


FORM OF ORDER SHEET

Court of _____

Appeal No. 866/2024

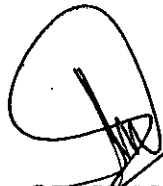
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/06/2024	<p>The appeal of Mr. Adnan Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 26.06.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Adnan Khan received today i.e on 12.06.2024 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.2 & 4 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.

No. 170 /Inst;/2024/KPST,

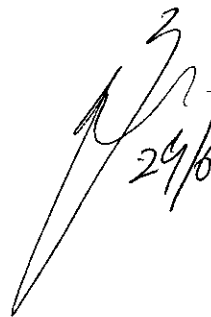
Dt. 13/6 /2024.


OFFICE ASISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv.
High Court Khattak.

R/Siv,

Resubmitted after necessary
completion.


24/6/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO 866 / 2024

MR. ADNAN KHAN

V/S

THE GOVT: OF KPK & OTHERS

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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 866 / 2024

Mr. Adnan Khan, Key Punch Operator (BPS-16),
Home Department, Khyber Pakhtunkhwa, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar
- 2- The Secretary to Government of Khyber Pakhtunkhwa, Home
Department, Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF
THE APPELLANT FOR ADJUSTMENT AGAINST HIS ORIGINAL
POST OF COMPUTER OPERATOR (BPS-16) W.E.F
17/01/2022 WITH ALL BACK BENEFITS .

PRAYER:

That on acceptance of the instant service appeal, the
respondents may kindly be directed to adjust the
appellant against his original post of Computer Operator
(BPS-16) instead of Key Punch Operator (BPS-16) w.e.f
17/01/2022 with all back benefits including seniority.
Any other remedy which this august Service Tribunal
deems fit that may also be awarded in favor of the
appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as
under:

- 1- That the appellant was initially appointed as Key Punch Operator
(BPS-16) in the erstwhile FATA Tribunal on the proper
recommendation of the departmental selection committee vide
office order dated 08-03-2019. That in pursuance to the

appointment order dated 08-03-2019 the appellant submitted his charge report and started performing his duty efficiently and upto the entire satisfaction of his superiors. Copies of the appointment order and arrival report are attached as annexure.....**A&B**

2- That during service, vide office order dated 15-08-2019 the appellant was adjusted against the post of Computer Operator (BPS-16) by the then Registrar FATA Tribunal. Copy of office order dated 15-08-2019 is attached as annexure.....**C**

3- That prior to merger of FATA in the province of Khyber Pakhtunkhwa the appellant received salary of Computer Operator (BPS-16) till January 2021. Copies of service book and salary slips for the months of February and May, 2021 are attached as annexure.....**D&E**

4- That astonishingly vide order dated 17-01-2022 the services of the appellant were dismissed on the ground that the appellant appointed himself against the post of Key Punch Operator/Computer Operator (BPS-16). That feeling aggrieved from the departmental appeal followed by the service appeal before this august Tribunal, the august Tribunal allowed the service appeal of the appellant vide judgment dated 03-03-2022. Copy of the order dated 17-01-2022 and judgment of service tribunal are attached as annexure.....**F&G**

5- That in compliance with the judgment of this august service tribunal the respondents issued reinstatement order of the appellant vide order dated 15/03/2023 whereby the appellant was reinstated into service with all back benefits, but as Key Punch Operator (KPO) BPS-16 instead of Computer Operator (BPS-16). Copy of office order dated 15/05/2023 is attached as annexure.....**H**

6- That the appellant feeling aggrieved from the action of the respondents by adjusting the appellant against the post of Key Punch Operator instead of Computer Operator (BPS-16) filed departmental appeal but no reply has been received so far. Copy of departmental appeal is attached as annexure.....**I**

Hence the instant service appeal on the grounds inter-alia as under:

G R O U N D S

A. That the in action and action of the respondents by not adjusting/reinstating the appellant against his original post of Computer Operator and adjusting the appellant against the post of Key Punch Operator(BPS-16) is against the law, facts and norms of natural justice.

- B. That the respondents have not treated the appellant in accordance with law and rules and such the respondents violated article 4 and 25 of the Constitution of the Islamic Republic of Pakistan 1973.
- C. That the action of the respondents is arbitrary and based on clear malafide by not adjusting the appellant against the post of Computer Operator (BPS-16).
- D. That the position of Key Punch Operator has been declared as dying cadre as such the inaction of the respondents by not adjusting the appellant is against the post of Computer Operator will affect the career progression of the appellant which is violative of section 7 of the Civil Servants Act, 1973 read with rule 7 of the Appointment, Promotion & Transfer Rules 1989.
- E. That in the case of adjustment of the appellant against the post of Computer no financial implication is involved as both the posts carries one and same grade i.e. BPS-16.
- F. That the appellant seeks permission to advance other grounds at the time of arguments.

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

APPELLANT


ADNAN KHAN

THROUGH:

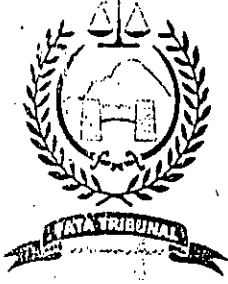

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

& 
KHANZAD GUL
ADVOCATE HIGH COURT

AFFIDAVIT

I, Mr. Adnan Khan Key Punch Operator cum Computer Operator (BPS-16) Home Department Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm that the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT



"A" -4-

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/1110 dated: 08.03.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Mr. Adnan Khan S/o Wali Khan against the vacant post of Key Punch Operator BPS-12 (13320-960-42120) in FATA Tribunal at Peshawar under rule 10-sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-12 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt. to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

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

REGISTRAR
FATA TRIBUNAL

B
-5-

To

The Registrar FATA Tribunal,
Peshawar.

Subject:- ARRIVAL REPORT.

In Compliance with this Department Order bearing No. R/13/2019-20/1563 dated 16.08.2019 Mr. Adnan Khan S/O Wali Khan Personal Assistant (BPS-16) is hereby submit my arrival report for duty today i.e. 16.08.2019 (Morning).

Dated 16.08.2019

16-8-2019

16-08-2019

Adnan Khan
Personal Assistant (BPS-16)



OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

11 E
-6-

OFFICE ORDER:-

No. R/13/2019-20/1563 dated 15.08.2019 the Competent authority is pleased to adjust Mr. Adnan Khan S/o Wali Khan Computer Operator (BPS-16) against the vacant post of Personal Assistant (BPS-16) on regular basis with immediate effect.

Terms & conditions:-

1. He will get pay at the minimum of (BPS-16) including usual allowances as admissible under rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt. to his account in the said fund, in prescribed manner.
3. He has to join duties at his own expenses.
4. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to:-

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

REGISTRAR
FATA TRIBUNAL

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

AD

-7-

1. Name: ADRIAN KHAN

2. Race: _____

3. Residence: BACHAT KAROYO NIKATA P STATION CHARJADDA

4. Father's name and residence: _____

INALI KHAN

5. Date of birth by Christian era as nearly as can be ascertained: _____

13-02-1995

6. Exact height by measurement: _____

5' 10"

7. Personal marks for identification _____

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

Little Finger:

Ring Finger:

Middle Finger:

Ring Finger:

Thumb:

9. Signature of Government Servant: _____

[Signature]

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

Registrar
FATA Tribunal

4E¹¹¹ -10-

AG KP Peshawar

P Sec:005 Month:February 2021
PR8073 -PCR Tribunal Merged Areas
PCR TRIBUNAL MERGED AREAS

NTR:
GPF #:
Old #:

: 50508878 Buckle:
ADNAN KHAN
COMPUTER OPERATOR
o.1710181065231
Interest Free

16 Active Temporary
D ALLOWANCES:

Basic Pay	20,430.00
House Rent Allowance 45%	4,091.00
Convey Allowance 2005	5,000.00
Computer Allowance	1,500.00
Medical Allowance 2011	1,500.00
5% Adhoc Relief All-2013	270.00
Adhoc Relief Allow @10%	183.00
Adhoc Relief All 2016 10%	1,588.00
Adhoc Relief All 2017 10%	2,043.00
Gross Pay and Allowances	40,691.00

DONS:			
Gratuity	363.44	Deducted	275.00
Provisional	62,300.00		
Welfare Fund			800.00
Life. Ben & Death Comp Fresh			650.00

Total Deductions	4,881.00
Net Pay	35,810.00

D.O.B 13.02.1995
Years 01 Months 008 Days
LPP Quota: 4
HABIB BANK LIMITED TENSIL BAZAR, CHARSA
02177901089403

AG KP Peshawar

SF:2

Pers #: 50508878 Buckle:
Name: ADNAN KHAN
COMPUTER OPERATOR

CHIC No.1710181065231
GPF Interest Free
16 Active Temporary

PAYS AND ALLOWANCES:
2247-Adhoc Relief All 2018 10%
2264-Adhoc Relief All 2019 10%

Gross Pay and Allowances				40,691.00
DEDUCTIONS:				
LT Payable	363.44	Deducted	275.00	
GPF Balance	62,300.00			

Total Deductions	4,881.00
Net Pay	35,810.00

D.O.B 13.02.1995
06 Years 01 Months 008 Days
LPP Quota:
HABIB BANK LIMITED TENSIL BAZAR, CHARSA
02177901089403

Government of Khyber Pakhtunkhwa
Accountant General Khyber Pakhtunkhwa, Peshawar
Monthly Salary Statement (May-2021)



-11-

Personal Information of Mr ADNAN KHAN d/w/s of WALI KHAN

Personnel Number: 50508878 CNIC: 1710181065231
 Date of Birth: 13.02.1995 Entry into Govt. Service: 22.01.2015

NTN:
 Length of Service: 06 Years 04 Months 011 Days

Employment Category: Active Temporary

Designation: COMPUTER OPERATOR 80877270-GOVERNMENT OF KHYBER PAKH

DDO Code: PR8073-FCR Tribunal Merged Areas

Payroll Section: 005

GPF Section: 002

Cash Center:

GPF A/C No:

Interest Applied: No

GPF Balance: 72,320.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 16

Pay Stage: 1

Wage type		Amount	Wage type		Amount
0001	Basic Pay	20,430.00	1001	House Rent Allowance 45%	4,091.00
1210	Convey Allowance 2005	5,000.00	1500	Computer Allowance	1,500.00
1974	Medical Allowance 2011	1,500.00	2148	15% Adhoc Relief All-2013	270.00
2199	Adhoc Relief Allow @10%	183.00	2211	Adhoc Relief All 2016 10%	1,588.00
2224	Adhoc Relief All 2017 10%	2,043.00	2247	Adhoc Relief All 2018 10%	2,043.00
2264	Adhoc Relief All 2019 10%	2,043.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-1,500.00
3534	R. Ben & Death Comp Fresh	-650.00	3609	Income Tax	-91.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 638.30 Recovered till MAY-2021: 548.00 Exempted: 0.34- Recoverable: 90.64

Gross Pay (Rs.): 40,691.00 Deductions: (Rs.): -5,581.00 Net Pay: (Rs.): 35,110.00

Payee Name: ADNAN KHAN

Account Number: 02177901089403

Bank Details: HABIB BANK LIMITED, 220217 TEHSIL BAZAR, CHARSADDA. TEHSIL BAZAR, CHARSADDA., CHARSADDA

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: peshawar

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: adnankhan556123@gmail.com



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

"F"

Dated Peshawar 17th January, 2022

-12-

ORDER

HD/FATA Tribunal/B&A/55/2022/248-67 WHEREAS, Mr. Adnan Khan, Key Punch Operator (BPS-16) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. AND WHEREAS, the Department gave opportunity of personal hearing to Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal as required under the rules 7(d) Government Servant (Efficiency & Disciplinary) Rules, 2011, AND WHEREAS, Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal was not able to produce any favorable record.

3. NOW, THEREFORE, the Competent Authority has been pleased to impose major penalty of "Removal from Service" on Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-01-2022.

-Sd-

Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General Govt. of Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. Additional Secretary (Judicial) Home & TA's Deptt: Khyber Pakhtunkhwa.
7. PSO to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Chief Minister Khyber Pakhtunkhwa.
9. Account Section Home & TAs Department (NMAs).
10. Official concerned.

Section Officer (B & A)

"5" -13-

Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (Judicial)**

Service Appeal No.774/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Reedad Khan, Ex-Chowkidar (BPS-03), Ex-FATA Tribunal,
Home & Tribal Affairs Department, Peshawar.**
.....***Appellant***

Versus

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

Service Appeal No.775/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Samiullah, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home &
Tribal Affairs Department, Peshawar.**
.....***Appellant***

Versus

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

Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

-14-

Service Appeal No.776/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Kafil Ahmad, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

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

Service Appeal No.777/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

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

Service Appeal No.778/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

-15-

Service Appeal No.774/2022 titled "Rezaul Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Mr. Sadiq Shah, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

Versus

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

.....**(Respondents)**

Service Appeal No.779/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Adnan, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

Versus

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

.....**(Respondents)**

Service Appeal No.780/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Asad Iqbal, Ex-Junior Clerk (BPS-11), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**

-16-

Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kulim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

- 2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
 - 3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**
-(Respondents)

Service Appeal No.781/2022

Date of presentation of Appeal.....11.05.2022
 Date of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Muhammad Shoaib, Ex-KPO(BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
Appellant

Versus

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

Service Appeal No.782/2022

Date of presentation of Appeal.....11.05.2022
 Date of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Adnan Khan, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
Appellant

Versus

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

-17-

Service Appeal No.774/2022 titled "Reedad Khai-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rosina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Service Appeal No.783/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Awais, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....*Appellant*

Versus

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

Service Appeal No.784/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Nasir Gul, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....*Appellant*

Versus

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

Service Appeal No.802/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

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Service Appeal No.774/2022 titled "Rezad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalam Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Mr. Mohsin Nawaz, Ex-Stenographer (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....**Appellant**

Versus

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

Service Appeal No.811/2022

Date of presentation of Appeal.....20.05.2022
 Date of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Tahir Khan, S/O Arsala Khan R/o Guldara Chowk, PO Namak Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Assistnat/Moharir, Ex-FATA Tribunal Peshawar.
.....**Appellant**

Versus

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

Service Appeal No.812/2022

Date of presentation of Appeal.....20.05.2022
 Date of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Ziafat Ullah Khan S/O Naimat Ullah Khan R/o presently Masjid Ibrahim Bara Gate, PO GPO, Nodhiya Payan Peshawar, Driver, Ex-FATA Tribunal, Peshawar.
.....**Appellant**

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Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Versus

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

.....(Respondents)

Service Appeal No.813/2022

Date of presentation of appeal.....20.05.2022
 Dates of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Faheem Shahzad S/O Hidayat Ullah R/O Kotla Mohsin Khan Landi Arbab Mohallah Kasaban Peshawar.

.....Appellant

Versus

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

Service Appeal No.814/2022

Date of presentation of Appeal.....20.05.2022
 Date of Hearing.....03.03.2023
 Date of Decision.....03.03.2023

Mr. Muhammad Shoaib S/O Arsala Khan, R/o Kakshal Pul P.O Kakshal, Mohallah Tariq Abad No.1, Peshawar, Naib Qasid, Ex-FATA Tribunal, Peshawar.

.....Appellant

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**

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Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kullin Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

3. **The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.**

Service Appeal No.815/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah S/O Rehmat Ali, Junior Clerk, Ex-FATA Tribunal Peshawar.
.....**Appellant**

Versus

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

Service Appeal No.816/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Khair Ul Bashar S/O Sahib Din R/O PO Shah Qabool Awliya House No. 2938, Mohallah Dabgari Bazar Sakawat Hussain Peshawar, Junior Clerk, Ex-FATA Tribunal Peshawar.
.....**Appellant**

Versus

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

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Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Service Appeal No.817/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Naveed Ahmad S/O Sami Ul Haq R/O Khat Gate, House No. 131,
Mohallah Muhammad Khan Sadozai, Peshawar, Naib Qasid, Ex-
FATA, Tribunal Peshawar.**

.....**Appellant**

Versus

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

Service Appeal No.818/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

**Mr. Bahar Ali S/O Mehmood Khan R/O Guldara Chowk, PO Namak
Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Chowkidar, Ex-
FATA Tribunal Peshawar.**

.....**Appellant**

Versus

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

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Service Appeal No.774/2022 titled "Reedud Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Present:

Noor Muhammad Khattak,
Advocate.....

For the appellants
in Service Appeal
No.774/2022,
775/2022, 776/2022,
777/2022, 778/2022,
779/2022, 780/2022,
781/2022, 782/2022,
783/2022, 784/2022,
802/2022,

Imran Khan,
Advocate.....

For the appellants
in Service appeal
No.811/2022,
812/2022, 813/2022,
814/2022, 815/2022,
816/2022, 817/2022,
818/2022

Muhammad Riaz Khan Paindakhel,
Assistant Advocate GeneralFor respondents.

APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDERS DATED
17.01.2022, WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE HAS BEEN IMPOSED ON
THE APPELLANT AND AGAINST THE IMPUGNED
INACTION OF THE RESPONDENTS BY NOT
DECIDING THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUARY PERIOD OF
NINETY DAYS.

CONSOLIDATED JUDGMENT

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

Service Appeal No.774/2022 titled "Rezad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising: Kullun Arshad Khan, Chairman, and Ms Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. The appellants were appointed against different posts in the erstwhile FATA Tribunal and after merger of the Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa, the employees of the FATA Tribunal including the appellants were transferred to the Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department and they were posted against different posts vide Notification No. E&A (HD)2-5/2021 dated 17.06.2021. Vide different covering letters all issued on 25.10.2021, the appellants were served with show cause notices by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, containing the following stereotyped allegations:

"That consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in EX-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled"

It was thus found by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, that the appellants had been guilty of "Misconduct" as specified in rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule(I)(vi) "appointed in violation of law and rules".

It is pertinent to mention here that the Inquiry was dispensed with by the Secretary.

The appellants filed their respective replies and vide impugned orders, the Secretary to the Government of Khyber Pakhtunkhwa, Home

Service Appeal No.774/2022 titled "Reetad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Department, Peshawar, removed all the appellants from service. The appellants filed departmental appeals, which were not responded within 90 days compelling the appellants to file these appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants. It was mainly contended in the replies that the appellants were not aggrieved persons; that a full-fledged enquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was "*coram non judice*"; that enquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 wherein the enquiry report held that the same selection committee was constituted without lawful authority; that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates were/existed no attendance sheet, minutes of the meeting and even the appointment order were found ambiguous; that the said departmental committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of the legitimate Departmental Selection Committee;

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Service Appeal, No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalin Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kullin Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

that the enquiry committee termed all the said appointments illegal and without lawful authority and recommended to cancel/withdraw.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

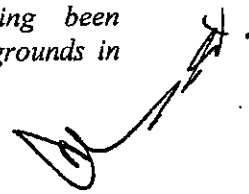
5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned orders.

6. It is undisputed that the appellants were appointed by the Ex-FATA Tribunal and they had been performing duties until their removal from service. The allegations against them are that the recruitment process was unlawful and the appointment orders were issued without lawful authority. Not a single document was produced by the respondents in support of these allegations before the Tribunal. All the appellants were the candidates in the process of selection initiated in response to the advertisement in two Urdu dailies "AAJ Peshawar" and "AAYEEN Peshawar". It is worth mentioning that all the appellants had duly applied for the posts. The appointment orders show that each appointment had been made on the recommendation of the Departmental Selection Committee (DSC). The respondents though alleged that the DSC was unlawful but have not explained as to how that was so? The posts advertised were within the competence of the Registrar under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules,

Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalin Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2015. Therefore, the allegation that the appointment orders were issued by unlawful authority is also not finding favour with us. Regarding the bald allegation that the selection process was also unlawful, there is nothing more said as to how the process was unlawful except that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates, there were/existed no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. We find that there are no details of any such employees had been produced before us, nor any order of constitution of the selection committee alleged to be against the law was produced, similarly no details regarding number of posts so much so who was appointed against the 24th post alleged to be in excess of the sanctioned posts, nothing is known nor anything in support of the above was placed on the record despite sufficient time given on the request of the Assistant Advocate General. Even today we waited for four long hours but nobody from respondent/department bothered to appear before the Tribunal. It is also undisputed that the appellants were not associated with the enquiry proceedings on the basis of which they were penalized. In the show cause notices, the appellants were also said to be guilty under rule 2, Sub-Rule(I)(vi) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the said provision is reproduced as under:

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



Service Appeal No.774/2022 titled "Khadad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kulsoo Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

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

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

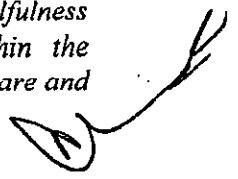
"5. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal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

Service Appeal No.774/2022 titled "Reshad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kulm Arshad Khan, Chairman, and Ms. Rozma Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

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

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



Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60."

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

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

Service Appeal No 774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

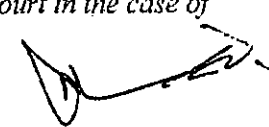
the services of the respondent merely, because they have themselves committed irregularity in violating the procedure governing the, appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re instating the respondent."

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

"8. In the present case, petitioner was never promoted but was directly appointed as Director (B-19) after fulfilling the prescribed procedure, therefore, petitioner's reversion to the post of Deputy Director (B-18) is not sustainable. Learned Tribunal dismissed the appeal of petitioner on the ground that his appointment/selection as Director (B-19) was made with legal/procedural infirmities of substantial nature. While mentioning procedural infirmities in petitioner's appointment, learned Tribunal has nowhere pointed out that petitioner was, in any way, at fault, or involved in getting the said appointment or was promoted as Director (B-19). The reversion has been made only after the change in the Government and the departmental head. Prior to it, there is no material on record to substantiate that petitioner was lacking any qualification, experience or was found inefficient or unsuitable. Even in the summary moved by the incumbent Director-General of respondent Bureau he had nowhere mentioned that petitioner was inefficient or unsuitable to the post of Director (B-19) or lacked in qualification, and experience, except pointing out the departmental lapses in said appointment.

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

10. In such-like a situation this Court in the case of



Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Federation of Pakistan through Secretary, Establishment Division Islamabad and another v. Gohar Riaz 2004 SCMR 1662 with specific reference of Secretary to the Government of N.-W.F. Zakat/Social Welfare Department Peshawar and another v. Saadulalh Khan 1996 SCMR 413 and Water and Power Development Authority through Chairman WAPDA House, Lahore v. Abbas Ali Malano and another 2004 SCMR 630 held:---

"Even otherwise respondent (employee) could not be punished for any action or omission of petitioners (department). They cannot be allowed to take benefits of their lapses in order to terminate the service of respondent merely because they had themselves committed irregularity by violating the procedure governing the appointment. On this aspect, it would be relevant to refer the case of Secretary to Government of N.-W.F.P. Zakat/Ushr, Social Welfare Department 1996 SCMR 413 wherein this Court has candidly held that department having itself appointed civil servant on temporary basis in violation of rules could not be allowed to take benefit of its lapses in order to terminate services of civil servants merely because it had itself committed irregularity in violating procedure governing such appointment. Similarly in the case of Water Development Authority referred (supra), it has been held by this Court that where authority itself was responsible for making, such appointment, but subsequently took a turn and terminated their services on ground of same having been made in violation of the rules, this Court did not appreciate such conduct, particularly when the appointees fulfilled requisite qualifications."

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

Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

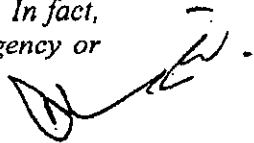
14. In the facts and circumstances, we find that in this case, neither petitioner was found to be lacking in qualification, experience or in any ineligibility in any manner, nor any fault has been attributed to petitioner, therefore, he cannot be reverted from the post of Director (B-19). Act of sending summary by the Establishment Secretary to the Prime Minister was not in accordance with Rule 6(2) of the Civil Servants (Appointment,

Service Appeal No.774/2022 titled "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalun Arshad Khan, Chairman, and Ms. Rozina Rahman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

Promotion and Transfer) Rules, 1973 as the Establishment Secretary was himself the appointing authority. The departmental authorities at the time of appointment of the petitioner as Director (B-19) did not commit any irregularity or illegality as has been affirmed by the Establishment Secretary in the summary to the Prime Minister. The power vested in the competent authority should have been exercised by the competent authority itself, fairly and justly. Decision has to be made in the public interest based on policy. It must be exercised by the proper authority and not by some agent or delegatee. It must be exercised without restraint as the public interest may, from time to time require. It must not be fettered or hampered by contracts or other bargains or by self-imposed rules of thumb. So a distinction must be made between following a consistent policy and blindly applying some rigid rule. Secondly discretion must not be abused. In the case of *Zahid Akhtar v. Government of Punjab* PLD 1995 SC 530 this Court observed that "we need not stress here that a tamed and subservient bureaucracy can neither be helpful to government nor it is expected to inspire public confidence in administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait of a bureaucrat. It hardly need to be mention that a Government servant is expected to comply only those orders/directions of superior which are legal and within his competence".

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

"11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or



Service Appeal No.774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalon Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

eventuality which may arise from a contract, statute or by operation of law. The doctrine of *locus poenitentiae* sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have

Service Appeal No.774/2022 titled "Revidad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

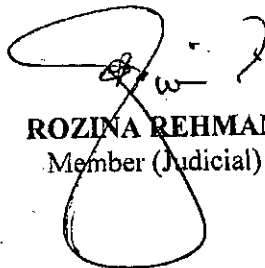
been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system."

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

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of March, 2023.*



KALIM ARSHAD KHAN
Chairman



ROZINA REHMAN
Member (Judicial)

(TO BE SUBSTITUTED WITH EVEN NUMBER AND DATE)



"H" - 36 -

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT**

☎ 091-9214104

☎ 091-9210201

Dated Peshawar the May 15, 2023

ORDER

NO.E&A (HD)2-5/2023. WHEREAS, the appellants/petitioners of Ex-FATA Tribunal, Peshawar were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and after fulfillment of legal and codal formalities the Competent Authority imposed Major Penalty of "REMOVAL FROM SERVICE" upon them vide Order No.HD/FATA Tribunal/B&A/55/2022/184-93, 154-63,205-15,123-32,164-73,252-67,133-42,268-77,143-53,318-27,288-9 &,174-88 dated 17/1/2022.

AND WHEREAS, feeling aggrieved with the said order, the appellants/petitioners filed Service Appeal No.774 to 784 of 2022 in Khyber Pakhtunkhwa Service Tribunal.

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal after adjudication accepted their appeals, set aside the impugned orders and direct reinstatement of all the appellants/petitioners with back benefits vide judgment dated 3rd March 2023.

AND WHEREAS, the Department filed CPLA against the said judgment of Khyber Pakhtunkhwa Service Tribunal, which is pending adjudication before the august Supreme Court of Pakistan.

AND NOW THEREFORE, the Competent Authority, in terms of Rule-4(2)(c) (ii) of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989, has been pleased to order re-instatement alongwith back benefits of the following appellants/petitioners into Service in compliance to the Khyber Pakhtunkhwa Service Tribunal judgment dated 3rd March 2023 subject to the final decision of the CPLA which is pending adjudication before the Supreme Court of Pakistan:-

- 1- Mr. Reedad Khan Ex-Chowkidar (BPS-03)
- 2- Mr. Samiullah Ex-KPO (BPS-16)
- 3- Mr. Kafil Ahmad Ex-Assistant (BPS-16)
- 4- Mr. Ikram Ullah Ex-Naib Qasid (BPS-03)
- 5- Mr. Sadiq Shah Ex-Driver (BPS-06)
- 6- Mr. Muhammad Adnan Ex-Assistant (BPS-16)
- 7- Mr. Asad Iqbal Ex-Junior Clerk (BPS-11)
- 8- Mr. Muhammad Shoaib Ex-KPO (BPS-16)
- 9- Mr. Adnan Khan Ex-KPO (BPS-16)
- 10- Mr. Muhammad Awais Ex-Driver (BPS-06)
- 11- Mr. Nasir Gul Ex-Naib Qasid (BPS-03)
- 12- Mr. Mohsin Nawaz Ex-Stenographer (BPS-16)

Home Secretary

Endst: No. & Date even

Copy to:-

- 1- Accountant General, Khyber Pakhtunkhwa
- 2- Secretary Finance Department, Khyber Pakhtunkhwa
- 3- Secretary Law Department, Khyber Pakhtunkhwa
- 4- Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 5- PS to Home Secretary, Home Department
- 6- Officials concerned
- 7- Personal files

Section Officer (General)

"I"-37-

To
The Secretary to Government of Khyber Pakhtunkhwa,
Home Department, Peshawar.

Subject:- **DEPARTMENTAL APPEAL**

Respected Sir!

- 1- That the appellant was initially appointed as Key Punch Operator (BPS-16) in the erstwhile FATA Tribunal on the proper recommendation of the Departmental Selection Committee vide office order dated 08-03-2019.
- 2- That in pursuance to the appointment order dated 08-03-2019 the appellant submitted his charge report and started performing his duty efficiently and upto the entire satisfaction of his superiors.
- 3- That during service, vide office order dated 15-08-2019 the appellant was adjusted against the post of Computer Operator (BPS-16) by the then Registrar FATA Tribunal.
- 4- That prior to merger of FATA in the Province of Khyber Pakhtunkhwa the appellant received salary of Computer Operator (BPS-16) till January 2021.
- 5- That astonishingly vide order dated 17-01-2022 the services of the appellant were dismissed on the ground that the appellant appointed himself against the post of Key Punch Operator/Computer Operator (BPS-16).
- 6- That feeling aggrieved, the appellant filed departmental appeal followed by the Service Appeal before the august Service Tribunal, and the august Tribunal allowed the Service Appeal of the appellant vide judgment dated 03-03-2022.
- 7- That in compliance with the judgment of this august Service Tribunal the department issued reinstatement of the appellant vide order dated 15/03/2023 whereby the appellant was reinstated into service with all back benefits, but as Key Punch Operator (KPO) BPS-16 instead of Computer Operator (BPS-16).
- 8- That the appellant feeling aggrieved from the action of the department by adjusting the appellant against the post of Key Punch Operator instead of Computer Operator (BPS-16) filed the instant departmental appeal before your honor.

That on acceptance of the instant service appeal, the respondents may kindly be directed to adjust the appellant against his original post of Computer Operator(BPS-16) instead of Key Punch Operator(BPS-16) w.e.f 17/01/2022 with all back benefits including seniority.

Dated: 19.02.2024



Adnan Khan,
Key Punch Operator (BPS-16)
Home Department,
Khyber Pakhtunkhwa, Peshawar.

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No /2024

Adnan Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KPK & others

(RESPONDENT)
(DEFENDANT)

I/We Adnan Khan

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / /2024


CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


WALEED ADNAN


UMAR FAROOQ MOHMAND

&


**MEHMOOD JAN
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)