BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 249/2023

IN

SERVICE APPEAL NO. 1232/2024

Ashiq Hussain .....Petitioner

VERSUS

Chief Secretary Khyber Pakhtunkhwa & others.....**Respondents.**

INDEX

Sr. No.	Description of Documents	Annex	Pages
1.	Implementation Report		2-3
2.	Affidavit		4
3.	Authority letter		5
4.	Service Tribunal Order dated 25-01-2024	I	6
5.	Minutes of the meeting dated 19-02-2024	II	7-8
6.	Surplus Pool Notification dated 25-06-2019	III	9-12
7.	Detailed Judgment dated 14-01-2022	IV	13-26
8.	Conditionally adjusted Notification dated 01-11-2022	V	27
9.	Seniority List Notification dated 29-11-2023	VI	28

Section Officer (Litigation)
Government of KP
Establishment Department

01-04-2024
Peshawar

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

EXECUTION PETITION NO. 249/2023

IN

SERVICE APPEAL NO. 1232/2020

Ashiq Hussain .....(Petitioner)

Versus

Chief Secretary, Khyber Pakhtunkhwa & Others..... (Respondents)

IMPLEMENTATION REPORT ON BEHALF OF RESPONDENTS NO. 01 & 02

RESPECTFULLY SHEWETH:

1. That in light of directions of Hon'ble Member (Executive), Khyber Pakhtunkhwa Service Tribunal contained in the order sheet dated 25-01-2024 **(Annex-I)**, a meeting under the chairmanship of the Special Secretary (Establishment) was held on 19-02-2024 at 1100 hrs in his office. Minutes of the meeting may be perused **(Annex-II).**
2. That it is stated that in wake of the 25th amendment in Constitution of Pakistan 1973, FATA has been merged into the Province of Khyber Pakhtunkhwa. Erstwhile FATA Secretariat Departments and Directorates were shifted and placed under the Administrative Supervision & control of respective/relevant Departments in Khyber Pakhtunkhwa Government Departments to ensure better coordination & seamless transitions. Some employees who were at the strength of Coordination & Administration Department FATA Secretariat were declared surplus as per Surplus Pool policy of the Provincial Government vide Establishment Department Notification dated 25-06-2019 **(Annex-III)** for their further adjustment amongst various Provincial Departments/ Directorates. Feeling aggrieved, the petitioners filed writ petition No.3704-P/2019 before the Hon'ble Peshawar High Court which became infructuous and dismissed accordingly. The petitioners then filed civil appeal 881/2020 before the Apex Court which was also dismissed as not pressed by directing the petitioners to approach proper forum i.e Service Tribunal.
3. That it is further submitted that the petitioners filed Service Appeals 1227/2022 & 10 others connected cases before the Khyber Pakhtunkhwa, Service Tribunal with the pray that they may be adjusted at the strength of Establishment & Administration Department as they were previously serving in similar Department in FATA Secretariat, which was allowed by the Hon'able Tribunal vide its Judgment dated 14-01-2022 **(Annex-IV)**.
4. That Mr. Hanif Ur Rehman & four others filed Execution Petition before the Hon'ble Tribunal to adjust them at proper place at seniority as per judgment dated 14.01.2022. In compliance of the ibid judgment of the Hon'ble Tribunal, the petitioners were adjusted conditionally against the posts of Assistants (BS-16) in Establishment & Administration Department vide Notification dated 01-11-2022 **(Annex-V)** and accordingly were placed at the Sr. No.334-338 of the seniority list of Assistants (BS-16) maintained at Establishment Department vide Notification dated 29-11-2023 **(Annex-VI)** till the final outcome of the Apex Court as the civil appeal is pending for

adjudication. Application for early hearing and shifting the case from Registry branch Peshawar to Principle seat Islamabad has already been filed.

5. That there are certain complications which create hurdles in implementation of the judgment of the Hon'ble Tribunal for placing the petitioners at proper place in seniority list.

   i. **The petitioners were rightly placed at surplus pool as per Government Surplus Pool Policy for their further adjustment in the directorates/attached formations. Although they have been adjusted in Establishment Department in compliance of the Hon'ble Tribunal's judgment yet they have no right of such adjustment.**

   ii. **As per Khyber Pakhtunkhwa, Rules of Business 1985, there is no concept of Administrative Department at Ex-FATA Secretariat and by merger of FATA into Khyber Pakhtunkhwa, the employees of Administration Department of FATA Secretariat cannot be merged as they are not employees of Establishment Department, but their services were rightly placed in the surplus pool.**

   iii. **By giving them seniority at Establishment department will affect the established rights of thousands of Secretariat employees and will lead to series of Litigation for the Provincial Government.**

   iv. **Respondents have filed CPLA before the Supreme Court of Pakistan which is pending for adjudication and in this connection application for early hearing and shifting the case from registry branch Peshawar to Principal seat Islamabad has already been filed. The implementation will have adverse impacts on the CPLA of the Provincial Government.**

PRAYER:-

In view of the humble submissions made above, as implementation of the Tribunal's Judgment in the Shape of adjustment has been made/implemented and petitioners are also placed in seniority list of Assistant. As CPLA is pending for adjudication before the Apex Court, therefore, it is humbly prayed to accept the request of the respondents and accordingly dismiss the Execution Petition, please.

(NADEEM ASLAM CHAUDHARY)
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 01)

(SHAHIDULLAH KHAN)
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 249/2023

IN SERVICE APPEAL NO. 1227/2020

Ashiq Hussain .....Petitioner

VERSUS

Chief Secretary Khyber Pakhtunkhwa & others.....**Respondents.**

AFFIDAVIT

I, Mr. Shahid Ullah, Secretary Establishment Department (BS-20), respondent, do hereby solemnly declare that contents of the Reply in the Execution Petition are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this Execution Petition, the answering Respondent has neither been placed ex-parte nor their defense/struck up.

DEPONENT

CNIC No. 11101-1464320-1
Contact No. 0333,9744944
Shahid Ullah

ATTESTED
Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

18 MAR 2024

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

AUTHORITY LETTER

Mr. Khaliq Ur Rehman, Superintendent (BPS-17), Litigation-II Section, Judicial Wing, Establishment Department, is hereby authorized to submit Reply, in the Hon'able Services Tribunal, in Execution Petition No. 249/2023 in S.A No. 1227/2020 Titled "Ashiq Hussain VS Govt. of Khyber Pakhtunkhwa & Others" on behalf of the undersigned.

(NADEEM ASLAM CHAUDHARY)
Chief Secretary,
KHYBER PAKHTUNKHWA.
Through,
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 01)

(SHAHIDULLAH KHAN)
SECRETARY,
ESTABLISHMENT DEPARTMENT,
Through
(Kaleem Ullah Baloch)
Special Secretary, Establishment
(Respondent No. 02)

E.P. No. 248/2022
Hanif ur Rehman

25th Jan. 2024

01. Petitioner in person present. Mr. Muhammad Jan, District Attorney alongwith Arshad Kamal, S.O (Litigation) and Khaliqur Rehman, Superintendent for the respondents present.

02. Representative of the respondents requested for some time for adjustment of seniority list. He is directed to adjust the petitioner at his proper place in the seniority list by consulting him and to come up with a feasible and acceptable option in the light of S.T's judge 1st. on the next date. Case is adjourned to 26.02.2024 before the S.B. PP given to the parties.

(Farecha Paul)
Member(E)

Fazle subhan P.S

26th Feb. 2024

01. Junior to counsel for the petitioner present. Mr. Muhammad Jan, Distinct Attorney alongwith Mr. Arshad Kamal S.O (Litigtion) for the respondents present.

02. Representatives of the respondents produced a copy of minutes of meeting dated 19.02.2024, vide which certain recommendations have been framed which have been submitted to the competent authority. Representatives requested for time to submit proper implementation repot. To come up for implementation report on 01.04.2024 before the S.B. P.P given to the parties.

Section Officer (Litigition)
Government of KP
Establishment Department

Annex II

7

MINUTES OF THE MEETING IN CONNECTION WITH SERVICE APPEAL NO. EXECUTION PETITIONS NO. 248/2023 TO 252/2023 TITLED HANIF-UR-REHMAN & OTHERS VS GOVT.

In light of directions of Hon'ble Member (Executive), Khyber Pakhtunkhwa Service Tribunal contained in the order sheet dated 25-01-2024, a meeting under the chairmanship of the Special Secretary (Establishment) was held on 19-02-2024 at 1100 hrs in his office. The following attended:-

1. Mr. Kaleem Ullah Khan (Chair)
   Special Secretary (Establishment).
   Establishment Department.
2. Mr. Saeed Ullah,
   Additional Secretary (Reg-II),
   Establishment Department.
3. Mr. Irshad Khan,
   Deputy Secretary (Judicial),
   Establishment Department.
4. Mr. Saqlain Khan,
   Law Officer,
   Law Department.
5. Mr. Siraj Muhammad,
   Section Officer (E-IV),
   Establishment Department.
6. Mr. Arshad Kamal
   Section Officer (Lit-II),
   Establishment Department.

After recitation, the chair welcomed the participants. The forum was informed that in wake of the 25th amendment in Constitution of Pakistan 1973, FATA has been merged into the Province of Khyber Pakhtunkhwa. Erstwhile FATA Secretariat Departments and Directorates were shifted and placed under the Administrative Supervision & control of respective/relevant Departments in Khyber Pakhtunkhwa Government Departments to ensure better coordination & seamless transitions. Some employees who were at the strength of Coordination & Administration Department FATA Secretariat were declared surplus as per Surplus Pool policy of the Provincial Government vide Establishment Department Notification dated 25-06-2019 for their further adjustment amongst various Provincial Departments/Directorates. Feeling aggrieved, the petitioners filed writ petition No.3704-P/2019 before the Hon'ble Peshawar High Court which became infructuous and dismissed accordingly. The petitioners then filed civil appeal 881/2020 before the Apex Court which was also dismissed as not pressed by directing the petitioners to approach proper forum i.e Service Tribunal.

The forum was further informed that the petitioners filed Service Appeals 1227/2022 & 10 others connected cases before the Khyber Pakhtunkhwa, Service

Section Officer (Litigition)
Government of KP
Establishment Department

Tribunal with the pray that they may be adjusted at the strength of Establishment & Administration Department as they were previously serving in similar Department in FATA Secretariat, which was allowed by the Hon'able Tribunal vide its Judgment dated 14-01-2022.

Mr. Hanif Ur Rehman & four others filed Execution Petition before the Hon'ble Tribunal to adjust them at proper place at seniority as per judgment dated 14.01.2022. In compliance of the ibid judgment of the Hon'ble Tribunal, the petitioners were adjusted conditionally against the posts of Assistants (BS-16) in Establishment & Administration Department vide Notification dated 01-11-2022 and accordingly were placed at the Sr. No.334-338 of the seniority list of Assistants (BS-16) maintained at Establishment Department vide Notification dated 29-11-2023 till the final outcome of the Apex Court as the civil appeal is pending for adjudication. Application for early hearing and shifting the case from Registry branch Peshawar to Principle seat Islamabad has already been filed.

After threadbare discussion, the forum was of the considered view that there are certain complications which creates hurdles in implementation of the judgment of the Hon'ble Tribunal for placing the petitioners at proper place in seniority list.

- The petitioners were rightly placed at surplus pool as per Government Surplus Pool Policy for their further adjustment in the directorates/attached formations. Although they have been adjusted in Establishment Department in compliance of the Hon'ble Tribunal's judgment yet they have no right of such adjustment.
- As per Khyber Pakhtunkhwa, Rules of Business 1985, there is no concept of Administrative Department at Ex-FATA Secretariat and by merger of FATA into Khyber Pakhtunkhwa, the employees of Administration Department of FATA Secretariat cannot be merged as they are not employees of Establishment Department, but their services were rightly placed in the surplus pool.
- By giving them seniority at Establishment department will affect the established rights of thousands of Secretariat employees and will lead to series of Litigation for the Provincial Government.
- Respondents have filed CPLA before the Supreme Court of Pakistan which is pending for adjudication and in this connection application for early hearing and shifting the case from registry branch Peshawar to Principal seat Islamabad has already been filed. The implementation will have adverse impacts on the CPLA of the Provincial Government.

The forum concluded that since the Provincial Government has challenged the Judgment of Hon'ble Service Tribunal before the Apex Court, therefore, the Establishment department may wait till the final outcome of the decision of the Apex Court.

The meeting ended with a vote of thanks from and to the chair.

Section Officer (Litigition)
Government of KP
Establishment Department

Annexure 9

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

Dated Peshawar, the 25th June, 2019

NOTIFICATION

No. SO(O&M)/E&AD/3-18/2019: In pursuance of integration and merger of erstwhile FATA with Khyber Pakhtunkhwa, the Competent Authority is pleased to declare the following 117 employees appointed by erstwhile FATA Secretariat as "Surplus" and place them in the Surplus Pool of Establishment and Administration Department for their further adjustment/placement w.e.f. 01.07.2019:

Sr.No.	Name of employee	Designation	BPS (Personal)
1.	Ashiq Hussain	Assistant	16
2.	Hanif ur Rehman	Assistant	16
3.	Shaukat Khan	Assistant	16
4.	Zahid Khan	Assistant	16
5.	Qaiser Khan	Assistant	16
6.	Shahid Ali Shah	Computer Operator	16
7.	Farooq Khan	Computer Operator	16
8.	Tauseef Iqbal	Computer Operator	16
9.	Waseem	Computer Operator	16
10.	Altaf Hussain	Computer Operator	16
11.	Amir Ali	Computer Operator	16
12.	Rab Nawaz	Computer Operator	16
13.	Kamran	Computer Operator	16
14.	Hafiz Muhammad Amjad	Computer Operator	16
15.	Fazl-ur-Rehman	Computer Operator	16
16.	Rajab Ali Khan	Head Draftsman	13
17.	Bakhtiar Khan	Sub Engineer	11
18.	Hakeem-ud-Din	Draftsman	11
19.	Naseem Khan	Storekeeper	7
20.	Inamullah	Driver	5
21.	Huzrat Gul	Driver	5
22.	Said Ayaz	Driver	5
23.	Abdul Qadir	Driver	5
24.	Shurbat Khan	Driver	5
25.	Iqbal Shah	Driver	5
26.	Muhammad Ali	Driver	5

TAHIR HAIDER KHAN
Advocate High Court
Attested

ATTESTED

Section Officer (Litigition)
Government of KP
Establishment Department

(62)

27.	Khan Muhammad	Driver	5
28.	Waheedullah Shah	Driver	5
29.	Mastan Shah	Driver	5
30.	Mubashir Alam	Driver	5
31.	Yousaf Hussain	Driver	5
32.	Ihsanullah	Driver	5
33.	Daud Shah	Driver	5
34.	Qismat Wali	Driver	5
35.	Alam Zeb	Driver	5
36.	Shafqatullah	Driver	5
37.	Qismatollah	Tracer	5
38.	Wali Khan	Tracer	4
39.	Muhammad Zahir Shah	Driver	4
40.	Niaz Akhtar	Driver	3
41.	Mena Jan	N/Qasid	2
42.	Zaki ullah	Naib Qasid	2
43.	Sabir Shah	Naib Qasid	2
44.	Muhammad Hussain	Naib Qasid	2
45.	Zubair Shah	Naib Qasid	2
46.	Muhammad Sharif	Naib Qasid	2
47.	Dost Ali	Naib Qasid	2
48.	Nishat Khan	Naib Qasid	2
49.	Wadan Shah	Naib Qasid	2
50.	Inamullah	Naib Qasid	2
51.	Maqsood Jan	Naib Qasid	2
52.	Zeeshan	Naib Qasid	2
53.	Arshad Khan	Naib Qasid	2
54.	Ikhlaq Khan	Naib Qasid	2
55.	Safdar Ali Shah	Naib Qasid	2
56.	Kifayatullah	Naib Qasid	2
57.	Hidayatullah	Naib Qasid	2
58.	Khalid Khan	Naib Qasid	2
59.	Shabir Khan	Naib Qasid	2
60.	Saeed Gul	Naib Qasid	2
61.	Zahidullah	Naib Qasid	2
62.	Farhad Gul	Naib Qasid	2
63.	Hameed Khan	Naib Qasid	2
64.	Rashid Khan	Naib Qasid	2
65.	Dost Muhammad	Naib Qasid	2
66.	Sajidullah	Naib Qasid	2
67.	Iftikhar ud Din	Chowkidar	2
68.	Altaf ur Rehman	Chowkidar	2
69.	Muhammad Amir	Chowkidar	2
70.	Yasar Arafat	Chowkidar	2
71.	Zumrud Khan	Chowkidar	2
72.	Kimya Gul	Chowkidar	2
73.	Azizullah		

TAIMUR ALI KHAN
Advocate High Court
Attested

Scanned by CamScanner

Section Officer (Litigition)
Government of KP
Establishment Department

74.	Zainullah	Chowkidar	2
75.	Safiullah	Chowkidar	2
76.	Inayatullah	Chowkidar	2
77.	Muhammad Abid	Chowkidar	2
78.	Daud Khan	AC Cleaner	2
79.	Muhammad Saleem	AC Cleaner/N/Qasid	2
80.	Fazale Haq	Mali	2
81.	Alamzeb	Mali	2
82.	Nehad Badshah	Mali	2
83.	Niaz Ali	Cook	2
84.	Muhammad Arshad	Cook	2
85.	Roohullah	Khadim Mosque	2
86.	Lal Jan	Regulation Baildar	2
87.	Muhammad Arshad	Sweeper	2
88.	Ramish	Sweeper	2
89.	Karan	Sweeper	2
90.	Majid Anwar	Sweeper	2
91.	Shumail	Sweeper	2
92.	Rohid Masceh	Sweeper	2
93.	Naeem Munir	Sweeper	2
94.	Pardeep Singh	Sweeper	2
95.	Mukesh	Sweeper	2
96.	Muhammad Naveed	Sweeper	2
97.	Daia Ram	Sweeper	2
98.	Muhammad Nisar	Naib Qasid	1
99.	Said Anwar	Naib Qasid	1
100.	Haseeb Zeb	Naib Qasid	1
101.	Abid	Naib Qasid	1
102.	Wakeel Khan	Naib Qasid	1
103.	Muhammad Amjad Ayaz	Naib Qasid	1
104.	Sumiullah	Naib Qasid	1
105.	Habib-ur-Rehman	Naib Qasid	1
106.	Muhammad Shoaib	Naib Qasid	1
107.	Bawar Khan	Naib Qasid	1
108.	Misbahullah	Naib Qasid	1
109.	Muhammad Tanveer	Naib Qasid	1
110.	Waqas Khurshid	Naib Qasid	1
111.	Muhammad Zahir Shah	Naib Qasid	1
112.	Javed Khan	Bara	1
113.	Noor Nabia	Mali	1
114.	Amjad Khan	Mali	1
115.	Jawad Khan	Chowkidar	1
116.	Inam ul haq	Chowkidar	1
117.	Siraj-ud-din		

2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment), Establishment Department has

ATTESTED

Section Officer (Litigation)
Government of KP
Establishment Department

been declared as focal person to properly monitor the whole process of adjustment/ placement of the surplus pool staff.

3. Consequent upon above all the above surplus staff alongwith their original record of service are directed to report to the Deputy Secretary (Establishment) Establishment Department for further necessary action.

CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA

Endst: No. & Date Even

Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Additional Chief Secretary, Merged Areas Secretariat.
3. Senior Member Board of Revenue.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries, Khyber Pakhtunkhwa.
7. The Accountant General, Khyber Pakhtunkhwa.
8. Secretary (A1&C) Merged Areas Secretariat.
9. Additional Secretary (A1&C) Merged Areas Secretariat with the request to hand over the relevant record of the above staff to the Establishment Department for further necessary action and taking up the case with the Finance Department with regard to financial implications of the staff w.e.f. 01.07.2019.
10. All Divisional Commissioners in Khyber Pakhtunkhwa.
11. All Deputy Commissioners in Khyber Pakhtunkhwa.
12. Director General Information, Khyber Pakhtunkhwa.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. Deputy Secretary (Establishment), Establishment Department for necessary action.
15. Section Officer (E-I), Establishment Department.
16. Section Officer (E-III) Establishment Department for necessary action.
17. Section Officer (E-IV) Establishment Department.
18. PS to Secretary Establishment Department.
19. PS to Special Secretary (Regulation), Establishment Department.
20. PS to Special Secretary (Establishment), Establishment Department.

05/08/19
(GAUHAR ALI)
SECTION OFFICER (O&M)

TAIMUR HAIDER KHAN
Advocate High Court
Attested

ATTESTED

Section Officer (Litigition)
Government of KP
Establishment Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020
Date of Decision ... 14.01.2022

Hanif Ur Rehman, Assistant (BPS-16), Directorate of Prosecution Khyber Pakhtunkhwa. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through its Chief Secretary at Civil Secretariat Peshawar and others. ... (Respondents)

Syed Yahya Zahid Gillani, Taimur Haider Khan &
Ali Gohar Durrani,
Advocates ... For Appellants

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. 1228/2020 titled Zubair Shah
2. 1229/2020 titled Farooq Khan
3. 1230/2020 titled Muhammad Amjid Ayaz
4. 1231/2020 titled Qaiser Khan
5. 1232/2020 titled Ashiq Hussain
6. 1233/2020 titled Shoukat Khan
7. 1244/2020 titled Haseeb Zeb

Section Officer (Litigition)
Government of KP
Establishment Department

8. 1245/2020 titled Muhammad Zahir Shah
9. 11125/2020 titled Zahid Khan
10. 11126/2020 titled Touseef Iqbal

02. Brief facts of the case are that the appellant was initially appointed as Assistant (BPS-11) on contract basis in Ex-FATA Secretariat vide order dated 01-12-2004. His services were regularized by the order of Peshawar High Court vide judgment dated 07-11-2013 with effect from 01-07-2008 in compliance with cabinet decision dated 29-08-2008. Regularization of the appellant was delayed by the respondents for quite longer and in the meanwhile, in the wake of merger of Ex-FATA with the Province, the appellant alongwith others were declared surplus vide order dated 25-06-2019. Feeling aggrieved, the appellant alongwith others filed writ petition No 3704-P/2019 in Peshawar High Court, but in the meanwhile the appellant alongwith others were adjusted in various directorates, hence the High Court vide judgment dated 05-12-2019 declared the petition as infructuous, which was challenged by the appellants in the supreme court of Pakistan and the supreme court remanded their case to this Tribunal vide order dated 04-08-2020 in CP No. 881/2020. Prayers of the appellants are that the impugned order dated 25-06-2019 may be set aside and the appellants may be retained/adjusted against the secretariat cadre borne at the strength of Establishment & Administration Department of Civil Secretariat. Similarly seniority/promotion may also be given to the appellants since the inception of their employment in the government department with back benefits as per judgment titled Tikka Khan & others Vs Syed Muzafar Hussain Shah & others (2018 SCMR 332) as well as in the light of judgment of larger bench of high court in Writ Petition No. 696/2010 dated 07-11-2013.

03. Learned counsel for the appellants has contended that the appellants has not been treated in accordance with law, hence their rights secured under the Constitution has badly been violated; that the impugned order has not been

Section Officer (Litigation)
Government of KP
Establishment Department

15

passed in accordance with law, therefore is not tenable and liable to be set aside; that the appellants were appointed in Ex-FATA Secretariat on contract basis vide order dated 01-12-2004 and in compliance with Federal Government decision dated 29-08-2008 and in pursuance of judgment of Peshawar High Court dated 07-11-2013, their services were regularized with effect from 01-07-2008 and the appellants were placed at the strength of Administration Department of Ex-FATA Secretariat; that the appellants were discriminated to the effect that they were placed in surplus pool vide order dated 25-06-2019, whereas services of similarly placed employees of all the departments were transferred to their respective departments in Provincial Government; that placing the appellants in surplus pool was not only illegal but contrary to the surplus pool policy, as the appellants never opted to be placed in surplus pool as per section-5 (a) of the Surplus Pool Policy of 2001 as amended in 2006 as well as the unwillingness of the appellants is also clear from the respondents letter dated 22-03-2019; that by doing so, the mature service of almost fifteen years may spoil and go in waste; that the illegal and untoward act of the respondents is also evident from the notification dated 08-01-2019, where the erstwhile FATA Secretariat departments and directorates have been shifted and placed under the administrative control of Khyber Pakhtunkhwa Government Departments, whereas the appellants were declared surplus; that billion of rupees have been granted by the Federal Government for merged/erstwhile FATA Secretariat departments but unfortunately despite having same cadre of posts at civil secretariat, the respondents have carried out the unjustifiable, illegal and unlawful impugned order dated 25-06-2019, which is not only the violation of the Apex Court judgment, but the same will also violate the fundamental rights of the appellants being enshrined in the Constitution of Pakistan, will seriously affect the promotion/seniority of the appellants; that discriminatory approach of the respondents is evident from the notification dated 22-03-2019, whereby other employees of Ex-FATA were not placed in surplus pool but Ex-FATA Planning Cell of P&D was placed and merged into Provincial

Section Officer (Litigition)
Government of KP
Establishment Department

116

P&D Department; that declaring the appellants surplus and subsequently their adjustment in various departments/directorates are illegal, which however were required to be placed at the strength of, Establishment & Administration department; that as per judgment of the High Court, seniority/promotions of the appellants are required to be dealt with in accordance with the judgment titled Tikka Khan Vs Syed Muzafar (2018 SCMR 332), but the respondents deliberately and with malafide declared them surplus, which is detrimental to the interests of the appellants in terms of monitory loss as well as seniority/promotion, hence interference of this tribunal would be warranted in case of the appellants.

04. Learned Additional Advocate General for the respondents has contended that the appellants has been treated at par with the law in vogue i.e. under section-11(A) of the Civil Servant Act, 1973 and the surplus pool policy of the provincial government framed thereunder; that proviso under Para-6 of the surplus pool policy states that in case the officer/officials declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall loose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from government service provided that if he does not fulfill the requisite qualifying service for pre-mature retirement, he may be compulsory retired from service by the competent authority, however in the instant case, no affidavit is forthcoming to the effect that the appellant refused to be absorbed/adjusted under the surplus pool policy of the government; that the appellants were ministerial staff of ex-FATA Secretariat, therefore they were treated under section-11(a) of the Civil Servant Act, 1973; that so far as the issue of inclusion of posts in BPS-17 and above of erstwhile agency planning cells, P&D Department merged areas secretariat is concerned, they were planning cadre employees, hence they were adjusted in the relevant cadre of the provincial government; that after merger of erstwhile FATA with the Province, the Finance Department vide

Section Officer (Litigition)
Government of KP
Establishment Department

order dated 21-11-2019 and 11-06-2020 created posts in the administrative departments in pursuance of request of establishment department, which were not meant for blue eyed persons as is alleged in the appeal; that the appellants has been treated in accordance with law, hence their appeals being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Before embarking upon the issue in hand, it would be appropriate to explain the background of the case. Record reveals that in 2003, the federal government created 157 regular posts for the erstwhile FATA Secretariat, against which 117 employees including the appellants were appointed on contract basis in 2004 after fulfilling all the codal formalities. Contract of such employees was renewed from time to time by issuing office orders and to this effect; the final extension was accorded for a further period of one year with effect from 03-12-2009. In the meanwhile, the federal government decided and issued instructions dated 29-08-2008 that all those employees working on contract against the posts from BPS-1 to 15 shall be regularized and decision of cabinet would be applicable to contract employees working in ex-FATA Secretariat through SAFRON Division for regularization of contract appointments in respect of contract employees working in FATA. In pursuance of the directives, the appellants submitted applications for regularization of their appointments as per cabinet decision, but such employees were not regularized under the pleas that vide notification dated 21-10-2008 and in terms of the centrally administered tribal areas (employees status order 1972 President Oder No. 13 of 1972), the employees working in FATA, shall, from the appointed day, be the employees of the provincial government on deputation to the Federal Government without deputation allowance, hence they are not entitled to be regularized under the policy decision dated 29-08-2008.

Section Officer (Litigition)
Government of KP
Establishment Department

18

07. In 2009, the provincial government promulgated regularization of service Act, 2009 and in pursuance, the appellants approached the additional chief secretary ex-FATA for regularization of their services accordingly, but no action was taken on their requests, hence the appellants filed writ petition No 969/2010 for regularization of their services, which was allowed vide judgment dated 30-11-2011 and services of the appellants were regularized under the regularization Act, 2009, against which the respondents filed civil appeal No 29-P/2013 and the Supreme Court remanded the case to the High Court Peshawar with direction to re-examine the case and the Writ Petition No 969/2010 shall be deemed to be pending. A three member bench of the Peshawar High Court decided the issue vide judgment dated 07-11-2013 in WP No 969/2010 and services of the appellants were regularized and the respondents were given three months time to prepare service structure so as to regulate their permanent employment in ex-FATA Secretariat vis-à-vis their emoluments, promotions, retirement benefits and inter-se-seniority with further directions to create a task force to achieve the objectives highlighted above. The respondents however, delayed their regularization, hence they filed COC No. 178-P/2014 and in compliance, the respondents submitted order dated 13-06-2014, whereby services of the appellants were regularized vide order dated 13-06-2014 with effect from 01-07-2008 as well as a task force committee had been constituted by Ex-FATA Secretariat vide order dated 14-10-2014 for preparation of service structure of such employees and sought time for preparation of service rules. The appellants again filed CM No. 182-P/2016 with IR in COC No 178-P/2014 in WP No 969/2010, where the learned Additional Advocate General alongwith departmental representative produced letter dated 28-10-2016, whereby service rules for the secretariat cadre employees of Ex-FATA Secretariat had been shown to be formulated and had been sent to secretary SAFRAN for approval, hence vide judgment dated 08-09-2016, Secretary SAFRAN was directed to finallze the matter within one month, but the respondents instead of doing the needful,

Section Officer (Litigition)
Government of KP
Establishment Department

declared all the 117 employees including the appellants as surplus vide order dated 25-06-2019, against which the appellants filed Writ Petition No. 3704-P/2019 for declaring the impugned order as set aside and retaining the appellants in the Civil Secretariat of establishment and administration department having the similar cadre of post of the rest of the civil secretariat employees.

08. During the course of hearing, the respondents produced copies of notifications dated 19-07-2019 and 22-07-2019 that such employees had been adjusted/absorbed in various departments. The High Court vide judgment dated 05-12-2019 observed that after their absorption , now they are regular employees of the provincial government and would be treated as such for all intent and purposes including their seniority and so far as their other grievance regarding their retention in civil secretariat is concerned, being civil servants, it would involve deeper appreciation of the vires of the policy, which have not been impugned in the writ petition and in case the appellants still feel aggrieved regarding any matter that could not be legally within the framework of the said policy, they would be legally bound by the terms and conditions of service and in view of bar contained in Article 212 of the Constitution, this court could not embark upon to entertain the same. Needless to mention and we expect that keeping in view the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly, hence the petition was declared as infructuous and was dismissed as such. Against the judgment of High Court, the appellants filed CPLA No 881/2020 in the Supreme Court of Pakistan, which was disposed of vide judgment dated 04-08-2020 on the terms that, the petitioners should approach the service tribunal, as the issue being terms and condition of their service, does fall within the jurisdiction of service tribunal, hence the appellant filed the instant service appeal.

Section Officer (Litigition)
Government of KP
Establishment Department

20

09. Main concern of the appellants in the instant service appeal is that in the first place, declaring them surplus is illegal, as they were serving against regular posts in administration department Ex-FATA, hence their services were required to be transferred to Establishment & Administration Department of the provincial government like other departments of Ex-FATA were merged in their respective department. Their second stance is that by declaring them surplus and their subsequent adjustment in directorates affected them in monitory terms as well as their seniority/promotion also affected being placed at the bottom of the seniority line.

10. In view of the foregoing explanation, in the first place, it would be appropriate to count the discriminatory behaviors of the respondents with the appellants, due to which the appellants spent almost twelve years in protracted litigation right from 2008 till date. The appellants were appointed on contract basis after fulfilling all the codal formalities by FATA Secretariat, administration wing but their services were not regularized, whereas similarly appointed persons by the same office with the same terms and conditions vide appointments orders dated 08-10-2004, were regularized vide order dated 04-04-2009. Similarly a batch of another 23 persons appointed on contract were regularized vide order dated 04-09-2009 and still a batch of another 28 persons were regularized vide order dated 17-03-2009; hence the appellants were discriminated in regularization of their services without any valid reason. In order to regularize their services, the appellants repeatedly requested the respondents to consider them at par with those, who were regularized and finally they submitted applications for implementation of the decision dated 29-08-2008 of the federal government, where by all those employees working in FATA on contract were ordered to be regularized, but their requests were declined under the plea that by virtue of presidential order as discussed above, they are employees of provincial government and only on deputation to FATA but without deputation allowance,

Section Officer (Litigation)
Government of KP
Establishment Department

21

hence they cannot be regularized, the fact however remains that they were not employee of provincial government and were appointed by administration department of Ex-FATA Secretariat, but due to malafide of the respondents, they were repeatedly refused regularization, which however was not warranted. In the meanwhile, the provincial government promulgated Regularization Act, 2009, by virtue of which all the contract employees were regularized, but the appellant were again refused regularization, but with no plausible reason, hence they were again discriminated and compelling them to file Writ Petition in Peshawar High Court, which was allowed vide judgment dated 30-11-2011 without any debate, as the respondents had already declared them as provincial employees and there was no reason whatsoever to refuse such regularization, but the respondent instead of their regularization, filed CPLA in the Supreme Court of Pakistan against such decision, which again was an act of discrimination and malafide, where the respondents had taken a plea that the High Court had allowed regularization under the regularization Act, 2009 but did not discuss their regularization under the policy of Federal Government laid down in the office memorandum issued by the cabinet secretary on 29-08-2008 directing the regularization of services of contractual employees working in FATA, hence the Supreme Court remanded their case to High Court to examine this aspect as well. A three member bench of High Court heard the arguments, where the respondents took a U turn and agreed to the point that the appellants had been discriminated and they will be regularized but sought time for creation of posts and to draw service structure for these and other employees to regulate their permanent employment. The three member bench of the High Court had taken a serious view of the unessential technicalities to block the way of the appellants, who too are entitled to the same relief and advised the respondents that the petitioners are suffering and are in trouble besides mental agony, hence such regularization was allowed on the basis of Federal Government decision dated 29-08-2008 and the appellants were declared as civil servants of the FATA

Section Officer (Litigation)
Government of KP
Establishment Department

22

Secretariat and not of the provincial government. In a manner, the appellants were wrongly refused their right of regularization under the Federal Government Policy, which was conceded by the respondents before three member's bench, but the appellants suffered for years for a single wrong refusal of the respondents, who put the matter on the back burner and on the ground of sheer technicalities thwarted the process despite the repeated direction of the federal government as well as of the judgment of the courts. Finally, Services of the appellants were very unwillingly regularized in 2014 with effect from 2008 and that too after contempt of court proceedings. Judgment of the three member bench is very clear and by virtue of such judgment, the respondents were required to regularize them in the first place and to own them as their own employees borne on the strength of establishment and administration department of FATA Secretariat, but step-motherly behavior of the respondents continued unabated, as neither posts were created for them nor service rules were framed for them as were committed by the respondents before the High Court and such commitments are part of the judgment dated 07-11-2013 of Peshawar High Court. In the wake of 25th Constitutional amendments and upon merger of FATA Secretariat into Provincial Secretariat, all the departments' alongwith staff were merged into provincial departments. Placed on record is notification dated 08-01-2019, where P&D Department of FATA Secretariat was handed over to provincial P&D Department and law & order department merged into Home Department vide notification dated 16-01-2019, Finance department merged into provincial Finance department vide notification dated 24-01-2019, education department vide order dated 24-01-2019 and similarly all other department like Zakat & Usher Department, Population Welfare Department, Industries, Technical Education, Minerals, Road & Infrastructure, Agriculture, Forests, Irrigation, Sports, FDMA and others were merged into respective Provincial Departments, but the appellants being employees of the administration department of ex-FATA were not merged into Provincial Establishment & Administration Department, rather they were

Section Officer (Litigition)
Government of KP
Establishment Department

declared surplus, which was discriminatory and based on malafide, as there was no reason for declaring the appellants as surplus, as total strength of FATA Secretariat from BPS-1 to 21 were 56983 of the civil administration against which employees of provincial government, defunct FATA DC, employees appointed by FATA Secretariat, line directorates and autonomous bodies etc were included, amongst which the number of 117 employees including the appellants were granted amount of Rs. 25505.00 million for smooth transition of the employees as well as departments to provincial departments and to this effect a summery was submitted by the provincial government to the Federal Government, which was accepted and vide notification dated 09-04-2019, provincial government was asked to ensure payment of salaries and other obligatory expenses, including terminal benefits as well of the employees against the regular sanctioned 56983 posts of the administrative departments/attached directorates/field formations of erstwhile FATA, which shows that the appellants were also working against sanctioned posts and they were required to be smoothly merged with the establishment and administration department of provincial government, but to their utter dismay, they were declared as surplus inspite of the fact that they were posted against sanctioned posts and declaring them surplus, was no more than malafide of the respondents. Another discriminatory behavior of the respondents can be seen, when a total of 235 posts were created vide order dated 11-06-2020 in administrative departments i.e. Finance, home, Local Government, Health, Environment, Information, Agriculture, Irrigation, Mineral and Education Departments for adjustment of the staff of the respective departments of ex-FATA, but here again the appellants were discriminated and no post was created for them in Establishment & Administration Department and they were declared surplus and later on were adjusted in various directorates, which was detrimental to their rights in terms of monetary benefits, as the allowances admissible to them in their new places of adjustment were less than the one admissible in civil secretariat. Moreover, their seniority was also affected

Section Officer (Litigation)
Government of KP
Establishment Department

24

as they were placed at the bottom of seniority and their promotions, as the appellant appointed as Assistant is still working as Assistant in 2022, are the factors, which cannot be ignored and which shows that injustice has been done to the appellants. Needless to mention that the respondents failed to appreciate that the Surplus Pool Policy-2001 did not apply to the appellants since the same was specifically made and meant for dealing with the transition of district system and resultant re-structuring of governmental offices under the devolution of powers from provincial to local governments as such, the appellants service in erstwhile FATA Secretariat (now merged area secretariat) had no nexus whatsoever with the same, as neither any department was abolished nor any post, hence the surplus pool policy applied on them was totally illegal. Moreover the concerned learned counsel for the appellants had added to their miseries by contesting their cases in wrong forums and to this effect, the supreme court of Pakistan in their case in civil petition No. 881/2020 had also noticed that the petitioners being pursuing their remedy before the wrong forum, had wasted much of their time and the service Tribunal shall justly and sympathetically consider the question of delay in accordance with law. To this effect we feel that the delay occurred due to wastage of time before wrong forums, but the appellants continuously contested their case without any break for getting justice. We feel that their case was already spoiled by the respondents due to sheer technicalities and without touching merit of the case. The apex court is very clear on the point of limitation that cases should be considered on merit and mere technicalities including limitation shall not debar the appellants from the rights accrued to them. In the instant case, the appellants has a strong case on merit, hence we are inclined to condone the delay occurred due to the reason mentioned above.

11. We are of the considered opinion that the appellants has not been treated in accordance with law, as they were employees of administration department of the ex-FATA and such stance was accepted by the respondents in their comment

Section Officer (Litigation)
Government of KP
Establishment Department

(24)

25

submitted to the High Court and the High Court vide judgment dated 07-11-2013 declared them civil servants and employees of administration department of ex-FATA Secretariat and regularized their services against sanctioned posts, despite they were declared surplus. They were discriminated by not transferring their services to the establishment and administration department of provincial government on the analogy of other employees transferred to their respective departments in provincial government and in case of non-availability of post, Finance department was required to create posts in Establishment & Administration Department on the analogy of creation of posts in other Administrative Departments as the Federal Government had granted amount of Rs. 25505 million for a total strength of 56983 posts including the posts of the appellants and declaring them surplus was unlawful and based on malafide and on this score alone the impugned order is liable to be set aside. The correct course would have been to create the same number of vacancies in their respective department i.e. Establishment & Administrative Department and to post them in their own department and issues of their seniority/promotion was required to be settled in accordance with the prevailing law and rule.

12. We have observed that grave injustice has been meted out to the appellants in the sense that after contesting for longer for their regularization and finally after getting regularized, they were still deprived of the service structure/rules and creation of posts despite the repeated directions of the three member bench of Peshawar High Court in its judgment dated 07-11-2013 passed in Writ Petition No. 969/2010. The same directions has still not been implemented and the matter was made worse when impugned order of placing them in surplus pool was passed, which directly affected their seniority and the future career of the appellants after putting in 18 years of service and half of their service has already been wasted in litigation.

Section Officer (Litigation)
Government of KP
Establishment Department

35 26

13. In view of the foregoing discussion, the instant appeal alongwith connected service appeals are accepted. The impugned order dated 25-06-2019 is set aside with direction to the respondents to adjust the appellants in their respective department i.e. Establishment & Administration Department Khyber Pakhtunkhwa against their respective posts and in case of non-availability of posts, the same shall be created for the appellants on the same manner, as were created for other Administrative Departments vide Finance Department notification dated 11-06-2020. Upon their adjustment in their respective department, they are held entitled to all consequential benefits. The issue of their seniority/promotion shall be dealt with in accordance with the provisions contained in Civil Servant Act, 1973 and Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989, particularly Section-17(3) of Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989. Needless to mention and is expected that in view of the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Section Officer (Litigation)
Government of KP
Establishment Department

27

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

F/E

Dated Peshawar, the November 1st, 2022

NOTIFICIATION

No. SO E-IV (E&AD)/1-2/2022: - In pursuance of Khyber Pakhtunkhwa Service Tribunal judgement in Service Appeal No. 1227/2020 dated 14.01.2022 and subsequent Execution Petition No. 242-252/2022 dated 26.07.2022 in Service Appeal No. 1227/2020 dated 14.01.2022, in compliance of the orders passed by Khyber Pakhtunkhwa Service Tribunal Mr. Shoukat Hussain, Assistant (BS-16), presently working as Assistant in Directorate of Higher Education Department Khyber Pakhtunkhwa is hereby conditionally adjusted as Assistant (BS-16) in Civil Secretariat, Peshawar till final judgement of Supreme Court of Pakistan in CPLA No. 358-P/2022 dated 25.04.2022 which is pending adjudication before Supreme Court of Pakistan.

2. His seniority and other claims will be settled in due course of time.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Endst: Even No. & Date.

Copy of the above is forwarded to: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
3. Director, Directorate of Higher Education, Higher Education Department.
4. Section Officer (Admn), Administration Department.
5. Section Officer (Secret), Establishment Department.
6. Section Officer (Lit-III), Establishment Department for further necessary action
7. P.S to Secretary Establishment Department.
8. P.S to Special Secretary (Estt), Establishment Department
9. P.A to Addl: Secretary (Estt), Establishment Department.
10. P.A to Deputy Secretary (Estt), Establishment Department.
11. Official concerned.

SECTION OFFICER (E-IV)

Section Officer (Litigition)
Government of KP
Establishment Department

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

Dated Peshawar, the 29.11.2023

NOTIFICATION

No. SO E-IV (E&AD)/1-2/2022: - In continuation of this Department's Notification dated 07.10.2022 in respect of Mr. Hanif Ur Rehman, Assistant (BS-16), the competent authority has been pleased to place him at Serial No. 334 of the Seniority List of Assistants maintained in Establishment Department, subject to final judgement of the Supreme Court of Pakistan in CPLA No.385-P/2022 which is pending for adjudication.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Endst: Even No. & Date.

Copy of the above is forwarded to: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Section Officer (Gen), Environment Department.
3. Section Officer (Secret), Establishment Department.
4. Section Officer (Lit-II), Establishment Department for further necessary action.
5. P.S to Secretary Establishment Department.
6. P.S to Special Secretary (Estt), Establishment Department
7. P.A to Addl: Secretary (Estt), Establishment Department.
8. P.A to Deputy Secretary (Estt), Establishment Department.
9. Official concerned.

SECTION OFFICER (E-IV)

Section Officer (Litigition)
Government of KP
Establishment Department