

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNEL PESHAWAR.

Execution petition No.345/2024 in Service Appeal No.599/2023

Mr. Shehryar Khan Computer Operator BPS-16.

.....Petitioner

VERSUS

Government of Khyber Pakhtunkhwa through the Chief Secretary & Others.

.....Respondents

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Deponents

Next: dated: 26/6/24

**EXECUTION PETITION TO GIVE EFFECTS AND IMPLEMENT THE
JUDGEMENT OF THIS HONOURABLE TRIBUNAL DATED 15-03-2024,
UPON EXECUTION PETITIONER**

IN SERVICE APPEAL NO. 599/2023 and Execution petition No. 345/2024

MR. SHEHRYAR KHAN COMPUTER OPERATOR BS-16

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 13771

Dated 25-06-24

VERSUS

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE CHIEF
SECRETARY, SECRETARY TOURISM AND OTHERS**

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth,

Preliminary objections:

- i. That the petitioner has got no cause of action to file the instant execution petition.
- ii. That the execution petition in hand is not maintainable in its present form.
- iii. That the execution petition is bad for Mis-joinder/non-joinder of unnecessary and necessary parties.
- iv. That under section 4(6) of Khyber Pakhtunkhwa Services Tribunal Act 1974, no appeal shall lie in the tribunal against an order or decision of a departmental authority regarding the fitness or otherwise of a person to be appointed to or to hold a particular post or to be promoted a higher post or cadre on this score alone the appeal is not maintainable.
- v. That the execution petition is based on misrepresentation of facts, hence the petitioner is estopped by his conduct to file the appeal.
- vi. That the petitioner has got all his back benefits along with increments and salaries etc.
- vii. That the appellant has been declared surplus and is now governed under the surplus pool policy.
- viii. That the petitioner has not come to the court with clean hands.
- ix. That the execution petition is barred by law.



OBJECTIONS ON FACTS

1. Pertains to the record.
2. Pertains to the record.
3. Correct to the extent of judgement of the Honorable Tribunal, however, the Finance Department abolished the posts of the ~~Petitioner~~ in the Directorate of Tourists Services and created new positions in surplus pool in the Establishment Department which was approved by provincial cabinet in its meeting held on 24.06.2023 and the ~~Petitioner~~ along with other employees of the erstwhile Directorate of Tourists Services were parked in surplus pool on 24th October 2023 under section 8(iv)(a) of the Tourism Act(Annex-A). Furthermore, the establishment department has placed his services at the disposal of Health Department for further posting at Khyber Pakhtunkhwa Health services Academy for further adjustment against the vacant post of Computer operator (Annex-B).
4. Pertains to the record.
5. Incorrect. As explained in para 03. It is further submitted that the same petitioner had filed WP No. 2772-P/2022 and WP No. 2773-P/2022 in the Peshawar High Court, the operative part of the judgement dated 26.01.2023 is reproduced as under: -

" Now the brief question as to whether an attached department which is no more in existence and merged into an authority while its employees who would be in surplus pool, and their fate either absorption, retention or utilization has not so far decided, how come the respondents would convene a meeting of the departmental Selection or promotion committee for their promotion for the simple reason that on which post and in which department they will be given promotion "

The Directorate of Tourist Service is no more in existence and the petitioner has been declared surplus and is governed under the surplus pool policy. Therefore, keeping in view the legal hurdles involved in the implementation of the ibid judgement the Culture, Tourism, Archaeology and Museums department has filed CPLA number 292-P/2024 against the ibid Judgement of the tribunal in the August Supreme Court of Pakistan on the advice of Law Department.



6. As explained vide para 05 CPLA No. 292-P/2024 has been filed in the August Supreme Court of Pakistan against the Judgment of the Honourable Tribunal dated 15.03.2024 (Annex-C). Keeping in view the fact that the petitioners are no more employees of their parent Department and the promotion posts were abolished by the Finance Department as narrated above (Annex D), it is humbly prayed that the execution petition may be dismissed/kept pending till the final outcome of the CPLA to avoid legal complications in the implementation of the judgement of the honourable tribunal please.
7. The respondents seek leave to raise additional grounds at the time of the arguments.



Chief Secretary KP respondent No.01

Nadeem Aslam
Chaudhry

Authorized Signy
Tourism

Mansir,

Secretary Finance Respondent No.03

Amer Sultan



Secretary tourism respondent No. 02

Muhammad Bakhtiar
Khan



Secretary Establishment Respondent No.04

Ali Roshan Saeed

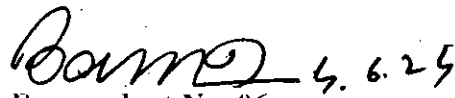


Secretary Administration Respondent No.05

Muhammad Ishtiaq

Director General
KP- Culture & Tourism Authority

Director General Culture Tourism Authority Respondent No. 06



Barkat Ullah Makhawat

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNEL PESHAWAR.

Execution petition No.345/2024 in Service Appeal No.599/2023

Mr. Shehryar Khan Computer Operator BPS-16.

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Government of Khyber Pakhtunkhwa through the Chief Secretary & Others.

.....Respondents

AFFIDAVIT

I, Muhammad Bakhtiar Khan, Secretary Culture & Tourism Department do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able

Service Tribunal Khyber Pakhtunkhwa, Peshawar. *It is further added on oath in this appeal the answering respondent have neither been placed en Parhi nor their defence is stuck off.*



DEPONENT

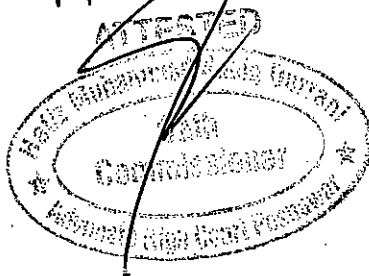
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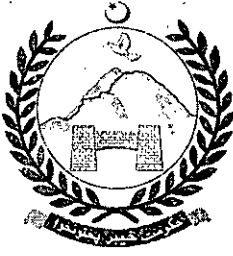
Cell No#

M. Bakhtiar Khan

Secy. Tourism

11 JUN 2024





**GOVERNMENT OF, KHYBER PAKHTUNKHWA,
CULTURE & TOURISM DEPARTMENT.**

13-A, KHYBER ROAD, PESHAWAR CANTT:



091- 9223448.



091-9212535.



Sportslitigation@gmail.com

NO. SO (LIT)/C&TD/1- 459/2023/ Ajmal
Dated Peshawar the, __ August , 2023.

AUTHORITY LETTER

Mr. Muhammad Javed (BPS-17), Section Officer, is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar in Execution Petition No345 In service Appel No 599 Mr Sheyar Khan Vs Government of Khyber Pakhtunkhwa Through Chief Secretary & others "on behalf of the undersigned till the final decision of the case.

**Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism & Museums Department.**



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)
Email: soeiisection@gmail.com

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091-9210524

Dated Peshawar the 24th October, 2023

ORDER:

SOE-III(E&AD)/1-5/Culture & Tourist Services/2023/Vol-I: In-pursuance of the provision of Section 8(iv)(a) of the Khyber Pakhtunkhwa Tourism Act, 2019, and decision of the Caretaker Provincial Cabinet in it's 8th Meeting dated 09-08-2023, the following employees of the Directorate of Culture and Directorate of Tourist Services, Tourism Department, are hereby declared as surplus for further adjustment under Surplus Pool Policy, 2001:

DIRECTORATE OF CULTURE			
S#	NAME OF EMPLOYEE	DESIGNATION	BPS
1.	Ajmal Khan	Director Culture	19
2.	Amin Khan	Deputy Director	18
3.	Riaz Ahmad	Deputy Director	18
4.	Muhammad Riaz	Assistant Director	17
5.	Imran Ullah	Assistant Director	17
6.	Mazhar Ali	Accounts Officer	17
7.	Rehman Shah	Programme Officer	16
8.	Sajid Ali Shah	Assistant	16
9.	Kashif Jan	Assistant	16
10.	Naeem-ul-Haq	Senior Scale Stenographer	16
11.	Syed Azaz-ul-Hassan	Computer Operator	16
12.	Muhammad Ayaz Tajik	Computer Operator	16
13.	Junaid Thomas	Senior Clerk	14
14.	Muhammad Zahid	Senior Clerk	14
15.	Amjad Ali	Senior Clerk	14
16.	Arshad Khan	Supervisor Sound System	13
17.	Muhammad Naeem	Electrician	12
18.	Ajun Khan	Junior Clerk	11
19.	Rizwan Javed	Junior Clerk	11
20.	Sajjad Khan	Generator Operator	08
21.	Yasir Khayam	Driver	06
22.	Atta Ullah	Driver	06
23.	Noor Akbar	Security Guard	03
24.	Zia-ul-Haq	Security Guard	03
25.	Sarfraz Khan	Security Guard	03
26.	Asif Khan	Security Guard	03
27.	Wajid Khan	Security Guard	03
28.	Habib-ur-Rehman	Security Guard	03
29.	Muhammad Shahid	Security Guard	03
30.	Waheed Khan	Security Guard	03
31.	Shah Jehan Khan	Qasid	03
32.	Gul Nawaz	Naib Qasid	03
33.	Muhammad Waqas	Naib Qasid	03
34.	Muhammad Zeeshan	Naib Qasid	03
35.	Gulzar Ali	Naib Qasid	03
36.	Altaf Khan	Chowkidar	03

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37.	Syed Naseem Shah	Chowkidar	03
38.	Zakir Ullah	Chowkidar	03
39.	Aman Ullah	Mali	03
40.	Sifat Ullah	Mali	03
41.	Shakil	Sweeper	03
42.	Miss Naseem	Sweeper	03
43.	Muhammad Karim	Technical Assistant	14
44.	Muhammad Javed Khan	Stage Supervisor	14
45.	Zahid Hussain	Junior Clerk	11
46.	Ghulam Rasool	Security Supervisor	11
47.	Momin Khan	Security Incharge	08
48.	Faqir Hussain	Mechanical Helper	04
49.	Jehanzeb Khan	Security Guard	04
50.	Muhammad Riaz	Security Guard	04
51.	Asad Ullah	Security Guard	03
52.	Javed Masih	Sweeper	04
53.	Muhammad Kamran	Security Guard	04
54.	Sohaib Afridi	Security Guard	03
55.	Zahid Ullah Shah	Electric Helper	03
56.	Arshad Khan	Naib Qasid	03
57.	Sajjad Ahmad	Chowkidar	03
58.	Syed Saif Ul Wahab Shah	Computer Operator	16
59.	Zubair Ali	Junior Clerk	11
60.	Obaid-ur-Rehman	Junior Clerk	11
61.	Fazal Aziz	Junior Clerk	11
62.	Mujtaba	Driver	06
63.	Sherdad Khan	Driver	06
64.	Mashal Khan	Photographer	03
65.	Arshad Ali	Carpenter	03
66.	Majeed Khan	Naib Qasid	03
67.	Shah Khalid	Naib Qasid	03
68.	Said Rehman	Naib Qasid	03
69.	Adnan Khan	Mali	03
70.	Fazal Ghani	Security Guard	03
71.	Tariq Afridi	Security Guard	03
72.	Bashir Muhammad	Security Guard	03
73.	Gohar Ali	Security Guard	03
74.	Zawar Hussain	Chowkidar	03
75.	Atta Ullah	Chowkidar	03
76.	Risalat Khan	Chowkidar	03
77.	Emmanuelle	Sweeper	03
78.	Harison Javed	Sweeper	03

DIRECTORATE OF TOURIST SERVICES			
S#	Name of employee	Designation	BPS
79.	Muhammad Arabi	Additional Director General	19
80.	Naseer Ahmad	Admn. & Accounts Officer	17
81.	Awais Tahir	Admn. & Accounts Officer	17
82.	Abid Hayat Safi	Law Officer	17
83.	Asad Ikram Qazi	Assistant Director	17
84.	Raza Khan	Superintendent	17
85.	Rafiq Ahmad	Assistant	16
86.	Mian Iftikhar Ali	Assistant	16
87.	Sanober Khan	Assistant	16
88.	Waqar Muhammad	Legal Assistant	16
89.	Israr Ahmad	Computer Operator	16

90.	Muhammad Riaz Khan	Computer Operator	16
91.	Muhammad Amjad	Computer Operator	16
92.	Shaharyar Khan	Computer Operator	16
93.	Israr Ahmad Khan	Computer Operator	16
94.	Asif Shahzad	Inspector	16
95.	Muhammad Bilal	Inspector	16
96.	Hisham Khan	Inspector	16
97.	Imran Khan	Inspector	16
98.	Muhammad Fahim	Inspector	16
99.	Zer Muhammad Khan	Inspector	16
100.	Khalid Bashir	Inspector	16
101.	Sajid Khan	Accountant	14
102.	Haider Zaman	Senior Clerk	14
103.	Arshad Ali	Senior Clerk	14
104.	Muhammad Ilyas	Senior Clerk	14
105.	Ziaullah	Senior Clerk	14
106.	Muhammad Asim Khan	Sub-Inspector	14
107.	Ihsanullah Khan	Sub-Inspector	14
108.	Noor Kamal Khan	Sub-Inspector	14
109.	Haider Ali	Sub-Inspector	14
110.	Waseem Zeb Khan	Sub-Inspector	14
111.	Muhammad Ishaq	Sub-Inspector	14
112.	Saddam Hussain	Sub-Inspector	14
113.	Amjad Jamil	Assistant Sub-Inspector	09
114.	Amir Afzal Khan	Assistant Sub-Inspector	09
115.	Hassan Ali Khan	Assistant Sub-Inspector	09
116.	Muhammad Asif	Assistant Sub-Inspector	09
117.	Zeeshan Tariq	Assistant Sub-Inspector	09
118.	Shamsher Ali Khan	Assistant Sub-Inspector	09
119.	Zohaib Ullah	Assistant Sub-Inspector	09
120.	Majid Ali Shah	Assistant Sub-Inspector	09
121.	Muhammad Sirajuddin	Assistant Sub-Inspector	09
122.	Sharif Ullah	Head Constable	07
123.	Khalil-ur-Rehman	Head Constable	07
124.	Noorad Ali	Head Constable	07
125.	Huzaif Ali Shah	Head Constable	07
126.	Irfan Ullah Khan	Driver	06
127.	Imdad Ullah	Driver	06
128.	Kamran Khan	Constable	05
129.	Abbas Mehdi	Constable	05
130.	Abdul Wadood	Constable	05
131.	Muhammad Saleem	Constable	05
132.	Qasim Khan	Constable	05
133.	Naseer Khan	Constable	05
134.	Umar Farooq	Constable	05
135.	Salman Khan	Constable	05
136.	Luqman Khan	Constable	05
137.	Mujahid Khan	Constable	05
138.	Mubarak Zeb	Constable	05
139.	Qadir Khan	Constable	05
140.	Shanzaib	Constable	05
141.	Attaullah	Constable	05
142.	Faiz Muhammad	Constable	05
143.	Mushatmil Shah	Dispatch Rider	05
144.	Shabbir Ahmad	Duplicate Machine Operator	04
145.	Muhammad Alamgir Khan	Naib Qasid	03
146.	Saeed Ullah	Naib Qasid	03
147.	Hamza Khan	Naib Qasid	03

Attaullah

148.	Muhammad Nawaz	Naib Qasid	03
149.	Kamran Khan	Naib Qasid	03
150.	Hammad Raza	Naib Qasid	03
151.	Muhammad Naeem	Naib Qasid	03
152.	Ibne Ali	Naib Qasid	03
153.	Mohsin Jan	Naib Qasid	03
154.	Umar Zada	Naib Qasid	03
155.	Sajjad Ullah	Naib Qasid	03
156.	Muhammad Umar	Naib Qasid	03
157.	Bismillah Jan	Chowkidar	03
158.	Imdad Ullah	Chowkidar	03
159.	Nouman Amjad	Chowkidar	03
160.	Noor-ul-Amin	Chowkidar	03
161.	Muhammad Zubair	Chowkidar	03
162.	Shahid Ullah	Chowkidar	03
163.	Mehmood ul Hassan	Chowkidar	03
164.	Yousaf Masih	Chowkidar	03

2. Consequent upon the above, all the mentioned Surplus Employees are directed to report to office of the Deputy Secretary (Establishment), Establishment Department along with their service record, for further necessary action, please.

Yours faithfully,


(SHER BAZ KHAN)
SECTION OFFICER (E-III)

Endst: of even No. & Date:

Copy forwarded to

1. Secretary to Govt. of Khyber Pakhtunkhwa, Tourism Department.
2. PS to Special Secretary (Estt:), Establishment Department.


SECTION OFFICER (E-III)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)
Email: soeiiisection@gmail.com

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091-9210524

Dated Peshawar, the 7th December, 2023

NOTIFICATION

No.SOE-III(E&AD)/1-5/Culture & Tourist Services/2023/Vol-I: Consequent upon the placement of employees of the Directorate of Culture and Directorate of Tourist Services, Khyber Pakhtunkhwa, in the Provincial Surplus Pool of Establishment & Administration Department in terms of section 8(iv)(a) of the Khyber Pakhtunkhwa Tourism Act, 2019; and subsequent recommendation of the Committee for adjustment of Surplus Staff, the Competent Authority (Secretary Establishment) under Rule-4(2)(c)(ii) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, is pleased to place the services of the following **Surplus Staff** at the disposal of **Secretary to Govt. of Khyber Pakhtunkhwa, Health Department**, for further adjustment against the vacant posts as noted against each, under initial quota, in the **Provincial Health Services Academy (PHSA)**, Khyber Pakhtunkhwa, on standard terms and conditions as per relevant Service Rules:

S#	NAME	PRESENT DESIGNATION	ADJUSTED AGAINST
1.	Mr. Shaher Yar Khan S/O Said Nawaz	Computer Operator (BPS-16)	Computer Operator (BPS-16)
2.	Mr. Israr Ahmad Khan S/O Shir Muhammad Khan	Computer Operator (BPS-16)	Computer Operator (BPS-16)

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA ESTABLISHMENT
DEPARTMENT

Endst: No.SOE-III(E&AD)/1-5/2023/Vol-I: Dated Peshawar the 7th December, 2023

Copy forwarded to the:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department in reference to letter No. FD/BO-IV/2-29/2022-23/Surplus Pool, dated 27-09-2023 with the request to abolish the mentioned posts in the Surplus Pool of E&A Department.
3. Accountant General, Khyber Pakhtunkhwa.
4. Director General, Provincial Health Services Academy, Khyber Pakhtunkhwa.
5. Section Officer (Admn/Budget & Dev.), E&A Department.
6. PS to Secretary (Estt) Establishment Department.
7. PA to Additional Secretary (Estt) Establishment Department.
8. Official concerned with directions to immediately report to Provincial Health Services Academy (PHSA).
9. Master file.

SECTION OFFICER (E-III)

B

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA No. _____/2024

Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar & others

-----**PETITIONERS**

VERSUS

Mr. Sheher Yar Khan

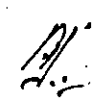
-----**RESPONDENT**

Appeal from : Learned Khyber Pakhtunkhwa Service
Tribunal, Peshawar
Counsel for Petitioner : *Advocate General, Khyber Pakhtunkhwa,*
Peshawar
Instituted by : *Muhammad Ajmal Khan, AOR*

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CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.


(Muhammad Ajmal Khan)
Advocate-on-Record
Supreme Court of Pakistan
For Government

A. J. Khan

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**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

CPLA No. _____/2024

Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar & others -----**PETITIONERS**

VERSUS

Mr. Sheher Yar Khan -----**RESPONDENT**

CONCISE STATEMENT

1	Subject matter and the law	Service Matter/Promotion	
2	Controversy between the parties	The promotion of respondent was deferred due to objections raised on the Service Rules of DTS by representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS. Against which the respondent filed Service Appeal No.599/2023 before the learned Service Tribunal, Peshawar which was allowed vide dated 15/03/2024 and the petitioners were directed to promote the respondent from the date when the meeting of DPC was held i.e. 07/11/2022, which is against the law. Hence, this CPLA.	
3.	Which side has filed this petition	Government / petitioners	
4.	Court/Forum	Date of a)Institution b) Decision	Who filed it and with what result
5.	Learned Khyber Pakhtunkhwa, Service Tribunal, Peshawar	a) 20/03/2023 b) 15/03/2024	Respondent filed Service Appeal No. 599/2023 which was allowed and the petitioners were directed to promote the respondent from the date when the meeting of DPC was held i.e. 07/11/2022.
6	Points/Questions noted in the impugned Judgment	Treatment of points in the impugned judgment	
A working paper was prepared by the Directorate of Tourist Services for promotion/appointment to the post of Assistant Controller/Assistant Director/Assistant Director-Cum-Assistant controller on regular/acting charge basis. Meeting of the Departmental Promotion Committee of the Directorate of Tourist Service Khyber Pakhtunkhwa, Peshawar was held on 07/11/2022 under the Chairmanship of the Secretary Sports and Tourism		The respondent qualified the conditions laid down in the service rules in the light of which working papers for his promotion was prepared and presented before the DPC. The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were groundless. The	

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<p>Department but the promotion of respondent was deferred due to objections raised by representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS.</p>	<p>appeal presented before us is, therefore, allowed as prayed for. Petitioners are directed to promote the respondent from the date when the meeting of DPC was held i.e. 07/11/2022.</p>
--	--

- | | |
|---|---|
| 7 | <p>Question requiring consideration & decision by the Supreme Court</p> <ol style="list-style-type: none"> 1. Whether the promotion of respondent was not deferred due to the objection raised by representative of Finance Department? 2. Whether the employees who are kept in surplus pool and their fate of absorption, retention or utilization are under the surplus pool policy can be granted promotion and call DPC for them? 3. Whether under Section 08 of newly promulgated Khyber Pakhtunkhwa Tourism Act, 2019, the said Directorate was not ceased and merged in-to Khyber Pakhtunkhwa Culture and Tourism Authority "CTA" established under Section 6 of the Act? 4. Whether the employees of DTS parked in surplus pool can be promoted but on which post and in which department? |
|---|---|

8. **LAW/RULING ON THE SUBJECT**

FOR		AGAINST	
1.	CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973	1	

CERTIFICATE

Certified that, we, the undersigned prepared the above concise statement which is correct.



(Muhammad Ajmal Khan)
 Advocate-on-Record
 Supreme Court of Pakistan
 For Government

(Additional Advocate General)
 Khyber Pakhtunkhwa



(W)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA No. _____/2024

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary, Culture, Tourism, Archaeology & Museums, Department Government of Khyber Pakhtunkhwa, Peshawar
3. Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar
4. Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar
5. Secretary Administration Department, Government of Khyber Pakhtunkhwa, Peshawar
6. Directorate of Tourist Services through DG Tourist Services (Now) Director General, Khyber Pakhtunkhwa, Culture & Tourism Authority, Peshawar.

.....PETITIONERS

VERSUS

Mr. Sheher Yar Khan s/o Said Nawaz R/O Haji Shah Zaman Kali,
Jamrud Agency

.....RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE
212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT
AND ORDER OF THE LEARNED KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR DATED 15/03/2024
PASSED IN SERVICE APPEAL No.599/2023

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

44

1. Whether the impugned judgment and order dated 15/03/2024 passed in Service Appeal No.599/2023 by the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually incorrect and required interference by this august Court?
2. Whether the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
3. Whether the respondent is employee of the Tourism Department?
4. Whether the promotion of respondent was not deferred due to the objection raised by representative of Finance Department?
5. Whether the employees who are kept in surplus pool and their fate of absorption, retention or utilization are under the surplus pool policy can be granted promotion and call DPC for them?
6. Whether under Section 08 of newly promulgated Khyber Pakhtunkhwa Tourism Act, 2019, the said Directorate was not ceased and merged in-to Khyber Pakhtunkhwa Culture and Tourism Authority "CTA" established under Section 6 of the Act?
7. Whether the employees of DTS parked in surplus pool can be promoted but on which post and in which department?
8. Whether the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar has advanced any legal and plausible reason by accepting the Service Appeal of respondent without adverting to legal and factual aspect of the matter?
9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
10. Whether the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly followed, applied and interpreted the law in the subject case?
11. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective while passing its impugned judgment and order dated 15/03/2024?

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FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the Directorate of Tourist Services was established by Federal Government in 1976 while its regional offices in 1988. On 31st March 2012, the Directorate of Tourist services was devolved to the Khyber Pakhtunkhwa in the 18th Constitutional Amendment.
2. That the Government of Khyber Pakhtunkhwa promulgated Tourism Act, 2019, under which the Khyber Pakhtunkhwa Culture and Tourism Authority was established for the development of Culture and Tourism. Under Section (8)(i) of the Tourism Act, the authority shall take over the administrative, financial and regulatory control of all the activities, offices, projects, centers of the corporation, Directorates and Institutes in a prescribed manner as a result thereof shall cease to be the attached departments of the department and shall merge into the authority as given in the Sub-section (b) of the Sub-Section (i) of the ibid Section.
3. That Sub-section (iv) of Section 8 of the Act, the Government shall create surplus pool in the Establishment Department for the employees of the Directorates till the retirement of the last incumbent. These employees shall continue to enjoy all the benefits currently admissible to them and shall be entitled to receive their salaries and other benefits as if they had continued to work against existing cadres or posts. The section ibid further adds that the service of the employees shall be utilized in a manner prescribed by the Government or absorb in the other departments.
4. That Secretary Tourism issued a certificate to the extent that the authority has developed the requisite capacity to take over the functions of the Directorate of Tourists Services on 25th July 2022 as required under the Act. The functions of the Directorate were transferred to the Tourists Services Wing of the Khyber Pakhtunkhwa Culture and Tourism Authority on 17th November 2022. Subsequently the Finance department abolished the posts of the respondent in the Directorate of Tourists Services and directed BO-IV to create similar posts on the strength of the Establishment Department for the creation of a surplus pool which was approved by Provincial Cabinet in its meeting held on 24/06/2023 and the respondent along-with other employees of the erstwhile Directorate of Tourists Services were parked in surplus pool 24th October, 2023 under section 8(iv)(a) of the Tourism Act. Now all of

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the employees of the erstwhile Directorate of Tourists Services are now placed are parked in surplus pool and their absorption, retention, etc. is governed under the surplus pool policy. Therefore, for all intents and purposes, the employees of the erstwhile Directorate of Tourist Services is no longer the attached department of the Culture, Tourism, Archaeology and Museum Department and its employees are governed under the surplus pool policy of the Government of Khyber Pakhtunkhwa Establishment Department.

5. That during the pendency of the creation of surplus pool, the Departmental Promotion Committee meeting was held on 07/11/2022 on the request of the Directorate of Tourists Services and directions of the superior Court. The request of the respondent for promotion was also placed before the Departmental Promotion Committee but the case was deferred. The decision of the Departmental Promotion Committee is reproduced as, 'the DPC deferred the promotion of said officials due to objections raised on the Service Rules of DTS by representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS'.
6. That the respondent filed Departmental Appeal but without waiting for the result being aggrieved from Departmental Promotion Committee, filed W.P No.2772/2023 before the Hon'ble Peshawar High Court, Peshawar which was dismissed and directed that their right of promotion shall be in accordance with the rules and regulations and terms and condition of the cadres into which they are absorbed.
7. That the respondent filed Service Appeal No.599/2023 before the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar for holding of the Departmental Promotion Committee (DPC) wherein Para-wise reply was asked from the petitioners which was filed and the stance of respondent was denied on legal and factual grounds.
8. That the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar allowed the Service Appeal and directed to the petitioners to promote the respondent from the date when the meeting of DPC was held i.e. 07/11/2022.
9. That the petitioners being aggrieved from the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 15/03/2024 passed in Service Appeal No.599/2023, prefer this CPLA before this august Court.

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10. That the petitioners seek leave to appeal against the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 15/03/2024 passed in Service Appeal No.599/2023.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 15/03/2024 passed in Service Appeal No.599/2023 may graciously be granted.



(Muhammad Ajmal Khan)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.



Advocate-On-Record

CERTIFICATE: Certified that all the legible copies of the illegible documents attached with this petition have been compared word to word with original and found correct in all respect.



Advocate-On-Record

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department, Civil Secretariat, Peshawar

finance.gkp.pk

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No.BO-III/FD/5-17/2023-24

Dated Peshawar the 07-09-2023

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism, Archeology & Museums, Department.

Subject: - **MINUTES OF THE 08TH MEETING OF THE CARETAKER PROVINCIAL CABINET HELD ON 09 AUGUST, 2023 REGARDING CREATION OF SURPLUS POOL FOR DIRECTORATE OF CULTURE AND DIRECTORATE OF TOURIST SERVICES**

Dear Sir,

I am directed to refer to your letter No.SO(T)/5-29(B)/ employees/ 2023/ 6053-58 dated 24-08-2023 on the subject noted above and to state that in compliance with the decision taken by the Provincial Cabinet in its meeting held on 09-08-2023, the posts of various categories of the following Directorates are hereby abolished.

S.#	DDOs and Description	No of Posts	Detail of Posts
1.	PR8609-Directotate of Culture Khyber Pakhtunkhwa Peshawar	53	Annexed-I
2.	PR8608-Culture Activities for Nishtar Hall Peshawar	38	Annexed-II
3.	PR8607-Toursit Services Peshawar	135	Annexed-III

Yours faithfully

BUDGET OFFICER-III

Endst: No And Date Even:

Copy forwarded to the: -

1. Secretary Establishment Department, Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa.
3. Directorate of Culture Department.
4. Directorate of Tourist Services Department.
5. Budget Officer-IV , Finance Department, is requested to initiate the case for approval regarding creation of posts in the surplus pool.
6. Private Secretary to Finance Secretary.
7. PS to Special Secretary Finance.
8. PA to Additional Secretary Finance.
9. PA to Deputy Secretary Finance.
10. Master File.

BUDGET OFFICER-III

SECRETARY
Culture, Tourism
Archeology & Museums Department
Khyber Pakhtunkhwa
Dairy No: 1719
Date: 12-09-23

AS
DS-
DS-IV
SO (T)
SO (Lit)
SO (Coord)

(17)

NC21135 (066)
TOURISM DEPARTMENT

082105 PROMOTION OF CULTURAL ACTIVITIES

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME	NUMBER OF POSTS		BUDGET ESTIMATES	REVISED ESTIMATES	AUTHORIZED EXPENDITURE
	2022-2023	2023-2024	2022-2023	2022-2023	JUL - OCT 2023
			Rs	Rs	Rs
08 RECREATIONAL, CULTURE AND RELIGION					
082 CULTURAL SERVICES					
0821 CULTURAL SERVICES					
082105 PROMOTION OF CULTURAL ACTIVITIES					
PR8609 Directorate of Culture Khyber Pakhtunkhwa Peshawar					
A01 TOTAL EMPLOYEES RELATED EXPENSES.					10,029,000
A011 TOTAL PAY		53			6,445,000
A011-1 TOTAL PAY OF OFFICERS		15			3,265,000
A01101 Total Basic Pay Of Officer		15			3,265,000
D063 Director (BPS-19)		1			410,000
D028 Deputy Director (BPS-18)		2			491,000
A007 Accounts Officer (BPS-17)		1			203,000
A021 Administrative Officer (BPS-17)		1			264,000
A079 Assistant Director (BPS-17)		2			534,000
C153 Computer Programmer (BPS-17)		1			267,000
A057 Assistant (BPS-16)		3			487,000
C082 Computer Operator (BPS-16)		2			203,000
P083 Programme Officer (BPS-16)		1			203,000
S061 Senior Scale Stenographer (BPS-16)		1			203,000
A011-2 TOTAL PAY OF OTHER STAFF		38			3,180,000
A01151 Total Basic Pay Other Staff		38			3,180,000
S035 Senior Clerk (BPS-14)		3			386,000
S153 Stenographer (BPS-14)		2			192,000
S154 Supervisor Sound System (BPS-13)		1			129,000
A005 Accountant (BPS-12)		1			120,000
E019 Electrician (BPS-12)		1			120,000
J013 Junior Clerk (BPS-11)		3			321,000
G013 Generator Operator (BPS-09)		1			99,000
D112 Driver (BPS-06)		3			259,000

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I have read with the matter as per m/SE
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Act 2019
WD-CTA

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NC21135 (066)
TOURISM DEPARTMENT

082105 PROMOTION OF CULTURAL ACTIVITIES

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME	NUMBER OF POSTS		BUDGET ESTIMATES	REVISED ESTIMATES	AUTHORIZED EXPENDITURE JUL - OCT 2023
	2022-2023	2023-2024	2022-2023	2022-2023	2023
			Rs	Rs	Rs
08 RECREATIONAL, CULTURE AND RELIGION					
082 CULTURAL SERVICES					
0821 CULTURAL SERVICES					
082105 PROMOTION OF CULTURAL ACTIVITIES					
PR8609 Directorate of Culture Khyber Pakhtunkhwa Peshawar					
Q004 Qasid (BPS-04)	1				102,000
C057 Chowkidar (BPS-03)	3				205,000
M010 Mali (BPS-03)	2				153,000
N005 Naib Qasid (BPS-03)	6				386,000
S023 Security Guard (BPS-03)	9				579,000
S162 Sweeper (BPS-03)	2				129,000
A012 TOTAL ALLOWANCES					<u>3,584,000</u>
A012-1 TOTAL REGULAR ALLOWANCES					<u>3,573,000</u>
A01202 House Rent Allowance					1,044,000
A01203 Conveyance Allowance					476,000
A01207 Washing Allowance					94,000
A01208 Dress Allowance					5,000
A0120D Integrated Allowance					55,000
A01216 Qualification Allowance					11,000
A01217 Medical Allowance					287,000
A0121T Adhoc Relief Allowance 2013					79,000
A01226 Computer Allowance					13,000
A0122C Adhoc Relief Allowance - 2015					56,000
A0124H Special Allowance-2021					394,000
A0124L Weather Allowance					12,000
A0124N Disparity Reduction Allowance 2022- 15%					497,000
A0124R Adhoc Relief Allowance 2022					550,000
A012-2 TOTAL OTHER ALLOWANCES(EXCLUDING TA)					<u>11,000</u>
A01274 Medical Charges					11,000
001 Medical Charges					11,000
A03 TOTAL OPERATING EXPENSES					<u>2,066,000</u>

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NC21135 (066)
TOURISM DEPARTMENT

082105 PROMOTION OF CULTURAL ACTIVITIES

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME	NUMBER OF POSTS		BUDGET ESTIMATES	REVISED ESTIMATES	AUTHORIZED EXPENDITURE JUL - OCT 2023
	2022-2023	2023-2024	2022-2023	2022-2023	2023
			Rs	Rs	Rs
08 RECREATIONAL, CULTURE AND RELIGION					
082 CULTURAL SERVICES					
0821 CULTURAL SERVICES					
082105 PROMOTION OF CULTURAL ACTIVITIES					
PR8608 Cultural Activities for Nishtar Hall Peshawar					
A01 TOTAL EMPLOYEES RELATED EXPENSES.					<u>6,355,000</u>
A011 TOTAL PAY		38			<u>3,631,000</u>
A011-1 TOTAL PAY OF OFFICERS		1			<u>112,000</u>
A01101 Total Basic Pay Of Officer		1			<u>112,000</u>
C082 Computer Operator (BPS-16)		1			112,000
A011-2 TOTAL PAY OF OTHER STAFF		37			<u>3,519,000</u>
A01151 Total Basic Pay Other Staff		37			<u>3,519,000</u>
S655 Stage Supervisor (BPS-14)		1			214,000
T097 Technical Assistant (BPS-14)		1			214,000
J013 Junior Clerk (BPS-11)		4			417,000
S271 Security Supervisor (BPS-11)		1			193,000
S230 Security Incharge (BPS-08)		1			172,000
D112 Driver (BPS-06)		2			126,000
S656 Security Head (BPS-05)		1			150,000
C012 Carpenter (BPS-03)		1			57,000
C057 Chowkidar (BPS-03)		4			278,000
E126 Electrical Helper (BPS-03)		1			107,000
M010 Mali (BPS-03)		1			57,000
M234 Mechanical Helper (BPS-03)		1			107,000
N005 Naib Qasid (BPS-03)		4			278,000
P027 Photographer (BPS-03)		1			57,000
S023 Security Guard (BPS-03)		9			764,000
S162 Sweeper (BPS-03)		4			328,000

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NC21135 (066)
TOURISM DEPARTMENT

047202 TOURISM

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME	NUMBER OF POSTS		BUDGET ESTIMATES	REVISED ESTIMATES	AUTHORIZED EXPENDITURE
	2022-2023	2023-2024	2022-2023	2022-2023	JUL - OCT 2023
			Rs	Rs	Rs
04 ECONOMIC AFFAIRS					
047 OTHER INDUSTRIES					
0472 SUBSIDIES					
047202 TOURISM					
PR8607 Tourist Services Peshawar					
A01 TOTAL EMPLOYEES RELATED EXPENSES.					
A011 TOTAL PAY		135			24,343,000
A011-1 TOTAL PAY OF OFFICERS		39			17,035,000
A01101 Total Basic Pay Of Officer		39			6,636,000
A737 Additional Director General (BPS-19)		1			6,633,000
D068 Director General (BPS-19)		1			314,000
D028 Deputy Director (BPS-18)		1			366,000
A079 Assistant Director (BPS-17)		1			325,000
A191 Assistant Controller (BPS-17)		1			244,000
A513 Assistant Director (IT) (BPS-17)		1			244,000
A725 Administrative and Account Officer (BPS-17)		2			170,000
A760 Assistant Director (Planning) (BPS-17)		1			487,000
A850 Assistant Director Cum-Assistant-Controller (BPS-17)		4			170,000
L025 Law Officer (BPS-17)		1			676,000
S166 Superintendent (BPS-17)		1			244,000
A057 Assistant (BPS-16)		4			244,000
C082 Computer Operator (BPS-16)		6			458,000
I012 Inspector (BPS-16)		12			904,000
L123 Legal Assistant (BPS-16)		1			1,421,000
S115 Stenographer (BPS-16)		1			183,000
A01105 Qualification Pay					183,000
A011-2 TOTAL PAY OF OTHER STAFF		26			3,000
A01151 Total Basic Pay Other Staff		26			10,399,000
					10,399,000

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NC21135 (066)
TOURISM DEPARTMENT

047202 TOURISM

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME	NUMBER OF POSTS		BUDGET ESTIMATES	REVISED ESTIMATES	AUTHORIZED EXPENDITURE
	2022-2023	2023-2024	2022-2023	2022-2023	JUL - OCT 2023
			Rs	Rs	Rs
04 ECONOMIC AFFAIRS					
047 OTHER INDUSTRIES					
0472 SUBSIDIES					
047202 TOURISM					
PR8607 Tourist Services Peshawar					
A005 Accountant (BPS-14)	2				214,000
S035 Senior Clerk (BPS-14)	5				435,000
S114 Steno Typist (BPS-14)	1				107,000
S138 Sub Inspector (BPS-14)	10				857,000
J013 Junior Clerk (BPS-11)	8				686,000
A149 Assistant Sub Inspector (BPS-09)	10				771,000
H015 Head Constable (BPS-07)	5				364,000
D112 Driver (BPS-06)	5				302,000
C088 Constable (BPS-05)	25				1,607,000
D136 Dispatch Rider (BPS-05)	1				64,000
D471 Duplicate Machine Operator (BPS-04)	1				64,000
C057 Chowkidar (BPS-03)	8				4,113,000
F001 Farash (BPS-03)	3				172,000
N005 Naib Qasid (BPS-03)	12				643,000
A012 TOTAL ALLOWANCES					<u>7,308,000</u>
A012-1 TOTAL REGULAR ALLOWANCES					<u>7,296,000</u>
A01202 House Rent Allowance					2,151,000
A01203 Conveyance Allowance					1,216,000
A01207 Washing Allowance					108,000
A01208 Dress Allowance					2,000
A0120D Integrated Allowance					60,000
A01217 Medical Allowance					588,000
A0121T Adhoc Relief Allowance 2013					43,000
A01224 Entertainment Allowance					2,000
A01226 Computer Allowance					34,000
A0122C Adhoc Relief Allowance - 2015					29,000
A01238 Charge allowance					8,000
A0123E Executive Allowance to PCS and PMS Officers (KP)					460,000