


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Appeal No. 570/2024**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/04/2024	<p>The appeal of Mr. Muhammad Akif resubmitted today by Mr. Ali Gohar Durrani 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</p> <p> REGISTRAR</p>

Respected Sir,

It is submitted the present appeal was received on 21-03-2024 which was returned to the counsel for the appellant for removing objection today 1-4-2024 the learned counsel re-filed the appeal without removing the objection no 1 and 5-

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please

4/4/24  
Registrar

Worthy Chairman

Wants date of appeal remain  
for the array of appeals in  
all cases


16/4/24

The appeal of Mr. Muhammad Akif received today i.e on 21 .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 According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 3 & 4 are un-necessary/improper parties, in light of the rules and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
- 2- Check list not attached with the appeal.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Annexures of the appeal are unattested.
- ⑤ Page nos. 20 to 23 & 46 of the appeal are illegible be replaced by legible/better one.
- 6- Annexures of the appeal are not in sequence.
- 7 Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 680 /S.T.

Dt. 28/3- /2024.

  
22/3/24  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

At: Ghobar Durrani Adv.  
High Court Peshawar.

*Registered*

1) Respondent no 3 & 4 in main *important documents*  
This *is* an *Ms case*

2) *Removal*

3) *Removal*

4) *Removal*

5) Memo of appeal is also placed on file  
on page 39

6) *Removal*

7) I have seen below the copy.  
The available copy is true and correct  
copy. accept the document

8) *Removal*

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR

Appeal No. 570 /2024

Muhammad Akif Khan

Versus

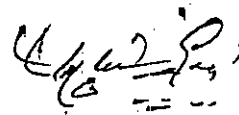
Government of Khyber Pakhtunkhwa through Chief Secretary and others

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APPELLANT

Through

  
ALI GOHAR DURRANI  
Advocate High Court(s)  
0332-9297427  
[khanliegohar@yahoo.com](mailto:khanliegohar@yahoo.com)

(1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

APPEAL No. 570 /2024

Muhammad Akif Khan, Assistant (BPS-16), Industrial Directorate, Khyber District.

..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Government of Khyber Pakhtunkhwa,  
Civil Secretariat Peshawar.
2. The Establishment & Administration Department,  
Through Secretary Establishment & Administration Government of Khyber  
Pakhtunkhwa,  
Civil Secretariat, Peshawar.
3. The Finance Department,  
Through Secretary Finance to the Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
4. The Government of Khyber Pakhtunkhwa  
Through Additional Chief secretary Merged Areas,  
Office at Warsak Road, Peshawar.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11360

Dated 21-03-2024

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 FOR ADJUSTMENT OF THE  
APPELLANT IN THE CIVIL SECRETARIAT, KHYBER  
PAKHTUNKHWA.**

**RESPECTFULLY SUBMITTED:**

The appellant most humbly beg to submit as under:

1. That the Appellant is a law-abiding citizen of Pakistan and also hails from a respectable family. He was appointed as an Assistant in FATA Development Authority Administration Department on contract basis vide Notification dated 29-12-2008.  
Copy of the notification dated 29-12-2008 is Annex-A.
2. That the services of the Appellant were regularized vide Notification dated 22-11-2011 by the approval of Board of Directors granted in its 22<sup>nd</sup> minutes held on 25<sup>th</sup> October, 2011.  
Copy of the notification dated 22-11-2011 is Annex-B.
3. That subsequently FATA Secretariat withdrew the regularization orders and the same were challenged before the Hon'ble Peshawar High Court, Peshawar, and the

2

Hon'ble Peshawar High Court set-aside the withdrawal of regularization orders vide its judgment in W.P No. 2303-P/2012 dated 04-09-2014.

**Copy of Judgment dated 04-09-2014 is Annex-C.**

4. That FATA was merged into Khyber Pakhtunkhwa Province post 25<sup>th</sup> amendment and the appellant was declared to be surplus vide notification dated 05-08-2020 by the Government of Khyber Pakhtunkhwa Establishment and Administration Department (Regulation Wing).

**Copy of the notification dated 05-08-2020 is Annex-D.**

5. That the Appellant was adjusted against the posts in other directorates, while the positions were vacant in Secretariat, still no option was given to the appellant.

**Copy of the advertisement is Annex-E.**

6. That on 14-09-2020 a notification was issued by the Government of Khyber Pakhtunkhwa Establishment and Administration Department (Establishment Wing) in which the competent authority has been pleased to place the services of the appellant (Surplus Pool of the establishment & Administration Department) at the disposal of Secretary Industries, Commerce and Technical Education Department Khyber Pakhtunkhwa for further adjustment in the office Directorate of industries and Commerce, Khyber Pakhtunkhwa against the vacant posts of Assistant w.e.f. 20-04-2020 under initial recruitment quota.

**Copy of notification dated 14-09-2020 is Annex-F.**

7. That on 21-09-2020 similarly placed employees approached the Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 1227/2020, wherein this Hon'ble Tribunal was pleased to allow the service Appeal vide judgment dated 14-01-2022 with the direction to the adjust the appellants in their respective departments against their respective posts and in case of non availability of the posts, the same shall be created for the appellant on the same manner as were created for other administrative departments. Upon their adjustment they are held entitled to all consequential benefits.

**Copy of the judgment dated 14-01-2022 is Annex-G.**

8. That another example is of one Mr. Shakeel Ahmad Assistant who was adjusted vide notification dated 26-08-2022 issued by Government of Khyber Pakhtunkhwa Establishment and Administration Department (Establishment Wing) upon the approval of the Chief minister Khyber Pakhtunkhwa.

**Copy of the notification dated 26-08-2022 is Annex-H.**

9. That on 06-11-2023 the appellant filed a departmental representation for adjustment in the Civil Secretariat, Khyber Pakhtunkhwa but of no legal effect.

**Copy of the departmental appeal dated 06-11-2023 is Annex-I.**

10. That the appellant having no alternate remedy but to approach this Honorable Tribunal amongst others on the following grounds:

**Grounds:**

- a. Because the impugned notifications are based in discrimination as is clearly laid out in the facts above.
- b. That the judgment dated 14-01-2022 rendered by the Honourable Service Tribunal is also applicable on those civil servants who were not a part of the said appeal, because judgments of the Honourable Service should be treated as judgments in rem, and not in personam. Reference can be given to the relevant portion of judgment cited 2023 SCMR 8, produced herein below:  
*"The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos. 1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum."*
- c. That the applicant is relying upon judgment cited 2023 SCMR 8, whereby, the essence of Article 212 of the Constitution of Pakistan, 1973, was fulfilled, by observing that any question of law decided by the Service Tribunal shall be treated as Judgment in rem, and not in personam. In order, to give force to the judgment of the Supreme Court, the applicant may also be subjected to the judgment rendered by the Honourable Service Tribunal.
- d. Because the impugned Notification dated 05-08-2020 and 26-08-2022 are illegal, against facts and law on the subject as well as Surplus Policy.
- e. Because the impugned notifications and orders are the sheer violation of law on the subject and the Constitution as well.
- f. Because the impugned notifications and orders are illegal. Unlawful, void and ineffective upon the rights of the appellant.
- g. Because the impugned notification and order is against the principles of natural justice and fundamental rights as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.
- h. Because in fact, the appellant's case is not of abolition of posts. Or service or setup to begin with and the concerned departments and attached department together with the posts continue to exist and have not been abolished.
- i. Because neither conscious application of mind has been undertaken or speaking nor reasoned order has been passed and Surplus Pool Policy, 2001 has been senselessly applied to the appellant.
- j. Because the impugned notifications and orders have been issued/ passed in flagrant violation of the law and the Surplus Pool Policy itself and deserves to be set aside.

- k. Because the mechanism provided for adjustment and fixation of seniority of the surplus employees in the Surplus Pool Policy, 2001 will deprive the appellant of his seniority and other benefits will render him junior to those who have been appointed much later in time than the appellant.
- l. Because blatant discrimination has been committed in the adjustment of the appellant as compared to other similarly placed employees of erstwhile FATA Secretariat have been adjusted in different departments of KP Civil Secretariat.
- m. Because the Appellant has been treated illegally, unlawfully and against the spirit of the law.
- n. Because the Rights of the Petitioner are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, and lie with this honorable tribunal.
- o. Because the right to due process as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is being made redundant in the instant case against the Appellant. The right is absolute and cannot be done away with and it needs to be taken as liberally as possible as per the dictum laid by the Honorable Supreme Court in PLD 2022 SC 497.  
"Incorporation of the right to a fair trial and due process by Article 10-A in the Constitution as an independent fundamental right underscores the constitutional significance of fair trial and due process and like other fundamental rights, it is to receive a liberal and progressive interpretation and enforcement."
- p. Because the Honorable Supreme Court of Pakistan in the recent judgment in Justice Qazi Faez Isa case has held in unequivocal terms that even the highest of offices are not to be denied the fundamental rights so guaranteed by the Constitution. The judgment is reported as PLD 2022 SC 119 and lay as under:

"Right to be dealt with in accordance with law. No one, including a Judge of the highest court in the land, is above the law, At the same time, no one, including a Judge of the highest court in the land, can be denied his right to be dealt with in accordance with law; it matters little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law."

The judgment referred to above further lay clear that the principles of natural justice are to be met in every circumstances in the following terms:

"After recognition of the right to fair trial and due process as a fundamental right by insertion of Art. 10A in the Constitution, violation of the principles of natural justice, which are the necessary components of the right to fair trial and due process, is now to be taken as a violation of the said fundamental right as well."

These principles are time and again reiterated by the Honorable Supreme Court and have been recently held of immense value in PLD 2021 SC 600 in the following words:

"Constitutional guarantee of the right to be dealt with in accordance with law, under Art. 4 of the Constitution, is available not only to every citizen of the country but also to every other person for the time being within Pakistan, Said constitutional guarantee cannot be curtailed or limited in the



(5)

case or matter of any person whosoever he may be and whatever the allegations against him may be.”

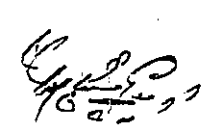
- q. Because the actions on part of the respondents seriously are in the negation of the Constitution of the Islamic Republic of Pakistan, 1973 and the Civil Servants Act.
- r. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the Constitution the terms and conditions of service of the Appellant and this Honorable Court being the custodian of the Fundamental Rights of citizens of Pakistan, as well as the protection afforded by the Constitution of Islamic Republic of Pakistan 1973, is why the Appellant seeks the redress of their grievances and to end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- s. Because the Appellant has got the fundamental right of being treated in accordance with law but the treatment meted out to the Appellant is on consideration other than legal and he has been deprived of his rights duly guaranteed to him by the constitution of Pakistan.
- t. Because the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the Law are badly violated.
- u. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Tribunal highlighting further contraventions of the provisions of the Constitution & Laws which adversely affected the Appellant.

**PRAYER:**

In light of the submissions laid hereinbefore, may it please this Honorable Tribunal to so kindly declare that the Surplus notification dated 05/08/2020 to be illegal, unlawful, discriminatory and without any lawful authority, in light of the judgment of this Honorable Tribunal in Service Appeal No. 1227/2020 decided on 14-01-2022. Furthermore, may it please this honorable tribunal to direct the adjustments of the appellants in their respective department i.e., Establishment & Administration Department Khyber Pakhtunkhwa.

AKF  
Appellant

Through

  
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Advocate High Court(s)  
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FIRM)  
HOUSE NO. 231-A,  
STREET NO.13, NEW  
SHAMI ROAD, PESHAWAR.

C

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,**  
**PESHAWAR**

Appeal No. \_\_\_\_\_/2024

Mr Muhammad Akif

Versus

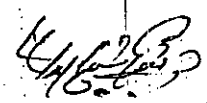
Government of Khyber Pakhtunkhwa through Chief Secretary and others

**AFFIDAVIT**


I, Muhammad Akif Khan, S/o Haji Moeem Khan P/o Jamrud, District Khyber.

, do hereby solemnly affirm and declare on oath that the contents of accompanied writ petition are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Honorable Court.

Identified By:

  
Ali Gohar Durrani  
Advocate High Court(s)



  
Deponent  
CNIC No. 21202-5844183-9

(7)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

APPEAL No. \_\_\_\_\_/2024

Muhammad Akif Khan, S/o Haji Moëem Khan P/o Jamrud, District Khyber.

..... Appellant

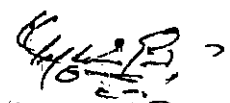
Versus

1. The Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Government of Khyber Pakhtunkhwa,  
Civil Secretariat Peshawar.
2. The Establishment & Administration Department,  
Through Secretary Establishment & Administration Government of Khyber  
Pakhtunkhwa,  
Civil Secretariat, Peshawar.
3. The Finance Department,  
Through Secretary Finance to the Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
4. The Government of Khyber Pakhtunkhwa  
Through Additional Chief secretary Merged Areas,  
Office at Warsak Road, Peshawar.

..... Respondents

Appellant

Through

  
ALI GOHAR DURRANI  
Advocate High Court(s)  
0332-9297427  
[khaneliegohar@yahoo.com](mailto:khaneliegohar@yahoo.com)  
SHAH | DURRANI |  
KHATTAK  
(A REGISTERED LAW  
FIRM)  
HOUSE NO. 231-A,  
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SHAMI ROAD, PESHAWAR.

8

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

APPEAL No. \_\_\_\_\_/2024

Muhammad Akif Khan                      Versus                      Govt. of KP and others

AN APPLICATION FOR THE CONDONATION OF DELAY IN BRINGING THE INSTANT  
APPEAL BEFORE THIS HONORABLE TRIBUNAL.

RESPECTFULLY SUBMITTED:

The applicant begs to submit as under:

1. That the applicant has moved the enclosed service appeal, in which no date is fixed so far.
2. That the applicant has moved the instant appeal in line with the judgment of this honorable tribunal, in Service Appeal no. 1227/2020 dated 14/01/2022.
3. That the judgment dated 14-01-2022 rendered by the Honourable Service Tribunal is also applicable on those civil servants who were not a part of the said appeal, because **judgments of the Honourable Service should be treated as judgments in rem, and not in personam.** Reference can be given to the relevant portion of judgment cited 2023 SCMR 8, produced herein below:  
*"The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos. 1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum."*
4. That the applicant is relying upon judgment cited 2023 SCMR 8, whereby, the essence of Article 212 of the Constitution of Pakistan, 1973, was fulfilled, by observing that any question of law decided by the Service Tribunal shall be treated as Judgment in rem, and not in personam. In order, to give force to the judgment of the Supreme Court, the applicant may also be subjected to the judgment rendered by the Honourable Service Tribunal.
5. The representation of the applicant has not been responded to. Reference be made to 2007 PLC (CS) 755 SC, 2006 SCMR 1459, 2005 SCMR 335, 2004 SCMR 497.

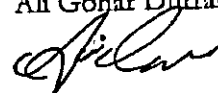
It is therefore most humbly prayed that on acceptance of this application, may it please this honorable tribunal to so kindly condone the delay in the filing of the instant appeal, based on the above legal submission.



Applicant

Through

Ali Gohar Durrani





# FATA Development Authority

Administration Department

1-2/A, Park Avenue, University Town, Peshawar.

Phone (091) 9216160 Fax (091) 9218518

(A)

(9)

No Secy/FDA/3-11(A)/C

Dated Peshawar the 29<sup>th</sup> December 200

To

✓ Muahmmad Akif Khan S/O Haji Moeem Khan  
P/O Jamrud Khyber Agency C/O Noor Sweet House Jamrud  
Khyber Agency

Subject: - Employment on Contract Basis in FATA Development Authority as Assistant

I am directed to say that you have been selected for appointment contract as Assistant in FATA Development Authority, on the following Terms and Conditions: -

- i. Post : **ASSISTANT (BPS-14)**.
- ii. Your appointment against the post of Assistant will in the first instance on probation for a period of one year subject to satisfactory performance, efficiency and amenability to discipline.
- iii. Pension: The services rendered by you under this contract shall qualify for any pension or gratuity.
- iv. Leave.  
(i) You will be governed by the Revised Leave Rules, 1980. However provisions contained in rules 5(c), 8, 11, 14, 16, 17, 18, 19, 27, 33, 35, 36, and 39 shall not apply.  
(ii) The leave at your credit shall be carried forward in case the contract extended without any interruption. However, all leave at your credit shall lapse on the date of final expiry or termination of the contract.  
Conduct: Your conduct during the employment on contract shall be regulated by relevant conduct rules.
- v. Travelling Allowance.- Travelling allowance on official journeys will be admissible at par with the government servants in BS-14.
- vi. Appeal: Civil servants (Appeal) Rules, 1977 will apply.

3/105



# FATA Development Authority

Administration Department

1-2/A, Park Avenue, University Town, Peshawar.

Phone (091) 9216160 Fax (091) 9218518

- ix. Termination/Extension of Contract: The appointment on contract shall be liable to termination on one month's notice or payment of one month's pay in lieu thereof on either side without assigning any reason.
- x. Medical Fitness: Your appointment is subject to Medical Fitness Certificate from the Authorized Medical Officer i.e. Civil Surgeon Federal Government Hospital, Peshawar.
- xi. Police Verification Report: Your appointment is subject to clearance of your antecedents from the Federal/Provincial Agencies.
- xii. Other Matters: In respect of other matters not specified here, you will be governed by the Rules/Regulations as applicable to FATA Development Authority employees.

2. If you accept the above terms and conditions of appointment, please send your acceptance to the FATA Development Authority within 7 days of the issuance of this letter.

3. This offer of appointment will be treated as cancelled if you do not convey acceptance thereof within the time specified in Para 02 above.

(Abdul Malik)  
Assistant Manager (Admn)



# FATA Development Authority

Administration Department

1-2/A, Park Avenue, University Town, Peshawar.

Phone (091) 9216160 Fax (091) 9218518

U

Dated Peshawar the 10 January 2009

## OFFICE ORDER

No Secy/FDA/3-11(A)/08: Consequent upon the recommendations of the Selection Committee following candidates are hereby appointed as Assistant (BPS-14) plus usual allowances admissible to Federal Government Employees, against the vacant posts in FATA Development Authority on the accepted terms and conditions offered vide this Authority letter No Secy/FDA/3-11(A)/08 dated 29 December 2008, with immediate effect:-

<u>S.#</u>	<u>Name with Father's Name</u>
1.	Farman Ali Afridi S/O Mehboob Ali Afridi of Khyber Agency
2.	Shahid S/O Miskeen Khan of Peshawar
3.	Nihar Ali S/O Sabz Ali Khan of Peshawar
4.	Syed Mazhar Ali Shah S/O Fazal Bahadar of Swabi
5.	Muhammad Saeed S/O Dost Muhammad of Khyber Agency
✓ 6.	M.Akif Khan S/O Haji Moeem Khan of Khyber Agency
7.	Sadia Jehangir D/O Jehangir Khan of Peshawar

On their appointment as Assistant (BPS-14) in FATA-DA against the vacant positions, the following postings / transfers are hereby ordered as per details below till further orders :-

<u>S.#</u>	<u>Name</u>	<u>From</u>	<u>To</u>	<u>Brief Job Discriptions</u>
1.	Farman Ali Afridi	Finance	Finance	Continue to perform his duties with General Manager (Finance) FATA-DA.
2.	Shahid	Admn	Admn	He shall perform duties as Care Taker with the responsibilities looking after the overall maintenance of FATA-DA building, its day to day requirements and security etc.
3.	Nihar Ali	CE Office	CE Office	Continue to perform his duties in the Chief Executive Office.
4.	Syed Mazhar Ali Shah	Admn	Admn	Continue to carry out responsibilities of stationery requirements and Issue / receipt of files / dak of FATA-DA. He shall look after duties of Care Taker in his absence.
5.	Muhammad Saeed	---	P&D	He shall perform normal duties as Assistant.
✓ 6.	M.Akif Khan	---	M&E	He shall perform normal duties as Assistant.
7.	Sadia Jehangir	---	Admn	She shall deal with establishment matters of FATA-DA and PMUs/PSUs staff etc.
8.	Anwar Shah	Admn	Admn	Continue to perform duties in Admn. He

12



# FATA Development Authority

Administration Department

1-2/A, Park Avenue, University Town, Peshawar.

Phone (091) 9216160

Fax (091) 9218518

- shall deal with administrative and account matters of FATA-DA.
9. Muhammad Humayun Khan Admn Industries Continue to perform his duties as Assistant He shall perform normal duties as Assistant with Consultant (Industries) in place of Muhammad Nazar Niazi, Assistant whose appointment on contract stand ceased on arrival of new entrants.

Sd/-  
Chief Executive  
FATA Development Authority

ndst: Even No & date

- A copy is forwarded to the:-
1. All General Managers in FATA-DA
  2. Consultant FATA-DA
  3. All Managers in FATA-DA
  4. Assistant Manager (Pre-Audit) FATA-DA
  5. PS to Chief Executive FATA
  6. Officials concerned
  7. Office order file

(Abdul Malik)  
Assistant Manager (Admn)





# FATA Development Authority

Administration Department

1-2/A, Park Avenue, University Town, Peshawar

Phone (091) 9216160

Fax (091) 9218518

(13) (B)

Dated 22<sup>nd</sup> November, 2011

Office Order:

**B.**  
No. Secy/FDA/4-17/Vol-11/08. In pursuance of approval of the Board of Directors, FATA-DA granted in its 22<sup>nd</sup> meeting held on 25<sup>th</sup> October, 2011 under agenda item No. 02, minutes circulated vide letter No. Secy/FDA/4-17/Vol-22/2011 dated 28<sup>th</sup> October, 2011, all the sanctioned posts held by contract employees including lump sum / fixed contract employees of FATA-DA headquarters and Agency coordination offices from BS-05 to BS-17 are hereby declared as regular posts and the incumbent employees are declared as regular employees in Govt. pay scales in terms of FATA Development Authority Regulation, 2006 and subject to the following conditions:-

1. The employees who have completed two years continuous satisfactory service as on 25<sup>th</sup> October, 2011.
2. The seniority of all the employees will be prepared / fixed from the dates of their appointments in FATA-DA.
3. The FATA Development Authority Rules / Standing orders issued from time to time shall be applicable to them.
4. Deduction of monthly CP fund will be made in accordance with para-8 of the FATA-DA Employees CP Fund Standing Order, 2010 @ 8% of the basic pay of the employees.
5. All employees of FATA-DA headquarters and Agency Coordination Offices who shall complete two years continuous satisfactory service from the date of appointment, shall automatically become regular on completion of two years of service.
6. All Regular employees shall be entitled for salaries / allowances commensurate with the Government of Pakistan pay scales as revised from time to time.
7. Annual increments in relevant basic scales shall become due on 1<sup>st</sup> of December, 2011.
8. All contract Class-IV employees (BS-1 to BS-4) have already been granted regular status with the approval of the Board of Directors, FATA-DA. The posts held by all Class-IV employees of FATA-DA headquarters and Agency coordination officers are also declared regular with effect from 25<sup>th</sup> October, 2011.
9. In case of any confusion / discrepancy in this behalf with the approval of the Competent Authority, FATA-DA shall be referred to the Board of Directors, FATA-DA for clarification.

Chief Executive,  
FATA-DA.

- CC: *23/11/11*
- 23/11/11*
- 23/11/11*
- 23/11/11*
- 23/11/11*
- 1) All General Managers, FATA-DA.
  - 2) All Managers, FATA-DA.
  - 3) All Project Managers / Directors, FATA-DA.
  - 4) All Agency Coordination Officers, FATA-DA.
  - 5) P.S. to Additional Chief secretary, FATA Secretariat.
  - 6) P.S. to Secretary to Governor, KP.
  - 7) P.S. to Secretary (Admn & Coord.), FATA Secretariat.
  - 8) P.S. to Secretary (Establishment & Admn), Civil Secretariat, KP Peshawar.
  - 9) P.S. to Chief Executive, FATA-DA.
  - 10) Copy to file No. Secy/FDA/3-11/C/2011.
- 23/11/2011*
- 23/11/2011*

*[Signature]*

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C

JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

W.P.No.2303-P/2012

JUDGMENT

Date of hearing.....04-09-2104.....

Petitioner(s) by Mr. Jiaz Anwar Advocate

Respondent(s) by M/s. Ziauddin Siddiqui and  
Jehanzeb Mohsud, Advocates

YAHYA AFIRDI, J.- Shahid and 89 others,

the petitioners, seek the constitutional jurisdiction of  
this Court praying that

"On acceptance of this writ petition an  
appropriate writ may please be issued:

i. Declaring the petitioners as fit and  
eligible for the posts mentioned against their  
names in the heading of this petition, similarly  
the petitioners having been validly regularized  
vide order No.Secy/FDA/4-17/vol-II/08 dated  
22.11.2011 issued pursuant to the decision of  
the Board of Directors of the FATA,  
Development Authority passed in its 22<sup>nd</sup>  
meeting held on 25.10.2011, office order  
No.Sec/FDA/5-104/2011/38 dated 12.6.2012  
whereby the order of regularization of the  
petitioners has been cancelled is illegal,  
unlawful, without lawful authority and of no  
legal effect, thus ineffective upon the rights of  
the petitioners and the same is liable to be strike  
down.

ii. The order of regularization of the  
petitioners having issued by the competent  
authority, thus any order / direction to the  
contrary issued from the office of the  
respondent No.1 & 4 are also illegal and of no  
legal effect and may also be strike down. The  
respondents are bound to follow the law and to  
restore the order of the regularization of  
services of the petitioners or any other remedy

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*demanded proper and not specifically asked for  
may also be allowed.*

2. In essence, the grievance of the petitioners is that

once the Board of Directors of the Federally

Administered Tribal Area Development Authority

("Authority") has regularized their services, then the

same could not be withdrawn by the Secretary. Wide

impugned order, dated 12.6.2012.

3. The respondents were put to notice and they have

contended that regularization of the petitioners' services

could only be carried out on the directions of the

"Steering Committee" of the Authority; that the

approval of the worthy Governor was conditional

precedents for regularizing the services of the

petitioners.

4. Valuable arguments of learned counsel for the

parties were heard and the record perused with their

able assistance.

5. It is an admitted position that is a body

incorporated through SRC 101(1)/2006 notified on

26.9.2006 ("Regulation"). It is also an admitted

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(16)

position that the "Steering Committee" has been duly constituted under Article-4 of the Regulation, consisting of members headed by the worthy Governor, Khyber Pakhtunkhwa, which is, "inter alia", responsible for determining the overall directions and general policy of the Authority. The "Board of Directors" of the Authority ("Board") has been constituted under Article-5 of the Regulation, consisting of members having Chief Executive of the Authority, who is the "ex-officio" Chairman of the Board. The Board of Directors, "inter-alia", is authorized to appoint officers of the Authority including officers in BPS-17, as has been claimed by the present petitioners.

6. The most crucial point to note is that the Board, while discharging its function, is subject to the direction rendered by the Steering Committee. This is clearly provided in sub-Article 2 & 3 of Article-5 of the Regulation, which provides:

"2. Subject to the direction of the Steering Committee, the Board may exercise all powers and do all acts and

ATTESTED

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things which may be exercised or done by the Authority in accordance with the provisions of this Regulation.

(3) The Board, in discharging its functions, shall act on sound principles of development and economic planning and shall be guided on the following matters and other matters of policy by such directions as the Steering Committee may from time to time give, namely:-

(a)...(b).....(c).....(d)...(e).....

(f) appointment of officers of the Authority;

The appointing authority of the Board is further confirmed by Rule-4 of the Federally Administered Tribal Area Development Authority Employees (Appointment, Promotion and Transfer) Rules, 2008, ("Rules") which reads as under:-

.....  
"Appointing Authority: The authority specified in column 3 of the Schedule shall be the appointing authority in respect of the post specified against each such authority in column 2 of the Schedule."

7. The Secretary of the Authority, vide impugned order dated 12.6.2012, withdrew the orders of regularization of services in the Authority granted to the petitioners, in terms that;

"Secy/FDA/5-104/2011. In compliance of FATA Secretariat letter No.FS/E/C-25/2272-75, dated 3.4.2012, the competent authority is pleased to cancel the FATA-

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*DA Office Order No.Secy/FDA/4-17/Vol-II/08 ab-initio."*

8. When the learned counsel for the respondent-Authority was asked to provide the decision of the "competent authority", which had withdrawn the said regularization duly approved by the Board, it was simply stated that the Governor and the Steering Committee have not approved the said decision of the Board.

9. This Court is not in consonance with the interpretation of Article-5 of the Regulation rendered by the worthy counsel for the respondents. The Regulation clearly provides that the Board is competent to appoint officers of the Authority. However, the authority of the Board, and its power of appointment would be subject to the general policy laid down by the "Steering Committee" headed by the worthy Governor, Khyber Pakhtunkhwa.

10. When the learned counsel for the respondents were asked as to whether there was any decision of the Steering Committee regarding the regularization of

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services of the employees of the Authority, their response was in the negative. When further probed, it was noted that neither was there any decision of the Steering Committee at the time of their regularization granted by the Board nor has there been any such decision till date.

11. In view of the clear factual and legal position, the impugned order of the Secretary, dated 12.6.2012, was devoid of any legal force. The power of withdrawing the regularization of services of the petitioners, is vested in the Board of the Authority and in case their rights, so accrued are to be affected, it is but the Board, which is competent to pass an order regarding the issue.

12. Accordingly, for the reasons stated above, we allow the instant writ petition in terms that

- (i) The impugned order dated 12.6.2012 is set aside being without lawful authority,
- (ii) In case the respondents want to revisit their decision of regularizing the services of petitioners in the Authority, the same to be placed before the Board of Directors, and the Board shall consider all the points raised by the respondents before the Court.

Dt. 4.9.2014.

*Sd/ Yahya Abzidi*  
*Sd/ Jabbarullah Khan*

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY



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

Dated Peshawar, the August 05<sup>th</sup>, 2020

**SOLICITATION**

No. SOO&M.E&A/3-18/2020 In terms of Section-4 of the "The Federally Administered Tribal Areas Development Authority Regulation (Repeal) Ordinance, 2020", the Competent Authority is pleased to declare the following 29 employees of defunct FATA Development Authority as "Surplus" and place them in the Surplus Pool of Establishment Department for their further adjustment placement as per policy in vogue w.e.f. 20.04.2020:-

S.No.	Name	Designation	BPS
1.	Arshad Khan Afridi	Manager (IT)	18
2.	Muhammad Jamil Khan	ACO SWA	17
3.	Muhammad Faruq Khan	ACO Mohmand	17
4.	Abdul Ghaffar	ACO Bajaur	17
5.	Niaz Bahadar	ACO Kurram	17
6.	M. Haris Shah	ACO Orakzai	17
7.	Tufail Khan Khalil	ACO Khyber	17
8.	Muhammad Hamayun Khan	ACO NWA	17
9.	Mr. Muhammad Sand	AM (M&E)	17
10.	Nihar Ali	Assistant	16
11.	Shahid	Assistant	16
12.	Mazhar Ali Shah	Assistant	16
13.	Farman Ali Afridi	Assistant	16
14.	Mrs. Sadia Jehangir	Assistant	16
15.	Muhammad Akil Khan	Assistant	16
16.	Usman Faruq	Assistant	16
17.	Faheem Ullah	Assistant	16
18.	Luqman Hakeem	Assistant	16
19.	Shakeel Ahmad	Assistant	16
20.	Zaheer ud Din	Assistant	16
21.	Ataf ur Rehman	Computer Operator	16
22.	Nasrullah Khan	Computer Operator	16
23.	Zahidullah	Computer Operator	16
24.	Feroz Shah	Computer Operator	16
25.	Fawad Hussain Khan	Computer Operator	16
26.	Fakhr-e-Alam	Computer Operator	16
27.	Sajid Nabi	Computer Operator	16
28.	Ahtesham Ghani	Computer Operator	16
29.	Muhammad Ajmal	Computer Operator	16



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30.	Nadia Salehuddin	Computer Operator	16
31.	Syed Adnan Ali Shah	Computer Operator	16
32.	Habib ur Rehman	Computer Operator	16
33.	Inamullah Kundi	Computer Operator	16
34.	Muhammad Fawad	Computer Operator	16
35.	Shahzada Saqib Zaman	Computer Operator	16
36.	Sajjad Ali	Computer Operator	16
37.	Rahib Shah	Computer Operator	16
38.	Abdul Jabbar	Computer Operator	16
39.	Syed Shah Said	Computer Operator	16
40.	Baidar Bakht	Computer Operator	16
41.	Shakir Ullah	Computer Operator	16
42.	Shahid Jamal	Computer Operator	16
43.	Muhammad Aftab Khan	Driver <i>Gov. no 1</i>	5
44.	Shah Hussain	Driver	5
45.	Muhammad Tahir	Driver	5
46.	Haider Raza	Driver	5
47.	Noor Khan	Driver	5
48.	Muhammad Junaid Khan	Driver	5
49.	Sami Ullah	Driver	5
50.	Kachkol Khan	Driver	5
51.	Imran Ullah	Driver	5
52.	Ali Gul	Driver	5
53.	Abdul Sumi	Driver	5
54.	Manzoor ur Rehman	Driver	5
55.	Shabir Jan	Driver	5
56.	Hidayat Ullah	Driver <i>PAO C2P</i>	5
57.	Suleh Khan	Driver	5
58.	Munir Khan	Driver	5
59.	Bilal Khan	Driver	5
60.	Abdul Wahid	Driver	5
61.	Ihsan Ullah Jan	Driver	5
62.	Syed Qasim	Driver	5
63.	Raza Gul	Driver	5
64.	Per Ullah	Driver	5
65.	Inamullah	Nash Qasid	2
66.	Iqbal Ullah	Nash Qasid	2
67.	Sharbat Ali	Nash Qasid	2

69.	Khan Bachn	Naib Qasid	2
70.	Yasir Khan	Naib Qasid	2
71.	Shah Baz Masih	Sanitary Worker	2
72.	Naeem Shah	Naib Qasid	2
73.	S. Aftab Shah	Naib Qasid	2
74.	Shukrullah	Naib Qasid PHE DP	2
75.	Adeel Ahmad	Naib Qasid	2
76.	Akhtar Zeh	Naib Qasid CS ✓	2
77.	Saifur Rehman	Naib Qasid	2
78.	Muhammad Asad	Naib Qasid PHE DP	2
79.	S. Musarat Shah	Naib Qasid	2
80.	Altaf Masih	Sanitary Worker	2
81.	Muhammad Yaseen	Naib Qasid	2
82.	Din Muhammadi	Naib Qasid	2
83.	Arshad Ali	Naib Qasid	2
84.	Tauqeer Ahmad	Naib Qasid	2
85.	Amjad Hussain	Naib Qasid	2
86.	Muqadar Khan	Naib Qasid	2
87.	Liaqat Ali	Chowkidar	2
88.	Rehmat ullah	Naib Qasid	2
89.	Zabit Gul	Naib Qasid	2
90.	Hazrat Noor	Naib Qasid	2
91.	Ubaid Ullah	Naib Qasid	2
92.	Intikhab Hussain	Naib Qasid	2
93.	Hazrat Umar	Naib Qasid	2
94.	Liaqat Ali	Naib Qasid	1

2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment) Establishment Department has been declared as focal person to properly monitor the whole process of adjustment/ absorption of the surplus pool staff.

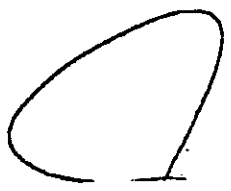
3. Consequent upon above, all the above surplus staff alongwith their original record of service are directed to report to the Deputy Secretary (Establishment), Establishment Department for further necessary action.

**CHIEF SECRETARY  
GOVT. OF KHYBER PAKHTUNKHWA**

Endst: No. & Date Even

Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.



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- Chief Executive defunct FATA Development Authority with the request to ensure provision of Last Pay Certificates (LPCs) of the above mentioned surplus staff/employees to Establishment & Administration Department.
8. Director General Information & Public Relations, Khyber Pakhtunkhwa.
9. All Divisional Commissioners in Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. Deputy Secretary (Establishment), Establishment Department.
13. Deputy Secretary (Admin), Establishment & Administration Department.
14. PS to Secretary Establishment Department.
15. PS to Special Secretary (Regulation), Establishment Department.
16. PS to Special Secretary (Establishment), Establishment Department.
17. Section Officer (E-III) Establishment Department with the request to take up case for creation of corresponding 94 regular posts for the above mentioned surplus staff employees in the surplus pool of Establishment department for drawl of salaries w.e.f. 20.04.2020 onward till further adjustment/posting.
18. Section Officer (Budget & Development), Establishment & Administration Department for necessary action regarding preparation and submission of Budget Estimates for the purpose of salaries of above mentioned 94 surplus staff employees of defunct FATA-DA for the period from 20.04.2020 onward to Finance Department.
19. All Section Officers in Establishment Department.
20. PA to Secretary defunct FATA Development Authority (FDA).

  
(FAZLI WADOOD)  
SECTION OFFICER (O&M)

05/08/2020

PUNJAB HIGH COURT, PUNJAB  
(ORIGINAL JURISDICTION)

VR No. 2193 PZ029

Abduslam Chaudhri and others

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For the Petitioners:  
Abduslam Chaudhri, Advocate

For the Respondents:

Secretary, Punjab

For the respondents:

Mr. Mansoor Ahmad, Advocate  
with Mansoor Ahmad & Co.  
Advocates, Lahore

Date of hearing:

30.11.2022

JUDGMENT

SYED ARSHAD ALI, Jr. Abduslam Chaudhri and others, who were the employees of Federally Administered Tribal Area Development Authority ("Authority") were dismissed by virtue of Khyber Pakhtunkhwa Ordinance No. VII of 2020 and their services have been transferred to the Provincial Government of Establishment Department, have invoked the constitutional jurisdiction of this Court, challenging the impugned order dated 01.03.2020 whereby the borrowing/Establishment Department has refused to acknowledge their status as regular employees.

2. Arguments heard and record perused.

3. The petitioners were essentially employed on contract basis by the Authority in various pay scales from the year, 2007 to 2010. Their services were regularized by the Board of Directors of the Authority vide order No. Secy/FDA/4-17/Vol-II/08 dated 22.11.2011. Later, the Secretary of the Authority had ordered for withdrawal of the regularization of the petitioners' services through another order dated 12.06.2012.

4. Feeling aggrieved of the aforesaid order, employees of the Authority had approached this Court through

ATTESTED

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. \_\_\_\_\_/2020



1. Ahtasham Ghanl S/o Abdul Ghanl (Computer Operator, BPS-16)
  2. Fakhr-e-Alam S/o Hasham Khan (Computer Operator, BPS-16)
  3. Faward Hussain Khan S/o Adam Khan (Computer Operator, BPS-16)
  4. Iniran Ullah Jan (Driver, BPS-5)
  5. Shakeel Ahmad (Assistant, BPS-16)
  6. Zahid Ullah Jan (Computer Operator, BPS-16)
  7. Farman Ali S/o Mehboob Ali (Assistant, BPS-16)
  8. Muhammad Akif Khan (Assistant, BPS-16)
- All employees of FATA-DA, Plot No.46, Sector B-2, Phase-V, Hayatabad, Peshawar.

..... Petitioner

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa Chief Secretary, Civil Secretariat, Peshawar.
- 2) Secretary FATA Development Authority.
- 3) Secretary Establishment, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 4) Chief Executive FATA-DA, Plot No.46, Sector B-2, Phase-V, Hayatabad, Peshawar.
- 5) Secretary Finance, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 6) Secretary Administration, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 7) Secretary Law & Parliamentary Affairs, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 8) General Manager Planning & Development FATA-DA, Plot No.46, Sector B-2, Phase-V, Hayatabad, Peshawar.

..... Respondents

Writ Petition No. 2303-P/2012. The said petition was disposed of by this Court vide order dated 04.09.2014 in the following manner:-

(26)

*"Accordingly, for the reasons stated above, we allow the instant writ petition in terms that*  
*(i) The impugned order dated 12.6.2012 is set aside being without lawful authority*  
*(ii) In case the respondents want to revisit their decision of regularizing the services of petitioners in the Authority, the same to be placed before the Board of Directors, and the Board shall consider all the points raised by the respondents before the Court".*

5. The legal discourse in the judgment of this Court would show that the competent authority for appointment of the Authority was the Board of Directors constituted under Article 5 of the Regulation, 2006 on the recommendation of the Steering Committee which was constituted under Article 4 of the said Regulation. Since the order of regularization of the petitioners and other employees of the Authority was passed by the Board of Directors, therefore, this Court has held that the subsequent order of withdrawal of regularization of the petitioners in service by the Secretary of the Authority was passed by incompetent authority. However, this Court, as stated above, has specifically allowed the respondent-Authority that they may revisit the order of regularization but in accordance with law.

6. Later, this issue was placed before the Board of Directors in its 31<sup>st</sup> meeting held on 16.10.2014 wherein the Board had directed for implementation of the judgment of this Court, however, no order has so far been passed by the Board of Directors or any other forum to revisit the order regularizing the service of the petitioners in the Authority.

7. Pursuant to 25<sup>th</sup> amendment in the Constitution of Islamic Republic of Pakistan, 1973 ("*Constitution*"), the Federally Administered Tribal Areas were merged into the respective Provinces of Khyber Pakhtunkhwa and Baluchistan. The present issue relates to the merger of Federally

Administered Tribal Area in the Province of Khyber Pakhtunkhwa.

(27)

8. The Provincial Government of Khyber Pakhtunkhwa had then initiated various steps for establishing its writ in the erstwhile FATA and has also issued very instructions for the transfer and posting of employees in the erstwhile FATA as well as in the Authority. The Authority was formally dissolved through Ordinance No. VII of 2020 and according to Section 3 of the said Ordinance, the employees of the Authority were declared as surplus and placed at the disposal of Establishment Department of the Provincial Government for their adjustment or posting as per policy.

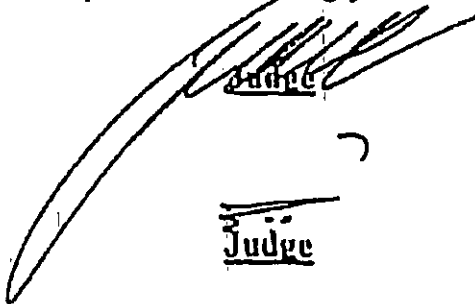
9. Upon such dissolution, the Authority had sent the list of its employees to the Secretary Government of Khyber Pakhtunkhwa Establishment Department Peshawar vide letter dated 09.03.2020. In the said letter, the status of the petitioners has been described as contract employees or employees appointed under the urgency clause whereas it is the claim of the petitioners that their services have been properly regularized by the then competent authority vide letter dated 22.11.2011. Thus, the only grievance of the petitioners is that their status described as a contract employees in the said letter dated 09.03.2020 is contrary to the judgment of this Court passed in Writ Petition No. 2303-P/2012 dated 04.09.2014. The respondents in their comments could not controvert this aspect of the case and they have simply stated that all the petitioners were relieved by the Authority vide letter dated 09.03.2020 and now they have been housed in the surplus pool by the Establishment Department for their onward posting. The respondents have neither admitted their status as regular employees of the erstwhile Authority nor have denied the same in very clear terms. The representative of the Department, present in Court, has only stated that on whatever status the petitioners were sent to the Establishment

Department, the respondents-department have received the them in the said status.

10. The perusal of the record which includes the letter dated 22.11.2011 whereby the services of the petitioners were regularized and the judgment of this Court passed in Writ Petition No. 2303-P/2012 dated 04.09.2014 would clearly show that the subsequent letter withdrawing the regularization of the petitioners in service has been set aside by this Court and despite the fact that this Court through the aforesaid judgment dated 04.09.2014 had allowed the respondents that they may revisit the order of their regularization, so far no such order has been passed by the Authority including the respondents.

11. In view of the above, we do not hesitate to hold that the petitioners were the regular employees of the Authority and on their transfer/adjustment in Provincial Government; pursuant to Section 3 of the Ordinance No.VII of 2020, they will continue to enjoy the said status and their status being described as a contract as well as urgency clause inductees are, thus, contrary to the factual and legal position, as stated above. This petition is disposed of accordingly.

ANNOUNCED.  
10.11.2022

  
Judge

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S.P. 10-11-22  
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16-11-22  
16-11-22  
A. S. S.

REGISTERED TO BE THE...  
16 NOV 2022







GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT  
(ESTABLISHMENT WING)

F

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Dated Peshawar the September 14, 2020

NOTIFICATION

No. SOE-III (E&AD)1-3/2020/FDA- In exercise of the power vested under provision of Sr. No. 2 (ii) of Rule-4 Appointment, Promotion and Transfer Rules, 1989 read with Para-5(c)(i) of the Surplus Policy contained in E&A Department (Regulation Wing) Govt. of Khyber Pakhtunkhwa circular letter No. SOR-I(E&AD)1-200/1998 dated 08-06-2001, the Competent Authority has been pleased to place the services of Muhammad Akif Khan, Assistant (BPS-16) (Surplus Pool of Establishment & Administration Department) at the disposal of Secretary Industries, Commerce & Technical Education Department, Khyber Pakhtunkhwa for further adjustment in the office of Directorate of Industries & Commerce, Khyber Pakhtunkhwa against the vacant posts of Assistant (BPS-16) w.e.f. 20-04-2020 under initial recruitment quota:-

SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Endst: No. SOE-III (E&AD) 1-3/2020/FDA

Dated Peshawar the September 14, 2020

Copy forwarded to the:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department.
2. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
3. Accountant General, Khyber Pakhtunkhwa.
4. Director Industries & Commerce, Khyber Pakhtunkhwa.
5. Section Officer (Admn/Budget & Dev.), E&A Department.
6. Section Officer (O&M) Establishment Department.
7. PS to Secretary (Estt) Establishment Department.
8. PS to Special Secretary (Estt) Establishment Department.
9. PS to Additional Secretary (Reg-II) Establishment Department.
10. PA to Deputy Secretary (Estt) Establishment Department.
11. Official concerned.
12. Master file.

  
(Zaman Ali Khan)  
Section Officer (E-III)

(25) Amir  
E  
G

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020

Date of Decision ... 14.01.2022

Hahif 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 Halder Khan & Ali Gohar Durrani,  
Advocates

... For Appellants

Muhammad Adeel Butt,  
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...  
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN  
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-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

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 along with others were declared surplus vide order dated 25-06-2019. Feeling aggrieved, the appellant along with others filed writ petition No 3704-P/2019 in Peshawar High Court, but in the meanwhile the appellant along with 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

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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

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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 monetary 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 lose 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

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 plea that vide notification dated 21-10-2008 and in terms of the centrally administered tribal areas (employees status order 1972 President Order 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.

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 finalize the matter within one month, but the respondents instead of doing the needful,



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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.

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 monetary 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,

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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

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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

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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 summary 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

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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.

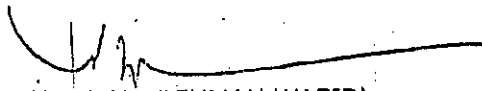
submitted to the High Court and the High Court vide judgment dated 07-11-2013 declared them civil servants and employees of administration department of ex-FATA Secretariat and regularized their services against sanctioned posts, despite they were declared surplus. They were discriminated by not transferring 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.

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)



ORDER  
14.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, 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)

**NOTIFICATION**

091-9210524



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT  
(ESTABLISHMENT WING)

Email: [soe11section@gmail.com](mailto:soe11section@gmail.com)

Dated Peshawar the 26<sup>th</sup> August, 2022



Not. SOE11 (E&AD) 1-3/2021/FDA. Consequent upon approval of Chief Minister  
Khyber Pakhtunkhwa, subsequent notification of this Department bearing No. SOE11 (E&AD) 1-3/2021/FDA dated 29-04-2022 and in exercise of the power vested  
under provision of Rule 4(2)(c)(ii) of the Khyber Pakhtunkhwa Appointment, Promotion and  
Transfer Rules, 1989 read with Para 5(c)(i) of the Staff Policy contained in Extra  
Department (Regulation Wing) Govt. of Khyber Pakhtunkhwa official letter No. SOE11  
(E&AD) 1-200/1998 dated 08-06-2001 the services of Mr. Shakeel Ahmad Assistant  
BPS-15 are placed at the disposal of Senior Member Board of Revenue, Islamabad for  
adjustment in the Board of Revenue, Khyber Pakhtunkhwa against vacant post of  
Assistant (BPS-16) under initial quota on standard terms and conditions as per  
level of service rules.

Chief Secretary  
KHYBER PAKHTUNKHWA

Order No. SOE11 (E&AD) 1-3/2021/FDA

Dated Peshawar the 26<sup>th</sup> August, 2022

Copy forwarded to the

- 1. Senior Member Board of Revenue, Revenue & Estate Department
- 2. Secretary Govt. of Khyber Pakhtunkhwa Finance Department
- 3. Section Officer (Adm/Budget & Dev), E&A Department
- 4. Section Officer (O&M), Establishment Department
- 5. PS to Secretary (Estt), Establishment Department
- 6. PS to Special Secretary (Estt), Establishment Department
- 7. PS to Additional Secretary (Reg-II), Establishment Department
- 8. PS to Additional Secretary (Estt), Establishment Department
- 9. Official concerned
- 10. Master file

*(Handwritten signature)*

(TANSEEZ ULLAH)  
SECTION OFFICER (E-III)

**BEFORE THE SECRETARY ESTABLISHMENT, GOVT: OF KHYBER PAKHTUNKHWA**

Dated: 06 November, 2023

*22/11/23*  
The Secretary to Government of Khyber Pakhtunkhwa,  
Establishment Department, Civil Secretariat,  
Peshawar.

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**SUBJECT: APPEAL FOR ADJUSTMENT IN THE CIVIL SECRETARIAT, KHYBER PAKHTUNKHWA**

With due veneration, please refer to the above cited subject, we (undersigned) request your honour the following facts and grounds for favourable consideration please.

- That after the Constitutional (25<sup>th</sup>) Amendment Act, 2018 the Federally Administered Tribal Areas were merged into the respective provinces of Khyber Pakhtunkhwa and Baluchistan. In light of the merger of Erstwhile Fata into Khyber Pakhtunkhwa Province, the Government of Khyber Pakhtunkhwa dissolved the Erstwhile FATA Development Authority and merged the employees into Establishment Department KP.
- Later on, we the undersigns were adjusted in different attached Departments (Directorate's).
- That vide Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated: 14/01/2022 in the service appeal No. 1227/2020 (Annexure-I) and subsequently vide Establishment Department Notification No. SOE-V (E&AD)/11-1/2022 dated: 29/08/202 (Annexure-II) and Notification No. SO (AD) 4 (173) S/T/2022 dated 29/08/2023 (Annexure-III). Several employees likewise us, who were initially adjusted in different attached Departments, were ordered and adjusted in the Civil Secretariat Khyber Pakhtunkhwa.
- That likewise the above said employees, we the undersigns appeal your honour to adjust us in the civil secretariat as per the precedence mentioned above and as per our humble request on humanitarian grounds, please.

We shall be very grateful to your honour for your favourable consideration and cooperation in this matter.

Thanking you in anticipation for your kind patronage.

**Enclosed as above:**

1. Zahidullah Jan, Computer Operator (BPS-16)
2. Ihtisham Ghani, -do-
3. Fawad Husain -do-
4. Fakhr e Alam -do-
5. Muhammad Akif Khan, Assistant (BPS-16)
6. Shakeel Ahmed, -do-
7. Farman Ali -do-
8. Imran Ullah Driver (BPS-6)
9. Faheem Ullah Assistant (BPS-16)

C.C

- 1) The Chief Secretary Khyber Pakhtunkhwa

Your's faithfully,

Directorate of Food, KP

-do-

-do-

-do-

Directorate of Industries, KP

Directorate of Population Welfare, KP

Directorate of Reclamation & Probation

Directorate of Treasury, KP

Directorate of Industries, KP

*22/11/2023*

# POWER OF ATTORNEY

BEFORE THE Service Tribunal Peshawar

No. \_\_\_\_\_ of 2022

*Muhammad Akrif Khan*

VERSUS

*Govt*

I/we \_\_\_\_\_ do hereby appoint &

constitute The Law Firm Of SHAH | DURRANI | KHATTAK

(a registered law firm) as counsel in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Complaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocates may do in the proceedings in my interest, Not to hold the Advocates responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- b) That the Advocates shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

*AKIF*

Signature of Executant(s)

21202-5844133-9

Accepted subject to term regarding payment of fee for/on behalf of The Law Firm of Shah | Durrani | Khattak.

**ALI GOHAR DURRANI**

Advocate High Court

[aligohar@sdklaw.org](mailto:aligohar@sdklaw.org)

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**Hannah Zahid Durrani**

Advocate High Court

*Babar Khan Durrani*  
**Babar Khan Durrani**

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**Shah | Durrani | Khattak**

(A registered law firm)

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231-A, Street No. 13, New Shami Road, Peshawar.

قیمت 50 روپے	35696	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: Shahkar Khan	بار کونسل ایسوسی ایشن نمبر: bc-19-1135	رابطہ نمبر: 0337-0414444
	PESHAWAR BAR ASSOCIATION	

بعدالت جناب: KP Service Tribunal, Peshawar

مخائب: Appellant	دعویٰ: Appeal
Muhammad Akif Khan	علت نمبر:
بنام	مورخہ:
Govt. of KP etc	جرم:
	تھانہ:

**بابت تحریر آئکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام Peshawar کے لیے Shahkar Khan Yousafzai کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ میں داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تازہ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا ہند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION  
KHYBER PAKHTOONKHWA

المرقوم: /20

بند گواہ شد العبد

مقام Peshawar کے لیے منظور ہے۔

Attested  
Accepted

S. Khan