


FORM OF ORDER SHEET

Court of _____

Appeal No. 546/2024

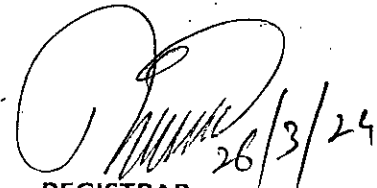
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/04/2024	<p>The appeal of Mr. Muhammad Tauseef Khan resubmitted today by Mr. Waleed Adnan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on .Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Muhammad Touseef Khan received today i.e on 25.03.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is not signed by the counsel.
- 2- Check list is not attached with the appeal.
- 3- Affidavit is not attested by the Oath Commissioner.
- 4- Annexures of the appeal are unattested.
- 5- Appeal has not been flagged/marked with annexures marks.
- 6- Copy of impugned order is not attached with the appeal.
- 7- Annexures-A of the appeal is illegible be replaced by legible/better one.
- 8- Six more copies/sets of the appeal along with annexures i.e. complete in respect may also be submitted with the appeal.

No. 669 /S.T,

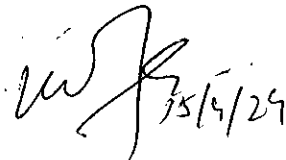
Dt. 26/3 /2024.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Waleed Adnan Adv.
High Court Peshawar.

Note- Objections no. 1 - to 5 and 7, 8 have been removed where as objection no. 6 pertains to impugned order. However there is no impugned order in the instant case here resubmitted.



35/4/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No:- 546 -P/2023/4

Muhammad Touseef Khan

Versus

Secretary Home & others

INDEX

S#	Description of the Documents	Annex	Pages
1.	<i>Grounds of appeal</i>	*	1-3
2.	<i>Copy of job advertisement and appointment order</i>	"A"	4-5
3.	<i>Copies of medical certificate and arrival report</i>	"B"	6-7
4.	<i>Copy of the judgment of KP Service Tribunal dated 05/12/2023</i>	"C"	8-21
5.	<i>Copies of relevant documents and departmental appeal</i>	"D" & "E"	22-32
6.	<i>Wakalat Nama</i>		33

Appellant

Through:-

Waleed Adnan
Advocate High Court
Peshawar.

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

SERVICE APPEAL NO. 546 /2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11895

Dated 28-03-2024

Mr. Muhammad Touseef Khan Junior Clerk (BPS-11),
FATA Tribunal, Peshawar.

.....**APPELLANT**

VERSUS

- 1- The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chairman, FATA Tribunal through its Registrar.
- 3- The Registrar, FATA Tribunal.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING/ POSTING THE APPELLANT AGAINST THE POST OF JUNIOR CLERK AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

That on acceptance of this service appeal the appellant may very kindly be adjusted/ posted against the post of Junior Clerk (BPS-11) with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant was appointed as Junior Clerk (BPS-07) in the FATA Tribunal vide order dated 08.03.2019 on the proper recommendation of Departmental Selection Committee. Copies of the job advertisement and appointment order are attached as annexure.....**A.**
- 2- That the appellant was medically examined where after he submitted his arrival report and started performing his duties. Copies of the medical certificate and arrival report are attached as annexure.....**B.**

- 3- That the appellant was serving the respondent department to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance.
- 4- That in the mean while the FATA Tribunal became defunct after merger of FATA into Khyber Pakhtunkhwa in light of 25th Constitutional amendment.
- 5- That since then the appellant has been in limbo where after he approached different forums for his posting/adjustment but to no avail.
- 6- That it is worth mentioning here that all other colleagues who were appointed along with the appellant, were adjusted/posted in the home department after the FATA Tribunal became defunct and thereafter they were removed from service on the ground that the codal formalities were not fulfilled at the time of their appointment. That the subject action of the respondents was assailed through departmental appeal followed by service appeal No.2567/2021 along with other connected appeals which were accepted vide consolidated judgment dated 05.12.2023 whereby the respondents were directed to reinstate them into service, however it's also pertinent to mention here that there is no such adverse order against the appellant. Copy of the judgment of KP Service Tribunal dated 05.12.2023 is attached as annexure.....C.
- 7- That now after revival of the erstwhile FATA Tribunal vide notification dated 17.07.2023 in light of the judgment of Honourable Peshawar High Court, Peshawar, the appellant filed departmental appeal for his posting/adjustment but in vain. Copies of the relevant documents and departmental appeal are attached as annexure.....D & E.
- 8- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not adjusting/posting the appellant against the post of junior clerk is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subjected noted above and as such respondents violated the Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.

- C- That it is also worth mentioning that there is no adverse order against the appellant yet the respondents are reluctant to adjust/ post him against the post of junior clerk.
- D- That the appellant is entitled to be posted/ adjusted against the post of junior clerk under the principle of consistency in light of the judgments of the August KP Service Tribunal.
- E- That it is also worth mentioning that there is no adverse order against the appellant yet the respondents are reluctant to adjust/ post him against the post of junior clerk.
- F- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Touseef
APPELLANT

THROUGH

WALEED ADNAN
UMAR FAROOQ
AYUB KHAN GHILZAI
& MEHMOOD JAN
ADVOCATES HIGH COURT

AFFIDAVIT

I, Mr. Muhammad Touseef Khan Junior Clerk (BPS-11), FATA Tribunal, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Touseef
DEPONENT

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JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	HPS	No of	Age	Qualification
1	Motorist	14	04	18-32	HA/HS/B Com & Equivalent with 10 years experience
2	Key Punch Operator	12	03	18-32	HA/HS/B Com & Equivalent with 10 years experience
3	Stenographer	12	01	18-32	HA/HS with standard typing Speeding to 40 WPM
5	Junior Clerk	07	04	18-32	HA/HS or Equivalent with typing Speeding to 40 WPM
6	Driver	04	04	18-40	Matric pass having "L.V." driving license
7	Sub Guard	01	04	18-40	Matric Pass
8	Chevrolet	01	03	18-40	

Special conditions:
 1. Age relaxation in deserving cases can be considered as per Government rules.
 2. Only shortlisted candidates will be called for test interview.
 3. No TA/DA will be admissible for test interview.
 4. Application form along with attested copies of testimonials, experience certificates (NAT), Domestic Certificate and a recent photograph should reach on PO Box No. 151 within 15 days of advertisement.
 5. Incomplete or applications received after closing date will not be entertained.
 6. Government employee should apply through proper channel.
 7. The competent authority reserves the right to change the terms & condition, not to fill vacant posts and reserves the right to extend the recruitment process without any reason.
 8. This advertisement is subject to verification.

JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	HPS	No of	Age	Qualification
1	Assistant Motorist	14	04	18-32	HA/HS/B Com & Equivalent with 10 years experience
2	Key Punch Operator	12	03	18-32	HA/HS/B Com & Equivalent with 10 years experience
3	Stenographer	12	01	18-32	HA/HS with standard typing Speeding to 40 WPM
4	Junior Clerk	07	04	18-32	HA/HS or Equivalent with typing Speeding to 40 WPM
5	Driver	04	04	18-40	Matric pass having "L.V." driving license
6	Sub Guard	01	04	18-40	Matric Pass
7	Chevrolet	01	03	18-40	

Special conditions:
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 7. The competent authority reserves the right to change the terms & condition, not to fill vacant posts and reserves the right to extend the recruitment process without any reason.
 8. This advertisement is subject to verification.

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ABC CERTIFIED

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JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged arrears against the following vacant posts on regular basis

S. No	Name of post	BPS	Nos of post	Age	Qualification
1.	Assistant/ Moharior	14	03	18-32	B.A, BSc, B.Com & equivalent with 06 years experience
2.	Key Punch Operator	12	01	18-32	B.A, BSc, B.Com & Equivalent
3.	Stenographer	12	04	18-32	F.A FSc with shorthand and typing speed upto 40 WPM
4.	Junior Clerk	07	04	18-32	F.A FSc or equivalent and typing speed upto 40 WPM
5.	Driver	04	04	18-40	Middle Pass having LTV Driving license
6.	Naib Qasid	01	03	18-40	Middle Class
7.	Chowkidar	01		18-40	

JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged arrears against the following vacant posts on regular basis

S. No	Name of post	BPS	Nos of post	Age	Qualification
8.	Assistant/ Moharior	14	03	18-32	B.A, BSc, B.Com & equivalent with 06 years experience
9.	Key Punch Operator	12	01	18-32	B.A, BSc, B.Com & Equivalent
10.	Stenographer	12	04	18-32	F.A FSc with shorthand and typing speed upto 40 WPM
11.	Junior Clerk	07	04	18-32	F.A FSc or equivalent and typing speed upto 40 WPM
12.	Driver	04	04	18-40	Middle Pass having LTV Driving license
13.	Naib Qasid	01	03	18-40	Middle Class
14.	Chowkidar	01		18-40	



(5)

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/ *MSA* dated: 08/03/2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Muhammad Touseef Khan S/O Zaman Shah against the vacant post of Junior Clerk BPS-07 (10990-610-29290) in FATA Tribunal at Peshawar under rule 10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-07 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt. to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

01. The Accountant General Pakistan Revenues Sub Office, Peshawar.
02. Ps to ACS FATA, Peshawar.
03. PS to Secretary Law & Order FATA, Peshawar.
04. PS to Secretary Finance FATA, Peshawar.
05. Personal File.
06. Official Concerned.

REGISTRAR
FATA TRIBUNAL

ORDER

No. R/11/2018-19/1139 dated 08/03/2019 On recommendation of the Departmental Selection Committee, the competent authority is pleased to appoint Muhammad Touseef Khan S/o Zaman Shah against the vacant post of Junior Clerk BPS-07 (10990-610-29290) in FATA Tribunal at Peshawar under Rule 10 sub rule 2 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 on the following terms and conditions.

Terms & Conditions:-

1. He will get pay at the minimum of BPS-07 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act, 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards general provident Fund (GPF) alongwith the contributions made by Govt: to his account in the said funds, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/Civil Surgeon before joining duties as required under the rules.
5. He has to join duties as his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

Registrar
FATA Tribunal

Copy to:-

1. The Accountant General Pakistan Revenues Sub Office, Peshawar.
2. PS to ACS FATA, Peshawar
3. PS to Secretary Law & orders FATA, Peshawar.
4. PS to Secretary Finance FATA, Peshawar.
5. Personal File.
6. Official concerned.

Registrar
FATA Tribunal

To

The Registrar
FATA Tribunal
Peshawar.

Subject:

ARRIVAL REPORT

R/Sir,

In pursuance of FATA Tribunal Peshawar order No. R/11/2018-19/1131 dated 08.03.2019, I submit my arrival report as Junior Clerk today i.e. 16.03.2019.

You're obediently,



Mhd. Touseef Khan J/Clerk

MEDICAL CERTIFICATE

(7)

Name of official MUHAMMAD TOUSEEF Khan

Caste or race Muslim

Father's name ZAMAN SMAN

Residence Moh. Darg wall village & P.O. Bad Darg
Teh. & Dist. Charsada.

Date of birth 01-04-1989

Exact height by measurement 5-2

Personal mark of identification NIL

Signature of the official [Signature]

Signature of head of office _____

Seal of office _____

I do hereby certify that I have examined Mr. Muhammad Touseef Khan a candidate for employment in the Office of the PATA Tribuna and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except NIL

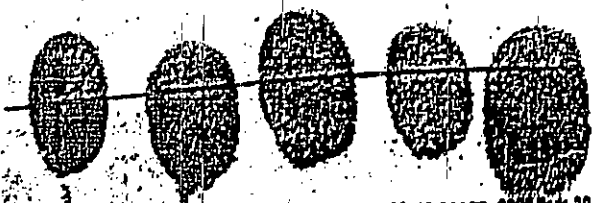
I do not consider this as disqualification for employment in the office of the As above

His age according to his own statement 30 year and by appearance about year 30 thirty 2

MEDICAL SUPERINTENDENT,
CIVIL HOSPITAL [Signature]
Medical Superintendent
Police/ Services, Hospital
Peshawar

1670311

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Service Appeal No.2567/2021 titled "Navaid Ur Rehman & two others vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 05.12.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**



**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)**

Service Appeal No.2567/2021

Date of presentation of Appeal.....10.02.2021
Date of Hearing.....05.12.2023
Date of Decision.....05.12.2023

Mr. Navaid Ur Rehman Afridi S/O Muhammad Shah, resident of F.R, Metta Khel, P.O Sam Badaber Peshawar.....(Appellant)

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Service Appeal No.2568/2021

Date of presentation of Appeal.....10.02.2021
Date of Hearing.....05.12.2023
Date of Decision.....05.12.2023

Mr. Arif Jan S/O Afsar Jan, resident of Sheikh Abad Rajjar Tehsil & District Charsadda.....(Appellant)

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Service Appeal No.2569/2021

Date of presentation of Appeal.....10.02.2021
Date of Hearing.....05.12.2023
Date of Decision.....05.12.2023

DATE STAMPED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Mr. Nadir Shah son of Iqbal Shah, resident of Garhi Kargaram Alamgudar, Tehsil Bara, District Khyber.....(Appellant)

Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
 3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

Present:

Zartaj Anwar, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 11.11.2020, WHEREBY THE APPELLANTS HAVE BEEN AWARDED MAJOR PENALTY OF REMOVAL FROM SERVICE AND AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 16.11.2020 WAS FILED BEFORE THE COMPETENT AUTHORITY WHICH WAS REJECTED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above three appeals are going to be decided as all are similar in nature and almost with the same contentions.

2. The appellants were appointed against the post of Junior Clerk vide order dated different posts in the erstwhile FATA Tribunal and after merger of the Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa, the employees of the FATA Tribunal including the appellants were transferred to the Government of Khyber

ATTESTED


KALIM ARSHAD KHAN
Chairman, Khyber Pakhtunkhwa
Service Tribunal
Peshawar

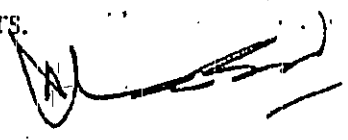
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Pakhtunkhwa Home & Tribal Affairs Department and they were posted against different posts vide Notification No. E&A (HD)2-5/2021 dated 17.06.2021. That on 02.09.2020, the appellants were issued show cause notices by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar. It was thus found by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, that the appellants had been guilty of "Misconduct" as specified in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The appellants filed their respective replies and vide impugned orders, the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, removed all the appellants from service. The appellants filed departmental appeals, which were regretted, compelling the appellants to file these appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned orders.



ATTESTED

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

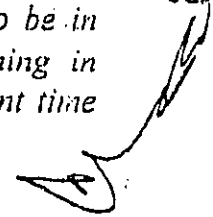
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6. At the very outset, learned counsel for the appellants referred to the consolidated judgment passed in Service Appeal No.774/2022 titled "Reedad Khan Vs. The Chief Secretary Khyber Pakhtunkhwa & others" and stated that the instant service appeals were also connected with the above mentioned appeal, being similar nature and were argued but at the time of announcement, certain points were needed further consideration, which were clarified today. This Tribunal in similar matter in issue passed consolidated judgment in Service Appeal No.774/2022 has held as under:

"It is undisputed that the appellants were appointed by the Ex-FATA Tribunal and they had been performing duties until their removal from service. The allegations against them are that the recruitment process was unlawful and the appointment orders were issued without lawful authority. Not a single document was produced by the respondents in support of these allegations before the Tribunal. All the appellants were the candidates in the process of selection initiated in response to the advertisement in two Urdu dailies "AAJ Peshawar" and "AAYEEN Peshawar". It is worth mentioning that all the appellants had duly applied for the posts. The appointment orders show that each appointment had been made on the recommendation of the Departmental Selection Committee (DSC). The respondents though alleged that the DSC was unlawful but have not explained as to how that was so? The posts advertised were within the competence of the Registrar under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules, 2015. Therefore, the allegation that the appointment orders were issued by unlawful authority is also not finding favour with us. Regarding the bald allegation that the selection process was also unlawful, there is nothing more said as to how the process was unlawful except that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates, there were/existed no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. We find that there are no details of any such employees had been produced before us, nor any order of constitution of the selection committee alleged to be against the law was produced, similarly no details regarding number of posts so much so who was appointed against the 24th post alleged to be in excess of the sanctioned posts, nothing is known nor anything in support of the above was placed on the record despite sufficient time

ATTESTED

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



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given on the request of the Assistant Advocate General. Even today we waited for four long hours but nobody from respondent/department bothered to appear before the Tribunal. It is also undisputed that the appellants were not associated with the enquiry proceedings on the basis of which they were penalized. In the show cause notices, the appellants were also said to be guilty under rule 2, Sub-Rule(1)(vi) of the Khyber Pakhtunkhwa Government, Servants (Efficiency & Discipline) Rules, 2011, the said provision is reproduced as under:


"Rule 2 sub-rule (1) clause (vi) "making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules".

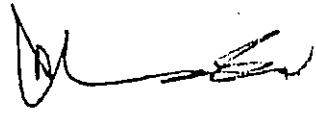
7. Nothing has been said or explained in the replies of the respondents or during the arguments regarding the alleged violation of law and rules in the appointments of the appellants. It is also to be observed that if at all there was any illegality, irregularity or wrongdoing found in the appointments of the appellants, which have nowhere been explained nor, as aforesaid, any document produced in that regard, the appointment orders of the appellants have not been cancelled rather the appellants were removed from service.

8. The Registrar (Sajjad-ur-Rehman), of the EX-FATA Tribunal, who had made the appointments of the appellants as competent authority under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules, 2015, was removed from service on the basis of the said enquiry. He filed Service Appeal No.2770/2021 before this Tribunal, which was partially accepted on 01.02.2022 and the major penalty of removal from service awarded to him was converted into minor penalty of stoppage of increment for one year. We deem appropriate to reproduce paragraphs 5, 6 & 7 of the said judgment.

"5. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUNTS AND AUDIT RULES, 2015, where appointment authority for making appointments in Ex-FATA Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

"6. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointment

NOTIFIED

Registrar, Ex-FATA Tribunal,
Peshawar



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authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval for the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointment authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegation does not hold ground.

"7. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or

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Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

reformation. Reliance is placed on 2006 SCMR 60."

In the judgment it was found that there were some irregularities in the appointments made by the Registrar, that were not so grave rather lack of proper care and vigilance was there which might not be willful to make the same as a case of grave negligence inviting severe punishment. It is nowhere alleged by the respondents in the show cause notices, impugned orders or even in the replies that the appellants were either not qualified or were ineligible for the post against which they had been appointed. There might be irregularities in the process, though not brought on surface by the respondents in any shape, yet for the said alleged irregularities, the appellants could not be made to suffer. Reliance is placed on 1996 SCMR 413 titled "Secretary to Government of NWFP Zakat/Social Welfare Department Peshawar and another versus Sadullah Khan", wherein the august Supreme Court of Pakistan held as under:

"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described "purely temporary basis". The petitioners have now turned around and terminated his services due to irregularity and violation of rule 10(2) *ibid*. The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely, because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re instating the respondent."

9. Wisdom is also derived from 2009 SCMR 412 titled "Fauz Asadullah Khan versus Federation of Pakistan through Secretary Establishment and others", wherein the august Court found that:

"8. In the present case, petitioner was never promoted but was directly appointed as Director (B-19) after fulfilling the prescribed procedure, therefore, petitioner's reversion to the post of Deputy Director (B-18) is not sustainable. Learned Tribunal dismissed the appeal of petitioner on the ground that his appointment/selection as Director (B-19) was made with legal/procedural infirmities of substantial nature. While mentioning procedural

ATTESTED
Kallin Arshad Khan
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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infirmities in petitioner's appointment, learned Tribunal has nowhere pointed out that petitioner was, in any way, at fault, or involved in getting the said appointment or was promoted as Director (B-19). The reversion has been made only after the change in the Government and the departmental head. Prior to it, there is no material on record to substantiate that petitioner was lacking any qualification, experience or was found inefficient or unsuitable. Even in the summary moved by the incumbent Director-General of respondent Bureau he had nowhere mentioned that petitioner was inefficient or unsuitable to the post of Director (B-19) or lacked in qualification, and experience, except pointing out the departmental lapses in said appointment.

9. Admittedly, rules for appointment to the post of Director (B-19) in the respondent Bureau were duly approved by the competent authority; petitioner was called for interview and was selected on the recommendation of Selection Board, which recommendation was approved by the competent authority.

10. In such-like a situation this Court in the case of *Federation of Pakistan through Secretary, Establishment Division Islamabad and another v. Gohar Riaz* 2004 SCMR 1662 with specific reference of *Secretary to the Government of N.-W.F. Zakat/Social Welfare Department Peshawar and another v. Saadulath Khan* 1996 SCMR 413 and *Water and Power Development Authority through Chairman WAPDA House, Lahore v. Abbas Ali Malano and another* 2004 SCMR 630 held:---

"Even otherwise respondent (employee) could not be punished for any action or omission of petitioners (department). They cannot be allowed to take benefits of their lapses in order to terminate the service of respondent merely because they had themselves committed irregularity by violating the procedure governing the appointment. On this aspect, it would be relevant to refer the case of *Secretary to Government of N.-W.F.P. Zakat/Ushr, Social Welfare Department* 1996 SCMR 413 wherein this Court has candidly held that department having itself appointed civil

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12/12/2023
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Service Tribunal
Peshawar

servant on temporary basis in violation of rules could not be allowed to take benefit of its lapses in order to terminate services of civil servants merely because it had itself committed irregularity in violating procedure governing such appointment. Similarly in the case of Water Development Authority referred (supra), it has been held by this Court that where authority itself was responsible for making, such appointment, but subsequently took a turn and terminated their services on ground of same having been made in violation of the rules, this Court did not appreciate such conduct, particularly when the appointees fulfilled requisite qualifications."

11. In Muhammad Zahid Iqbal and others v. D.E.O. Mardan and others 2006 SCMR 285 this Court observed that "principle in nutshell and consistently declared by this Court is that once the appointees are qualified to be appointed their services cannot subsequently be terminated on the basis of lapses and irregularities committed by the department itself. Such laxities and irregularities committed by the Government can be ignored by the Courts only, when the appointees lacked the basic eligibilities otherwise not".

12. On numerous occasions this Court has held that for the irregularities committed by the department itself qua the appointments of the candidate, the appointees cannot be condemned subsequently with the change of Heads of the Department or at other level. Government is an institution in perpetuity and its orders cannot be reversed simply because the Heads have changed. Such act of the departmental authority is all the more unjustified when the candidate is otherwise fully eligible and qualified to hold the job. Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education, Secondary, N.-W.F.P. Peshawar and others 2007 PLC (C.S.) 179.

13. It is well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where a full opportunity of defence is to be provided to the delinquent officer. Efficiency and Discipline Rules, 1973 clearly stipulate that in case of charge of

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[Signature]
Kallin Arshad Khan
Chairman
Judicial, Khyber Pakhtunkhwa
Service Tribunal

[Signature]

misconduct, a full-fledged inquiry is to be conducted. This Court in the case of Pakistan International Airlines Corporation through Managing Director, PIAC Head Office, Karachi Airport, Karachi v. Ms. Shaista Naheed 2004 SCMR 316, has held that "in case of award of major penalty, a full-fledged inquiry is to be conducted in terms of Rule 5 of E&D Rules, 1973 and an opportunity of defence and personal hearing is to be provided". Specific reference is made to latest decisions of this Court in cases of Secretary, Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar and another PLD 2008 SC 392 and Fazal Ahmad Naseem Gondal v. Registrar, Lahore High Court 2008 SCMR 114.

14. In the facts and circumstances, we find that in this case, neither petitioner was found to be lacking in qualification, experience or in any ineligibility in any manner, nor any fault has been attributed to petitioner, therefore, he cannot be reverted from the post of Director (B-19). Act of sending summary by the Establishment Secretary to the Prime Minister was not in accordance with Rule 6(2) of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 as the Establishment Secretary was himself the appointing authority. The departmental authorities at the time of appointment of the petitioner as Director (B-19) did not commit any irregularity or illegality as has been affirmed by the Establishment Secretary in the summary to the Prime Minister. The power vested in the competent authority should have been exercised by the competent authority itself, fairly and justly. Decision has to be made in the public interest based on policy. It must be exercised by the proper authority and not by some agent or delegatee. It must be exercised without restraint as the public interest may, from time to time require. It must not be fettered or hampered by contracts or other bargains or by self-imposed rules of thumb. So a distinction must be made between following a consistent policy and blindly applying some rigid rule. Secondly discretion must not be abused. In the case of Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 this Court observed that "we need not stress here that a tamed and subservient

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APPROVED

[Signature]

Chief Justice

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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bureaucracy can neither be helpful to government nor it is expected to inspire public confidence in administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait of a bureaucrat. It hardly need to be mention that a Government servant is expected to comply only those orders/directions of superior which are legal and within his competence".

10. In a recent judgment in the case titled "Inspector General of Police, Quetta and another versus Fida Muhammad and others" reported as 2022 SCMR 1583, the honourable Court observed that:

"11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that the appointments

APPROVED
KALIM ASHAD KHANI
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-I for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system."


11. For what has been discussed above, we hold that the appellants have not been treated in accordance with law and thus the impugned orders are not sustainable. On acceptance of all these appeals we set aside the impugned orders and direct reinstatement of all the appellants with back benefits. Costs shall follow the event. Consign."

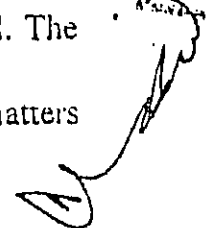
7. The instant service appeals are also for reinstatement in service.

All of the appellants i.e. appellants in this case as well as in the above mentioned case have been removed from service and the competent authority of all the appellants, was the Secretary to Government of Khyber Pakhtunkhwa, Home Department. The difference is that in these appeals, the departmental appeals of the appellants were regretted while those appellants' departmental appeals were not responded. The date of removal from service was also different while facts and matters

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ATTESTED


Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar




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in issue are the same. All the impugned orders had been set aside as the impugned orders were not in accordance with law.

8. Therefore, we allow these appeals. The impugned orders are set aside and the appellants are reinstated in service with all back benefits. Copy of this judgment be placed in all connected appeals files. Costs shall follow the event. Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of December, 2023.


KALIM ARSHAD KHAN
Chairman


SALAH-UD-DIN
Member (Judicial)

Certified to be true copy

Atiqul Shah


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 05/12/23
Number of Words 13-P
Copying Fee 65/-
Urgent _____
Total 65/-
Name of Copyholder _____
Date of Completion of Copy 13/12/23
Date of Delivery of Copy 13/12/23

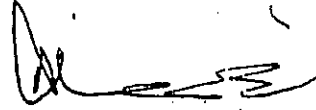
Dec, 2023

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1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we allow these appeals. The impugned orders are set aside and the appellants are reinstated in service with all back benefits. Copy of this judgment be placed in all connected appeal files. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 5th day of December, 2023.*



(Salah Ud Din)
Member(Judicial)



(Kalim Arshad Khan)
Chairman



Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

NOTIFICATION

Peshawar, dated the 17th July, 2023.

No. SO-(J-I)/HD/IP-86/2023/Vol-I. In exercise of the powers conferred by sub-section (2) of section 55A of the Frontier Crime Regulation, 1901 (Regulation No. III of 1901), and in pursuance of the Judgment of the Honorable Peshawar High Court, Peshawar dated: 02-12-2022, rendered in writ petition No: 2337-P/2019, and other connected petitions, read with clause (1) of Article 129 and Article 105 of the Constitution of the Islamic Republic of Pakistan, the Governor of Khyber Pakhtunkhwa, on the advice of the Chief Minister, Khyber Pakhtunkhwa, is pleased to appoint the following as Chairman and Members of FATA Tribunal for a period of three (03) years or during the pleasure of the Governor, Khyber Pakhtunkhwa, in the best public interest, with immediate effect:

- | | |
|--------------------------------|----------|
| 1) Mr. Zakir Hussain Afridi; | Chairman |
| 2) Mr. Kifayat Ullah Khan; and | Member |
| 3) Mr. Khalil Ullah Khalil | Member |

02. Consequent upon the appointment of the Chairman and Members of the FATA Tribunal, the FATA Tribunal shall hear and decide the following cases:-

- w.p. No. 2337/2019 "Suhbat Khan and others vs Kandl Barami Tappa Kama Khel";
- w.p. No. 2338/2019 "Haji Ameer Navaz vs Tor Khel, Koki Khel Tribe through representatives";
- w.p. No. 2336/2019 " Suubat Khan and others vs Kandl Barami Tappa Kama Khel";
- w.p. No. 2345-P/2019 "Muhammad Alam and others vs Baldar and others";
- w.p. No. 2355-P/2019 "Attaullah vs Nazir Shah and others";
- CR. No. 683/2019 "Ali Khan and others vs Sahib Zaman and others";
- CR. No. 688/2019 "Asghar vs Kiramat";
- CR. No. 534-P/2019 "Malik Shah Jehan and others vs Haji Sabz Amin and others";
- CR. No. 542-P/2019 "Adil Hussain and others vs Noor Ghulam and others";
- CR. No. 137-P/2019 "State vs Dr. Shakeel Afridi"; and
- CR. No. 124/2019 "Dr. Shakeel Afridi vs the State and others".



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Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

03. The terms and conditions, with regard to the pay and allowances of the Chairman and Members of the FATA Tribunal, shall be same as of the lastly appointed Chairman and Members of the FATA Tribunal.

04. The FATA Tribunal may, in addition to the above mentioned cases, also hear and decide other case, remanded or referred by the Peshawar High Court, Peshawar or the Supreme Court of Pakistan, in future, if any.

SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

Copy forwarded to the:

1. Principal Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
4. Registrar, Peshawar High Court, Peshawar.
5. All Administrative Secretaries in Khyber Pakhtunkhwa.
6. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
7. Chairman/Members, FATA Tribunal.
8. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
9. All Divisional Commissioners in Khyber Pakhtunkhwa.
10. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
11. Manager Government Printing Press, Peshawar with the request that it may be published in the official Gazette and 50 copies be furnished to this office
12. PS to Secretary, Home & Tribal Affairs Department.


17/07/2023
(AAMIR SHAHZAD)
SECTION OFFICER (JUDICIAL-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
NOTIFICATION

Peshawar, dated the 8th November, 2023

No. SO (J-I)/HD/P-86/2023/Vol-I. In exercise of the powers conferred by sub-section (2) of section 55A of the Frontier Crime Regulation, 1901 (Regulation No. III of 1901), and in pursuance of the Judgment of the Honorable Peshawar High Court, Peshawar dated: 02-12-2022, rendered in Writ Petition No. 2337-P/2019, and other connected petitions, read with Clause (1) of Article 129 and Article 105 of the Constitution of the Islamic Republic of Pakistan, and in supersession of this Department's Notification No. SO(J-I)/HD/P86/2023/Vol-I, dated: 17th July, 2023; the Governor of Khyber Pakhtunkhwa, on the advice of the Chief Minister, Khyber Pakhtunkhwa, is pleased to appoint the following as Chairman and Members of FATA Tribunal for a period of three (03) years or during the pleasure of the Governor, Khyber Pakhtunkhwa, in the best public interest, with immediate effect:

- i. Kifayat Ullah Khan, and Chairman
- ii. Mr. Khalil Ullah Khalil, Member

02. Consequent upon the appointment of the Chairman and Members of the FATA Tribunal, the FATA Tribunal shall hear and decide the following cases:

- (a) Writ Petition No. 2337/2019 "Suubat Khan and others vs Kandi Barami Tappa Karna Khel";
- (b) Writ Petition No. 2338/2019 "Haji Ameer Nawaz vs Tor Khel, Koki Khel Tribe through representatives";
- (c) Writ Petition No. 2336/2019 "Suubat Khan and others vs Kandi Barami Tappa Karna Khel";
- (d) Writ Petition No. 2345-P/2019 "Muhammad Alam and others vs Baldar and others";
- (e) Writ Petition No. 2355-P/2019 "Altaullah vs Nazir Shah and others";
- (f) CR. No. 683/2019 "Ali Khan and others vs Sahib Zaman and others";
- (g) GR. No. 688/2019 "Asghar vs Kramat";
- (h) CR. No. 534-P/2019 "Malik Shah Jehan and others vs Haji Sabz Amin and others";
- (i) CR. No. 542-P/2019 "Adil Hussain and others vs Noor Ghulam and others";
- (j) GR. No. 437-P/2019 "State vs Dr. Shakeel Afridi"; and
- (k) CR. No. 124/2019 "Dr. Shakeel Afridi vs the State and others".



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

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03. The terms and conditions, with regard to the pay and allowances of the Chairman and Members of the FATA Tribunal, shall be same as of the lastly appointed Chairman and Member of the FATA Tribunal.

04. The FATA Tribunal may, in addition to the above mentioned cases, also hear and decide any other cases, remanded or referred by the Peshawar High Court, Peshawar or the Supreme Court of Pakistan, in future, if any.

ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

Copy forwarded to the:

1. Additional Chief Secretary, P&D Department, Khyber Pakhtunkhwa.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. Registrar, Peshawar High Court, Peshawar.
6. All Administrative Secretaries in Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
9. Director General Prosecution, Khyber Pakhtunkhwa.
10. Chairman/Member, FATA Tribunal.
11. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
12. Manager Government Printing Press, Peshawar with the request that it may be published in the official Gazette and 50 copies be furnished to this office.
13. PS to Additional Chief Secretary, Home & Tribal Affairs Department.


(AAMIR SHAHZAD)
SECTION OFFICER (JUDICIAL-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

(Tele No. 091-9211217 Fax No. 091-9210201)

No. SO (Judl)/HD/P-86/2023/Vol-I
Dated Peshawar the 16th November, 2023

MOST IMMEDIATE

To

The Secretary, Government of Pakistan
Law & Justice Division,
Islamabad

Subject:

**ALLOTMENT OF OFFICE ACCOMMODATION FOR FATA TRIBUNAL AT
FEDERAL JUDICIAL COMPLEX HAYATABAD, PESHAWAR**

Dear Sir,

I am directed to refer to the subject noted above and to state that after 25th Constitutional Amendment, erstwhile FATA was merged with Khyber Pakhtunkhwa Province and FCR was repealed. Moreover, cases pending under FCR at different forums transferred to respective courts. Furthermore, some legal issues arose before Peshawar High Court, Peshawar (PHC), therefore Hon'ble PHC vide judgment dated 02.12.2022 in W.P No. 2337-P/2019 etc held that (copy enclosed);

'the case of first category shall be transferred to the FATA Tribunal which was established under Section 55-A of the FCR and in this regard, the Provincial Government shall constitute and notify FATA Tribunal for adjudication of the said cases as well as other cases which would arise out of the judgment of the Commissioner or other for a as stated in this judgment'.

02. In pursuance of the judgment of Peshawar High Court, Peshawar, this department re-constituted ex-FATA Tribunal vide this department notification of even number dated 17.07.2023 and 08.11.2023 (copies enclosed).

03. I am, also directed to state that FATA Tribunal was lastly functioning at Federal Judicial Complex, Hayatabad, Peshawar and the same premises is still available. Since, the operationalization of the Tribunal is dependent upon the allotment of office/building; therefore, it is requested to re-allot the same building for FATA Tribunal which was previously allotted at Federal Judicial Complex, Peshawar as per decision of Hon'ble Court and larger public interest.

Yours faithfully,

(AAMIR SHAHZAD)
Section Officer (Judicial-I)

Copy forwarded to the:

1. Registrar, Peshawar High Court, Peshawar.
2. Chairman, FATA Tribunal, Peshawar.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. PS to Additional Chief Secretary, Home & Tribal Affairs Department.

Section Officer (Judicial-I)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

(Tele No. 091-9211217 Fax No. 091-9210201)

No. SO:(Judl)/HD/P-86/2023/Vol-I

Dated Peshawar the 15th November, 2023

MOST IMMEDIATE

To

The Secretary to Government of Khyber Pakhtunkhwa,
Administration Department

Subject:

ALLOTMENT OF OFFICE ACCOMMODATION FOR FATA TRIBUNAL AT
FEDERAL JUDICIAL COMPLEX HAYATABAD, PESHAWAR

Dear Sir,

I am directed to refer to the subject noted above and to state that after 25th Constitutional Amendment, erstwhile FATA was merged with Khyber Pakhtunkhwa Province and FCR was repealed. Moreover, cases pending under FCR at different forums transferred to respective courts. Furthermore, some legal issues arose before Peshawar High Court, Peshawar (PHC); therefore Hon'ble PHC vide at Judgment dated 02.12.2022 in W.P No. 2337-P/2019 etc held that (copy enclosed);

"the case of first category shall be transferred to the FATA Tribunal which was established under Section 55-A of the FCR and in this regard, the Provincial Government shall constitute and notify FATA Tribunal for adjudication of the said cases as well as other cases which would arise out of the judgment of the Commissioner or other for a as stated in this judgment".

02. In pursuance of the judgment of Peshawar High Court, Peshawar, this department re-constituted ex-FATA Tribunal vide this department notification of even number dated 17.07.2023 and 08.11.2023 (copies enclosed).

03. I am, also directed to state that Chairman and Member FATA Tribunal are entitled to pay & other privileges of BS-21 and 20 officers respectively. However, this department is deficient of vehicles for the Chairman and Members FATA Tribunal.

04. I am, therefore, directed to request that vehicles (03 numbers) may be arranged for newly constituted FATA Tribunal as per entitlement at the earliest for smooth operationalization of FATA Tribunal, please.

Yours faithfully,

(AAMIR SHAHZAD)
Section Officer (Judicial-I)

Copy forwarded to the:

1. Registrar, Peshawar High Court, Peshawar.
2. Chairman, FATA Tribunal, Peshawar.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. PS to Additional Chief Secretary, Home & Tribal Affairs Department.

Section Officer (Judicial-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

(Tele No. 091-8211217 Fax No. 091-9210201)

28

No. SO (Judl)/HD/P-86/2023/Vol-I
Dated Peshawar the 15th November, 2023

MOST IMMEDIATE

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Administration Department

Subject:

**REQUEST FOR PROVISION OF VEHICLES FOR CHAIRMAN/MEMBERS
FATA TRIBUNAL**

Dear Sir,

I am directed to refer to the subject noted above and to state that after 25th Constitutional Amendment, erstwhile FATA was merged with Khyber Pakhtunkhwa Province and FCR was repealed. Moreover, cases pending under FCR at different forums transferred to respective courts. Furthermore, some legal issues arose before Peshawar High Court, Peshawar (PHC), therefore Hon'ble PHC vide at Judgment dated 02.12.2022 in W.P No. 2337-P/2019 etc held that (copy enclosed);

"the case of first category shall be transferred to the FATA Tribunal which was established under Section 55-A of the FCR and in this regard, the Provincial Government shall constitute and notify FATA Tribunal for adjudication of the said cases as well as other cases which would arise out of the judgment of the Commissioner or other for a as stated in this judgment".

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03. I am, also directed to state that Chairman and Member FATA Tribunal are entitled to pay & other privileges of BS-21 and 20 officers respectively. However, this department is deficient of vehicles for the Chairman and Members FATA Tribunal.

04. I am, therefore, directed to request that vehicles (03 numbers) may be arranged for newly constituted FATA Tribunal as per entitlement at the earliest for smooth operationalization of FATA Tribunal, please.

Yours faithfully,

(AAMIR SHAHZAD)
Section Officer (Judicial-I)

Copy forwarded to the:

1. Registrar, Peshawar High Court, Peshawar.
2. Chairman, FATA Tribunal, Peshawar.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. PS to Additional Chief Secretary, Home & Tribal Affairs Department.

Section Officer (Judicial-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

(Tele No. 091-9211217 Fax No.091-9210201)

No. SO (Judl)/H/D/P-85/2023/Vol-I

Dated Peshawar the 20th November, 2023

MOST IMMEDIATE

To

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department

Subject: **POSTING OF STAFF IN FATA TRIBUNAL.**

Dear Sir,

I am directed to refer to the subject noted above and to state that after 25th Constitutional Amendment, erstwhile FATA was merged with Khyber Pakhtunkhwa Province and FCR was repealed. Moreover, cases pending under FCR at different forums were transferred to respective courts. Furthermore, some legal issues arose before Peshawar High Court, Peshawar (PHC), therefore Hon'ble PHC vide its Judgment dated 02.12.2022 in W.P No. 2337-P/2019 etc held that;

the case of first category shall be transferred to the FATA Tribunal which was established under Section 55-A of the FCR and in this regard, the Provincial Government shall constitute and notify FATA Tribunal for adjudication of the said cases as well as other cases which would arise out of the judgment of the Commissioner or other for a as stated in this judgment.

02. In pursuance of the judgment of Peshawar High Court, Peshawar, this department re-constituted ex-FATA Tribunal vide this department notification of even number dated 17.07.2023 and 08.11.2023 (copies enclosed).

03. I am, also directed to state that in order to comply with the directions of the Hon'ble High Court in its true sense and to operationalize the FATA Tribunal, following staff members are required to be posted on emergent basis:

Sr. #	No. & nomenclature of post	Sr. #	No. & nomenclature of post
1.	01 Superintendent	2.	03 Assistants
3.	03 Stenographers	4.	03 Computer Operators
5.	03 Junior Clerks	6.	02 Chowkidars
7.	08 Naib Gasid		

04. I am, therefore, directed to request services of requisite staff may be placed at the disposal of FATA Tribunal from service pool on temporary basis, please.

Yours faithfully,

(AAMIR SHAHZAD)
Section Officer (Judicial-I)

Copy forwarded to the:

1. Registrar, Peshawar High Court, Peshawar.
2. Chairman, FATA Tribunal, Peshawar.
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Section Officer (Judicial-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

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NOTE FOR CHIEF SECRETARY

Subject: CONSTITUTION / REVIVAL OF EARSTWHILE FATA TRIBUNAL UNDER FRONTIER CRIMES REGULATIONS (FCR), 1901.

In pursuance of the Peshawar High Court Judgment dated 02-12-2022 rendered in W.P. No.2337-P/2019, and other connected petitions, the Governor Khyber Pakhtunkhwa on the recommendation of Chief Minister approved the Constitution/Revival of FATA Tribunal. Consequent upon approval of the competent authority, FATA Tribunal was notified on 17.07.2023, comprising following chairman/members (Annex-I):

- | | |
|---------------------------------|----------|
| i. Mr. Zakir Hussain Afridi; | Chairman |
| ii. Mr. Kifayat Ullah Khan; and | Member |
| iii. Mr. Khalil Ullah Khalil | Member |

02. However, later on, Mr. Zakir Hussain Afridi joined Right to Public Service Commission as "Commissioner" and requested to withdraw his appointment as Chairman FATA Tribunal. Consequently, a case was processed and after approval by the Governor Khyber Pakhtunkhwa, Mr. Kifayat Ullah Khan was appointed to the position of Chairman FATA Tribunal vide Home Department notification dated 08.11.2023 (Annex-II).

03. In order to comply with the directions of Hon'ble Peshawar High Court and to operationalize FATA Tribunal, this department has taken following steps:

- (i) As neither are there any posts sanctioned, nor appointments freely allow, hence a BS-19 officer of Prosecution Service has been allowed to "act" as Registrar too (Annex-III)
- (ii) Ministry of Law & Justice has been requested for allotment of office accommodation for FATA Tribunal at Federal Judicial Complex Hayat, Peshawar (Annex-IV)
- (iii) Secretary Administration has been requested for provision of 03 vehicles for Chairman/Members (Annex-V)
- (iv) Secretary Finance has been requested for provision of requisite funds (salary / non salary) (Annex-VI).

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Secretary Establishment has been requested for provision of staff from surplus pool (on temporary basis) (Annex-VII).

04. Keeping in view the urgency of issue (High Court has been asking for reports and asked for one just recently too vide Annex-VIII); Home Department proposes to hold a meeting under the Chairmanship of Chief Secretary Khyber Pakhtunkhwa by inviting Secretaries Finance, Administration, Establishment and Chairman/Member FATA Tribunal so that all pending issues could be expedited well in time, please.

Muhammad Abid Majeed
4 Dec, 09

(MUHAMMAD ABID MAJEED)
Additional Chief Secretary
Home & Tribal Affairs Department

Chief Secretary, Khyber Pakhtunkhwa.

"E"

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To

The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar

Subject: DEPARTMENTAL APPEAL/ REPRESENTATION FOR POSTING/ADJUSTMENT.

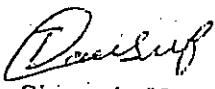
R/Sir.

The appellant submits as under:

1. That the appellant was appointed as Junior Clerk (BPS-07) in the FATA Tribunal on 08.03.2019 upon the proper recommendation of Departmental Selection Committee.
2. That the appellant assumed charge and started performing his duties quite efficiently up to the entire satisfaction of his superiors.
3. That in the meanwhile FATA Tribunal became defunct after merger of FATA into Khyber Pakhtunkhwa in light of the 25th Constitutional amendment.
4. That since then the appellant has been in hanging position without any posting where after he approached different forums for his posting/adjustment but all in vain.
5. That it is worth mentioning here that all other colleagues who were appointed along with the appellant, were adjusted/posted in the home department after the FATA Tribunal became defunct where after they were removed from service on the ground that the codal formalities were not fulfilled at the time of their appointment. That the subject action of the respondent department was assailed through departmental appeals followed by service appeals which were accepted by Khyber Pakhtunkhwa Service Tribunal directing the respondents to reinstate them into service, however it's also pertinent to mention here that there is no such adverse order against the appellant.
6. That now the Honourable Peshawar High Court has ordered for revival of the erstwhile FATA Tribunal where after the provincial government also issued a notification dated 17.07.2023 for its revival.
7. That the appellant time and again approached the competent authority and requested for his posting/adjustment but to no avail.

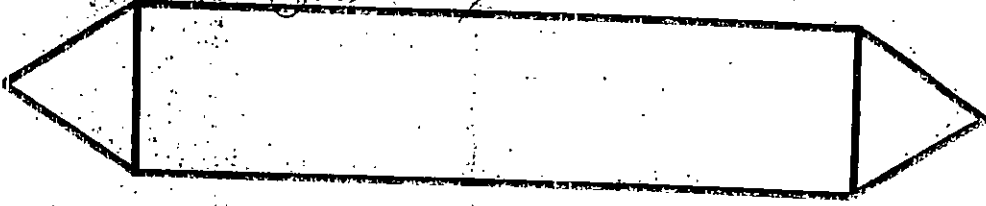
It is therefore most humbly prayed that on acceptance of this departmental appeal, the appellant may please be adjusted/posted against the post of junior clerk (BPS-11) in FATA Tribunal or if there is any adverse order against the appellant, may please be communicated to the appellant.

Dated: 24/11/2023


Sincerely Yours,

Muhammad Touseef Khan
Junior Clerk (BPS-11)
FATA Tribunal

بعدالت سندس کی رو سے



2 منجانب محمد لوصف
محمد لوصف بنام سید

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

کیلئے رکن عدنان + محمد لوصف + محمد صالح
الدوسری

آن مقام

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔

کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 23 ماہ صرج 2022ء

واہ العبد