Public Service Commission. Therefore the appellant was terminated in order to appoint nominee of Public Service Commission according to rules.

(G) Incorrect. The posts in BPS-1 to 15 were declared as district cadre posts, the then Chief Engineer, the provincial head of Public Health Engg: Department had wrongly exercised his powers to make recruitment of appellant against District cadre posts. Recruitment of District cadre posts fall in the purview of District Coordination Officer. According to ESTA Code and Public Service Commission Ordinance the post of Sub Engineer shall be filled on the recommendation of Public Service Commission.

(H) Incorrect. Nomination of Public Service Commission is prerequisite for appointment as Sub Engineer in Public Health Engg: Department. The appellant was appointed without recommendation of Public Service Commission which is against standing recruitment policy of Khyber Pakhtunkhwa.

(I) Incorrect. The Notification issued by Secretary Works & Service Department dated 30.4.2008 as referred by the appellant is related only for posting/transfer of officials from BPS-1 to 16 and not for recruitment (**Annexure-X**).

(J) Incorrect. The appellant is responsible for not appearing in test and interview conducted by Public Service Commission for the post of Sub Engineers in 2011 and 2012, advertised on 7.4.2011 (**Annexure-XI**). Therefore judgment of Apex Court pertained to petty employees like Chowkidar, Naib Qasid and Junior Clerk. This judgment is not applicable on the posts to be filled through the recommendation of Public Service Commission.

The termination Order of the appellant is consistent with the Judgment of Supreme Court of Pakistan dated 17.3.2014 in constitution petition No 6 of 2011 CMA 5216 of 2012 Syed Mubashir Raza Jaffari versus EOBI.

(K) 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 appellants 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 321/2016

Mr. Murtaza Ali S/O Abdul Haq
Ex-Sub Engineer PHE Divn, Malakand. ..... (Appellant)

Versus

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

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

3. Executive Engineer PHE Division, Malakand. .....Respondent

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 KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 321/2016

Murtaza Ali VS PHE Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-9) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1-5) incorrect. The appellant was appointed as Sub Engineer on the recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 11.1.2010, got his medical fitness certificate and his submitted his arrival report and proper service book of the appellant was also maintained by the respondents, however the Chief Engineer Mr. Sikandar Khan gave statement in the Supreme Court in other cases of a different nature that although many other illegal appointees in the department have been removed from service but again many other such action is in progress at various stages and they are still in service. Therefore, the Honorable Supreme Court directed the Chief Engineer to complete the process within one month against the illegal pending cases against the illegal appointees and on the basis of which in order to save his skin the Chief Engineer issued show-cause notice and adopted a slipshod manner for removing the appellant from service which was duly replied by the appellant in which explained the details and rebutted the objections/allegations leveled against him with full reasons and justification which were not taken in consideration at all.

6). Incorrect. The appellant was appointed as Sub Engineer on the recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 11.1.2010, who was terminated from

service without following proper procedures and codal formalities. Therefore appellant filed an appeal against the termination order and waited for statutory period but was not responded. Moreover under the Superior Courts judgment it is necessary that the department should responded to the departmental appeal.

7). Incorrect. The appellant was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 11.1.2010 and the appellant was made a scapegoat by his high ups in order to save his skin by terminating the appellant from his service.

8). Admitted correct by the respondents as all the relevant record of the appellant is present with the department.

9). Admitted correct. Hence no comments.

10). Not replied according to para 10 of the appeal. Moreover para 10 of the appeal is correct.

GROUNDS:

A. Incorrect. The appellant was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 11.1.2010, as the appellant has good cause of action therefore he filed departmental appeal against order dated 11.1.2010 which was also rejected on3.3.2016 for no good ground. Therefore the order dated 3.3.2016 is not according to the law, rules, facts, norms of justice and material on record therefore liable to be set aside.

B. Incorrect. While para B of the appeal is correct.

C. Incorrect. The appellant was not given opportunity of defence according the judgment of august Service Tribunal dated 30.12.2015 as the appointment of the appellant was legal as he was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities vide order dated 11.1.2010.

D. Incorrect. While para D of the appeal is correct.

E. Incorrect. The appellant was appointed after the proper recommendation of Departmental Selection Committee by the competent authority after fulfilling all codal formalities, got his medical fitness certificate and his submitted his arrival report and proper service book was also maintained by the respondent department and the department also paid regularly salaries to the appellant which means that the appellant was a civil servant in all aspects and there is a proper procedure for taking any action against a civil servant but in the case of the appellant the department did not adopt proper procedure and the high ups terminated the appellant in slipshod manner in order to save his skin which is not permissible under the law and rules.

F. Not replied according to para F of the appeal. Moreover para F of the appeal is correct.

G. Incorrect. While para G of the appeal is correct.

H. Incorrect. As per notification 30.4.2008 herein the Chief Engineer were authorized for making appointment from BPS-1 to BPS-15 through DPC and as the appellant possess the prescribed qualification therefore he got appointment as per law and rules.

I. Incorrect. While para I of the appeal is correct.

J. Incorrect. While para I of the appeal is correct.

K. Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
&
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

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

DEPONENT

ATTESTED

Oath Commissioner
Zahoor Khan Advocate
Distt: Court Peshawar
14/11/2016