

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 2356/2023.

Namdar Khan APPELLANT

Versus

Government of Khyber Pakhtunkhwa & Others

..... RESPONDENTS

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DEPONENT

Through


SECTION OFFICER (LIT)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**SERVICE APPEAL NO. 2356/2023.**

Namdar Khan

APPELLANT

Versus

Government of Khyber Pakhtunkhwa & Others

Khyber Pakhtunkhwa
Service TribunalDiary No. 12603Dated 07-08-24

RESPONDENTS

PRELIMINARY OBJECTIONS:

- 1- That the appeal is not maintainable in its present form.
- 2- That the appellant has got no locus standi and cause of action to file the instant appeal.
- 3- That the appellant did not come to the Tribunal with clean hands.
- 4- That the appeal is not maintainable due to mis-Joinder and non-Joinder of necessary and proper parties.
- 5- That the appellant concealed the material fact from the Honorable Tribunal.
- 6- That the appellant is estopped by his own conduct to file the present appeal.
- 7- That the appeal is barred in law and limitation.

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.**RESPECTFULLY SHEWETH:****FACTS:**

- 1) Pertains to record, hence no comment.
- 2) Pertains to record, hence no comment.
- 3) Correct, the services of appellant and 08 others were regularized w.e.f 13-01-2022 vide notification no. SO(E)P&D/3-1/Reg:/projects/M.As/2022 under Khyber Pakhtunkhwa (Regularization of Services of Employees of Erstwhile FATA) Act 2021 (**Annexed**)
- 4) Pertains to record, hence no comment.
- 5) The appeal is not maintainable on the following grounds

GROUND:


1. Pertains to record, hence no comment.
2. Incorrect and misconceived. The appellant has misguided this hon'ble court by annexing monthly salary slip of the regularization period i.e. August-2023 instead of contract / project period.
3. As per service record i.e. Service book of the appellant, the appellant was appointed as Driver (BPS-04) on contract basis as project employee and received annual increments.
4. According to approved minutes of the meeting held on 21.01.2020 at Finance Department regarding Protection of Pay of contract employees on regularization/ appointment on regular basis (non-gazetted) from BPS-01 to BPS-15, "all the project employees who were appointed on fixed pay basis and


in receipt of 5% increment are not entitled to the pay protection in light of Finance Department's letter NO. FD(SOSR-1)12-7/2014 dated 06.02.2014".

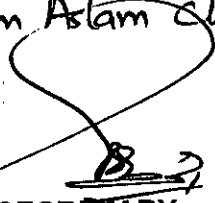
- 5. Incorrect. The under-reference letter of Finance Department dated 18.03.2021 regarding Pay Protection is related to gazetted contract employees on their regularization / appointment on regular basis.
- 6. Under the reference letter no. FD(SOSR-1)12-2/2020(34323) dated: 18.03.2021 referenced vide Finance Department letter no. FD(SOSR-1)12-4/2023/Mr. Sher Muhammad & Others dated 15.09.2023 relates to gazetted contract employees whereas under referenced letter no. FD(SOSR-1)12-7/2014 dated: 06.02.2014 pertains to non gazetted contract employees.
- 7. As per Government of Khyber Pakhtunkhwa's prevailing rules & policy, the positions of Driver are initially recruited at BPS-06. Consequently, the appellant's pay scale adheres to these Rules and is deemed accurate.
- 8. As explained in above paras of the grounds.
- 9. The respondents also seek leave of this Hon'ble Tribunal to raise further points at any time during arguments.


PRAYER:

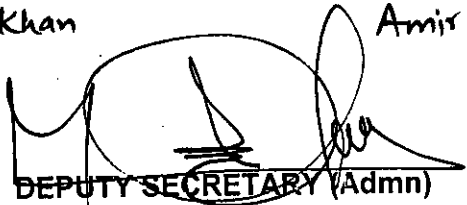
Keeping in view of the above reasonable & just grounds, it is very humbly prayed that the Service Appeal of the appellant may graciously be dismissed with cost on the appellant.


CHIEF SECRETARY
 Govt. of Khyber Pakhtunkhwa,
 (Respondent No. 01)
 Nadeem Aslam Chaudary


ADDITIONAL CHIEF SECRETARY
 Govt. of Khyber Pakhtunkhwa,
 P&D Department
 (Respondent No. 04)
 Imtiaz Ali Shah


SECRETARY
 Govt. of Khyber Pakhtunkhwa,
 P&D Department
 (Respondent No. 02).
 Shahid Ullah Khan


SECRETARY
 Govt. of Khyber Pakhtunkhwa,
 Finance Department
 (Respondent No. 03).
 Amir Sultan Tareen


DEPUTY SECRETARY (Admn)
 P&D DEPARTMENT
 Govt. of Khyber Pakhtunkhwa,
 (Respondent No. 05)
 Muhammad Irfan

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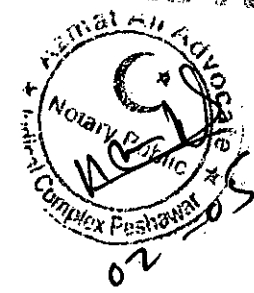
AFFIDAVIT

I, Shahid Ullah Khan Secretary, Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal, intentionally.

It is further stated on oath that in this appeal, the answering respondent have neither been placed ex-parte nor their defence has been struck-off/cost.

DEPONENT
CNIC No. 11101-1464320-1
Cell No. 9210520

ATTESTED



5-20-22

AN
ACT

to provide for the appointment and regularization of services of certain employees appointed on contract basis against project posts in the erstwhile Federally Administered Tribal Areas.

WHEREAS it is expedient to provide for the appointment and regularization of services of certain employees appointed on contract basis against project posts in the erstwhile Federally Administered Tribal Areas;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. **Short title, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa (Regularization of Services of Employees of Erstwhile Federally Administered Tribal Areas) Act, 2021.

(2) It shall apply to all the employees as defined in clause (d) of sub-section (1) of section 2 of this Act.

(3) It shall come into force at once.

2. **Definitions.**--- (1) In this Act, unless the context otherwise requires,-

(a) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;

(b) "Departmental Selection Committee" means a Departmental Selection Committee, constituted for the purpose of making selection for appointment to project post under a Department or office in the erstwhile Federally Administered Tribal Areas;

(c) "Government" means the Government of Khyber Pakhtunkhwa;

(d) "employees" means a person, who was appointed on contract basis, as per project policy, to a project post, in the erstwhile Federally Administered Tribal Areas, and such post was duly reflected in PC-I of that project, and who possess the prescribed qualification, training and experience for the said post at the time of such appointment;

(e) "Department" means a Government Department, as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985;

(f) "law or rules" means the law or rules, for the time being in force, governing the selection and appointment of civil servants;

(g) "project" means a perpetual nature project in the erstwhile Federally Administered Tribal Areas, the continuation of which and conversion to regular budget is essential for service delivery, duly identified by the Departments and reflected in the Schedule;

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Deputy Legislation Officer
Government of Khyber Pakhtunkhwa
Law Department

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- (h) "project post" means a post in the project; and
- (i) "Schedule" means a Schedule appended to this Act.

(2) The expression "contract appointment" shall have the same meaning as respectively assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973).

3. **Appointment and regularization of services of employees.**--- (1) Notwithstanding anything contained in any law or rules, the employees, appointed on contract basis, against project posts, in the erstwhile Federally Administered Tribal Areas, and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed, on regular basis, from the commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Department.

(2) All such employees, after the commencement of this Act, shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by them towards the Contributory Provident Fund, along with the contributions made by Government to their account in the said Fund, in the prescribed manner.

(3) A Committee, headed by the Secretary of the Department concerned, with the following membership, shall scrutinize all the credentials of the employees, before issuance of the regularization orders:

- (a) head of the Attached Department concerned;
- (b) representative of the Establishment and Administration Department of Government;
- (c) representative of the Finance Department of Government;
- (d) representative of the Planning and Development Department of Government; and
- (e) Deputy Secretary of the Department concerned.

4. **General conditions for regularization.**--- For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- (a) the service promotion quota of all service cadres shall not be affected;
- (b) the employees shall possess the same qualification and experience as required for a regular post;
- (c) the employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- (d) the services of such employees shall be deemed to have been regularized only on the publication of their names in the official Gazette.

5. **Determination of seniority.**---(1) All employees, whose services are regularized under this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this

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(Signature)

Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined as per provisions of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and rules made thereunder.

Deputy Legislation Officer
Government of Khyber Pakhtunkhwa
Law Department

6. **Removal of difficulties.**---If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister of Khyber Pakhtunkhwa may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing such difficulty.

7. **Overriding effect.**---Notwithstanding anything to the contrary contained in any other law or rules, the provisions of this Act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency to this Act shall cease to have effect.

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*Attested
Law Dept*

Schedule
[see section 2 (1) (h) (i)]

1.	Strengthening and Capacity Building of AGRI Extension in FATA.
2.	Promotion of Olive Cultivation / Grafting for Oil Production in Bajaur Agency.
3.	Establishment of Semen Production Unit at Jamrud and Breed/ Veterinary Service Improvement Program.
4.	Capacity Building Directorate of Livestock FATA.
5.	Mobile Veterinary Clinic in FATA (MVC).
6.	Establishment of Model Dairy Farm in FATA.
7.	Strengthening of Artificial Insemination/Veterinary Aid Services and Disease Reporting System L&DD in FATA.
8.	Creation of Disease Free Zone Through Mass Vaccination and Treatment and Feasible Districts on Pilot Basis.
9.	Opening of 5 CVDS 5 CVCS 6 AICS and Up-gradation of 2 CVDS to the level of CVHS Status in Bajaur Agency.
10.	Provision of Medicine and A.I Services in Existing Vet. Institution in Bajaur Agency.
11.	Establishment Vety. Diagnostic Lab in CVH Khar and Construction of Garage For 2 Vehicle in ALO Office Bajaur Agency.
12.	Provision of A.I. Facilitates/Medicine in Existing Veterinary Institution Construction of Building of Functional Veterinary Centers (In Rented Building), Special Campaign for The Control of Ecto and Endo Parasite in Mohmand Agency.
13.	Opening of 3 CVDS, 23 VCS, 16 AICs and Up-gradation of CVD Lakaro to CVH Status Mohmand Agency.
14.	Provision of Mobile Vety Clinic in Mohmand Agency.
15.	Opening/Establishment of 2 CVDs in Rented Building Ambar Area and Provision of A.I. Services in Existing Institutes of Mohmand Agency.
16.	Opening of 18 Vety Centers and 26 AICS in Khyber Agency.
17.	Opening of 3 CVDs in Rented Building, Bara Khyber Agency.
18.	Establishment of 02 Veterinary Diagnostic Lab in Civil Veterinary Hospitals in Jamrud and Landikotal.
19.	Opening of 3 CVCs, 11 CVDs and 9 AICs and Up-gradation of 3 CVDs to CVH Status in Orakzai Agency.
20.	Small Ruminants (Sheep and Goat) Development Program in Tribal Districts.
21.	Provision of Artificial Insemination Services in Existing Veterinary Institution in Orakzai Agency.
22.	Construction of Building for Existing Vety Institution and Provision of Artificial Insemination in Existing Veterinary Facilitation in District Orakzai.
23.	Construction of Building for 3 Rented Veterinary Institutions and Opening of One CVD in Mamozai Area, Orakzai Agency.
24.	Opening of 5 CVCs, 8 CVDs, 22 AICs and Diagnostic Laboratory in Kurram Agency.
25.	Provision of AI Facilities in Existing 11 Veterinary Institutions in NWA.
26.	Provision of Veterinary Health Facilities in District North Waziristan.
27.	Opening of 41 Veterinary Centres, 22 AICs and Up-gradation of one CVD to CVH Status In SWA.
28.	Opening of 07-Veterinary Dispensaries and 10-A.I. Centers in FR Peshawar.
29.	Provision of Mobile Veterinary Clinic in Sub Division Peshawar.
30.	Opening of 02- CVDs and 04-AICs in FR Kohat.

31.	Establishment of Mobile Veterinary Clinic in Sub Division Kohat.
32.	Opening of 2 CVDS, 2 CVCS, 6 AICS and Up-gradation of 1 CVD to CVH Status in FR DI KHAN.
33.	Provision of Mobile Veterinary Clinic in Sub Division D.I. Khan.
34.	Opening of 1 CVH, 02 CVDS, 04 CVCS and 11 AICS in FR Tank.
35.	Up-gradation of CVC to the Level of CVD, and 2 No. of CVD to the Level of CVH in Sub Division Tank.
36.	Opening of 5 Vety: Dispensaries, 05 Civil Vety: Centers, 10-AICs and Up-gradation of 01 CVC to CVD in FR Bannu.
37.	Opening of 08 Veterinary Centres and 08 AICS in FR LAKKI.
38.	Provision of Mobile Veterinary Clinic in Sub Division Lakki.
39.	Uplifting the Socio-Economic Condition and Gender Mainstreaming of Livestock Farmers Through PPP in FATA.
40.	Strengthening of Fisheries Department in FATA
41.	Control of Zoonotic / Contagious Disease Through Existing Vety Health Facilities and Establishment of Two Mobile Testing Labs on Pilots Basis in Tribal Districts.
42.	Provision of Mobile Vety: Clinic in Bajaur Agency.
43.	Provision of Artificial Insemination Services in Existing Function Vety: Institutes and Solarization of Major Vaccine Bank in AD Office in FR D.I. Khan.
44.	Program Management Unit for Roads and Infrastructure.
45.	Strengthening of Finance Department Civil Secretariat FATA.
46.	Aids Control Program in FATA.
47.	Health Sector Reforms Unit FATA.
48.	District Health Information System.
49.	Physical Rehabilitation Centres in FATA.
50.	Hepatitis Control Program in FATA (Phase-III).
51.	Integrated Vector Management Program in FATA.
52.	Eye Care Program in FATA (Phase-III).
53.	Thalassemia Control Program in FATA.
54.	Mobile Hospital Program in FATA (Phase-III).
55.	Establishment of Mental Health Clinics in AHQ Hospitals in FATA.
56.	Health Nutrition Program in FATA.
57.	TB Control Program in FATA.
58.	Maternal, Newborn, Child Health (MNCH) Program Merged District.
59.	Expanded Programme on Immunization (EPI) in FATA.
60.	Strengthening of EPI Program in FATA.
61.	Facilitation of FR Setup Health Sector in FRs (Tank Jandola).
62.	Facilitation of FR Health Setup in FRs (DI Khan Darazinda).
63.	Facilitation of Health Setup in FRs (Bannu Wazir).
64.	Facilitation of Health Setup in FRs (Lakki Bittari).
65.	Facilitation of Health Setup in FRs (Kohat Dara Adam Khel).
66.	Facilitation of Health Setup in FRs (Peshawar Hassan Khel).
67.	Opening of 07 CDs in FR Tank.
68.	Opening of 08 CHCs / CDs in FR D.I Khan District.
69.	Opening of 06 CHCs/CDs in FR Bannu District.
70.	Opening of 08 CHCs / CDs in FR Lakki.
71.	Opening of 02 CDs in FR Kohat District.
72.	Opening of 11 CHCs / CDs in FR Peshawar.
73.	Opening of 41 CHCs / CDs in Mohmand District.
74.	Opening of 22 CHCs / CDs Khyber District.
75.	Opening of 07 CHCs / CDs in Kurram District.
76.	Opening of 15 CHCs/ CDs in Orakzal District.

Attached
Tank 1

Deputy Registration Officer
Government of Khyber Pakhtunkhwa
Law Department

77.	Opening of 24 CHCs/CDs in North Waziristan District.
78.	Opening of 18 CHCs / CDs in South Waziristan District.
79.	Removal of Staff Deficiencies in Newly opened Areas in Health Facilities FATA.
80.	Establishment of Government College of Management Sciences, SWA.
81.	Strengthening of Crises Management Cell Through FATA Analysis and Strategy Team.
82.	Establishment of Levy Training Center at Shahkass, Jamrud, Khyber Agency.
83.	Establishment of Center of Excellence/Govt. College of Technology, Khar, Bajaur Agency.
84.	Establishment of Vocational Training Centres / Institutes in Bajaur Agency and FR Kohat.
85.	Opening Govt. Polytechnic Institute Parachinar Kurram Agency in rented building.
86.	Establishment of Govt. Technical Institute Wana SWA.
87.	Establishment of Govt. Technical Institute SWA at Chaghmalai.
88.	Introduction of Additional Technologies in Polytechnic Institutes of FATA.
89.	Overcoming of Staff/Equipment Deficiencies in Technical Institutes in FATA.
90.	Operationalization and Provision of Equipment/Machinery to Labs of Existing Technical Institutes in Mohmand Agency GTI Mohmand Agency.
91.	Reformation of Technical Education in all Institutes in FATA.
92.	Introduction of 02 Technologies (Civil & Electrical) at Govt. Tech: Institute Sadda kurram Agency.
93.	Introduction of New Technologies in Existing Technical Institutes of Tribal Districts.
94.	FATA Investment Facilitation Agency (FIFA).
95.	Small and Medium Enterprises Facilitation Unit.
96.	Establishment of PMU for Operationalization of Five FM Radio Stations in Merged Areas.
97.	Creation of Project Support Unit For Pre Construction and Implementation of Small Dams/Power Section.
98.	Strengthening of Local Govt. Directorate FATA.
99.	Directorate of Projects FATA Secretariat.
100.	Directorate of Monitoring and Evaluation in FATA Secretariat.
101.	Establishment of Fed Formation for the Directorate of Monitoring and Evaluation in FATA Secretariat.
102.	Satellite Monitoring of Development Schemes in FATA.
103.	Project Management Unit, Fata Infrastructure Programme.
104.	Khyber Area Development Project.
105.	Mohmand Area Development Project.
106.	Bajaur Area Development Project.
107.	Fata Water Resources Development Project.
108.	Survey Feasibilities Under Various Sector Phase-II.
109.	Urban Policy and Planning Unit FATA.
110.	Project Management Unit for World Food Programme in FATA.
111.	Strengthening of P&D Department.
112.	Establishment of HR/Archival Library in P&DD.
113.	Strengthening of AI&C Department, FATA Secretariat.
114.	Instructional and Physical Training Programme in FATA.
115.	Institutionalization of Boy Scouts Activities in Tribal Districts in FATA.
116.	Strengthening of FATA Olympics Association.

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117.	Strengthening of Zakat and Ushr Department, FATA Secretariat.
118.	Strengthening of Minerals Department, PMU for Mineral Sector Projects.
119.	Exploration and Evaluation of Dimension and Decorative Stones in FATA.
120.	Exploration and Evaluation of Occurrences in FATA.
121.	Establishment / Operation of Mines Rescue, Safety and Labour Welfare Centre in FATA.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(KIFAYAT ULLAH KHAN, AFRIDI)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa

Attested
Kifayat Ullah Khan




(11)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT**

AUTHORITY LETTER

Mr. Meher Muhammad, Section Officer (Litigation-II), Planning & Development Department is hereby authorized to attend the court hearing in the case "Service Appeal No: 2356/2023 titled " Namdar Khan VS Government of Khyber Pakhtunkhwa & Others" on behalf of Secretary P&D Department & Additional Chief Secretary, P&D Department .


**Deputy Secretary (Admin)
P&D Department**