

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

AMENDED SERVICE APPEAL No \_\_\_\_\_ / 2024  
IN  
SERVICE APPEAL NO 866/2024

ADNAN KHAN

V/S

GOVT OF KPK & OTHERS

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Dated: 06-09-2024

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK  
ADVOCATE SUPREME COURT

①

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

AMENDED SERVICE APPEAL No \_\_\_\_\_ / 2024

IN

SERVICE APPEAL NO 866/2024

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

.....APPELLANT

**V E R S U S**

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

.....RESPONDENTS

**AMENDED APPEAL IN COMPLIANCE WITH THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ORDER DATED 20/08/2024 WHEREBY THE PRAYER OF THE APPELLANT FOR FILING AN AMENDED APPEAL WAS ALLOWED AGAINST THE INACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR ADJUSTMENT AGAINST HIS ORIGINAL POST OF PERSONAL ASSISTANT (PA) BPS-16 INSTEAD OF COMPUTER OPERATOR (BPS-16) W.E.F 15/08/2019 INSTEAD OF 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 Personal Assistant(PA) BPS-16 instead of Computer /Key Punch Operator(BPS-16) w.e.f 15/08/2019 instead of 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.

- 2- That in pursuance to the aforesaid 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 attached as annexure.....A
- 3- That on 16/08/2019 the appellant was adjusted against the post of Personal Assistant (BPS-16) by the then Registrar FATA Tribunal Peshawar, hence in compliance with the aforesaid order of the competent authority the appellant has accordingly submitted arrival report on 16/08/2019. Copies of the appointment order alongwith arrival report dated 16/08/2019 are attached as annexure.....B&C
- 4- That astonishingly despite adjustment against the post of Personal Assistant (BPS-16), due to lukewarm response by the respondent salary against the post could not be released for uncertain reason.
- 5- 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
- 6- 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 has ultimately allowed the service appeal of the appellant vide judgment dated 03/03/2022. Copy of the dismissal order dated 17/01/2022 and judgment of service tribunal dated 03/03/2022 are attached as annexure.....F&G
- 7- That in compliance with the judgment of this august Service Tribunal the respondents order dated 15/03/2023 whereby the appellant was reinstated into service with all back benefits, but as Key Punch /Computer Operator (BPS-16) instead of Personal Assistant (BPS-16). Copy of office order dated 15/05/2023 is attached as annexure.....H
- 8- That probably due to oversight the appellant was though entitle to be adjusted against the post against which he was lastly adjusted i.e. Personal Assistant (BPS-16), hence the appellant filed an application in the Hon'ble Service Tribunal for permission to file an

amended service appeal. Copy of application is attached as annexure.....J

9- That this Hon'ble Tribunal vide order sheet dated 20/08/2024 has allowed the aforesaid application by passing order to file an amended service appeal within a week time and fixed the case on 09/09/2024. Copy of the order sheet dated 20/08/2024 is attached as annexure.....J

10- That since the appellant was not pleased from his adjustment against the post of KPO/Computer Operator (BPS-16) instead of Personal assistant (BPS-16) as he lastly remained as Personal Assistant, hence, filed departmental appeal but no reply has been received so far. Copy of departmental appeal is attached as annexure.....K

11- That the appellant after being highly aggrieved from the action and inaction of the respondents, having no other alternative except to file the instant service appeal on the grounds inter-alia as under:

**G R O U N D S**

A. That the action and inaction of the respondents by not adjusting/reinstating the appellant is against his original post of Personal Assistant (BPS-16) against which he was lastly adjusted instead adjusting the appellant against the post of Computer/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.

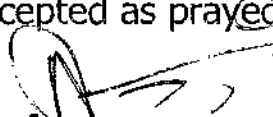
C. That the action of the respondents is arbitrary and based on clear malafide by not adjusting the appellant against the post of Personal Assistant(BPS-16) which is against the norms of natural justice and fair play.

D. That the position of Computer/Key Punch Operator has been declared as dying cadre as such the inaction of the respondents by not adjusting the appellant against the post of Personal Assistant (BPS-16) 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 Personal Assistant no financial implication is involved as both the posts carries one and same grade i.e. BPS-16.
- F. That if the appellant is adjusted against his original post of Personal Assistant (BPS-16) instead of Computer/Key Punch Operator (BPS-16) there will be no harm to anybody.
- G. That , apparently the only variance with regard to adjustment of the appellant against the KPO/Computer Operator (IT) is that the competent authority i.e. administrative Secretary is 'Secretary Administration' while in the case of Personal Assistant, the appellant will be come in the hierarchy/subordination of Establishment Secretary.
- H. That once this Hon'ble Tribunal has allowed amended service appeal, then there is no such hurdle to adjudicate upon the instant appeal having exclusive jurisdiction to decide the fate of the appellant.
- I. 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.

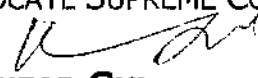
Dated: 06/09/2024

  
**APPELLANT**

**THROUGH:**

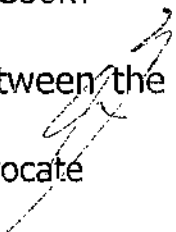
  
**NOOR MUHAMMAD KHATTAK**  
 ADVOCATE SUPREME COURT

&

  
**KHANZAD GUL**  
 ADVOCATE HIGH COURT

**CERTIFICATE:**

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.

  
 Advocate

**AFFIDAVIT**

I, Mr. Adnan Khan (the appellant) do hereby solemnly affirm that the contents of this amended Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
 DEPONENT



11A - 11 - 5

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.

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

REGISTRAR  
FATA TRIBUNAL



OFFICE OF THE  
REGISTRAR FATA TRIBUNAL,  
PESHAWAR

11/08/19  
6

**OFFICE ORDER:-**

No. R/13/2019-20/1563 dated 15.08.2019 the Competent authority is pleased to adjudge 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

AR  
-5-  
7

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

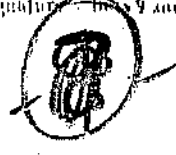
16-08-2019

Adnan Khan  
Personal Assistant (BPS-16)



Note: The callus in this page should be renewed or retested at least every five years and the signature should be dated

9 ID



1. Name: ABDUL KHAM

2. Race: 1

3. Residence: BOCHAT KARAWA NICADA P STATION CHARJADA

4. Father's name and residence:

WALI 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:

Pop. Finger:

Thumb:

9. Signature of Government Servant:

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

Registrar  
FATA TRIBUNAL

AG-AP Peshawar

P. Sec:005 Month:February, 2021  
PR8073 -PCR Tribunal Merged Areas  
PCR TRIBUNAL MERGED AREAS  
HTN:  
GPF 1:  
Old 1:

SF:2

Pers F: 50503878 Buckle:  
Name: ADNAN KHAN  
COMPUTER OPERATOR  
CRIC No.1710181065231  
GPF Interest Free  
16 Active Temporary

P. Sec:005 Month:February 2021  
PR8073 -PCR Tribunal Merged Areas  
PCR TRIBUNAL MERGED AREAS  
HTN:  
GPF 1:  
Old 1:

PR8073

PAYS AND ALLOWANCES:  
2247-Adhoc Relief All-2018-104  
2264-Adhoc Relief All-2019-104

2,043.00  
2,043.00

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

Subrc:

able 363.44 Deducted 275.00 TAX:(3609) 91.00  
lance 62,300.00 Subrc: 3,340.00  
enevolent Fund 800.00  
Ben & Death Comp Fresh 650.00

Total Deductions 4,881.00  
35,810.00

Total Deductions 4,881.00  
35,810.00

D.O.B  
13.02.1995

LFP Quota: 1  
HABIB BANK LIMITED YESIL BAZAR, CHARSA  
02177901089403

06 Years 01 Months 008 Days

D.O.B  
13.02.1995

LFP Quota:  
HABIB BANK LIMITED YESIL BAZAR, CHARSA  
02177901089403

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



-10-

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

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

Permanent Address:

City: peshawar

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: adnankhan556123@gmail.com

System generated document in accordance with APPM 4.6.12.9(82882/21.05.2021/v3.0)

\* All amounts are in Pak Rupees

\* Errors & omissions excepted (SERVICES/31.05.2021/23:03:43)



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

①  
"F"

Dated Peshawar 17<sup>th</sup> January, 2022

**ORDER**

HD/FATA Tribunal/B&A/55/2022/298-67 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

Ends 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)

"9" - 19 -

*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)*

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*[Handwritten signature]*

*Service Appeal No.774/2022 titled "Razdal 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.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**

*[Handwritten signature]*

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

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-15-

Service Appeal No.774/2022 titled "Reclaim Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalan Ashraf 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*)

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*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*)

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*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.**

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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.*

- 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)



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*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 Khatim Arshad Khan, Chairman, and Ms. Rozina 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 "Reedat Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Ms. Rozina 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, Assisnat/ 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 Kallin Arshad Khan, Chairman, and Ms. Pamina 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.

*Service Appeal No.774/2022 titled "Khadod Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kadir Arshad Khan, Chairman, and Ms. Rozina Rahman, 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 Bashir S/O Sahib Din R/O PO Shah Qabool Awliya House No. 2938, Mohallah Dabgari Bazar Sakhwat 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 "Mudoul Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kallim Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

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**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.**

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**Service Appeal No.818/2022**

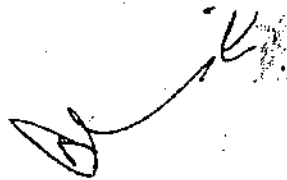
Date of presentation of Appeal.....20.05.2022  
Date of Hearing.....03.03.2023  
Date of Decision.....03.03.2023

**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 "Raedat 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 Mr. 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 Painsakhel,  
Assistant Advocate General.....

For 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.

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*Service Appeal No. 774/2022 titled "Rezaad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.03.2023 by Division Bench comprising Fatin Arshad Khan, Chairman and Ms. Razina Ishaq, 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

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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. 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 iudice"; 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 "Fauzad 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.*

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,

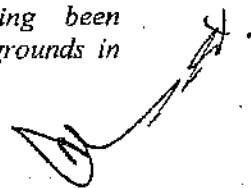
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*Service Appeal No.774/2022 titled "Iqbal Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Justice Ashraf Khan, Chairman, and Mr. Razna Rahman, 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 24<sup>th</sup> 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".*



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Service Appeal No.774/2022 titled "Asadad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalan 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*

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*Service Appeal No.77-4/2022 titled "Saudad Khan vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Khatim Arshad Khan, Chairman, and Ms. Rozina 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

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*Service Appeal No.774/2022 filed "Reedad Khan-w-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 "Arshad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalan 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 "Fauz Asadullah Khan versus Federation of Pakistan through Secretary Establishment and others", wherein the august Court found that:

"8. In the present case, petitioner was never promoted but was directly appointed as Director (B-19) after fulfilling the prescribed procedure, therefore, petitioner's reversion to the post of Deputy Director (B-18) is not sustainable. Learned Tribunal dismissed the appeal of petitioner on the ground that his appointment/selection as Director (B-19) was made with legal/procedural infirmities of substantial nature. While mentioning procedural 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 Khatun Arshad Khan, Chairman, and Ms. Rozina Reeman, 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 Malani 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 "Headof Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kollin Arshad Khan, Chairman, and Ms. Rozina 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 "Kasidat Khan vs. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalair 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

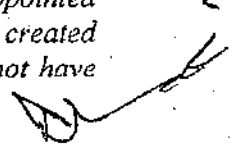
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Service Appeal No.774/2022 titled "Rezalad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Kalhu Arshad Khan, Chairman, and Ms. Rozina Rahman,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



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*Service Appeal No.774/2022 titled "Rasool 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.*

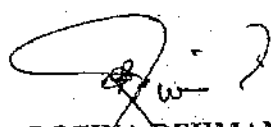
*been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system."*

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 3<sup>rd</sup> day of March, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**ROZINA REHMAN**  
Member (Judicial)

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"H" - ~~10~~



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, 154-63,205-15,123-32,164-73,252-67,133-42,268-77,143-53,318-27,288-9,8, 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 Awaiz 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)

Submitted on 02/8/24

"I"

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

C. M. No \_\_\_\_\_/2024

In

Service Appeal No 866/2024

Adnan Khan .....Petitioner/Appellant

**VERSUS**

Home Department & others.....Respondents

**APPLICATION FOR PERMISSION TO FILE AMENDED**  
**APPEAL.**

**Respectfully Submitted:-**

1. That the above titled Service Appeal is pending adjudication before this honorable Tribunal and is fixed for
2. That it is pertinent to mention here that in the prayer clause the wordings "Key Punch Operator" (BPS-16) has erroneously been mentioned while actual requisite nomenclature of the post is "Personal Assistant" (BPS-16).
3. That moreover, since the requisite post of Personal Assistant comes in the sole domain/hierarchy of Establishment Department, hence, Secretary Establishment is required to be impleaded in the amended service appeal.
4. That omission is not deliberate rather due to some typographical mistake as well as ground reality, hence needs to be rectified by filing an amended appeal.
3. That the valuable rights of the applicant are at stake and the law as well as the dictums of Superior Courts also favors the amendment of cases for the interest of justice.

4. That if the applicant is not allowed to amend his appeal, the very purpose of his appeal would be lost resulting in multiplicity of litigation.

It is therefore prayed, that on acceptance of this application, the applicant may kindly be allowed to file amended appeal as explained above.

Dated:- 31/07/2024

Through

  
Applicant/Appellant

Noor Muhammad Khattak  
Advocate Supreme Court

**AFFIDAVIT**

I, Adnan Khan (the Appellant), do hereby solemnly affirm and declare on oath that the contents of this Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

  
DEPONENT

(381-105J)

**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.**

TESTED  
29-8-24  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**R/SHEWETH:**

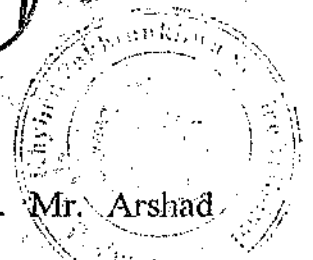
**ON FACTS:**

**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

A. No. 866/24  
Ajman Khan vs Govt

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31.07.2024 1. Learned counsel for the appellant present. Mr. Arshad

Azam learned Assistant Advocate General for the respondents present.

2. Written reply/comments not submitted. Learned AAG sought time to contact the respondents for submission of written reply. Granted. To come up for written reply and preliminary hearing on 20.08.2024 before S.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar

\*Kaleemullah

(Rashida Bano)  
Member (J)

20.08.2024 01. Learned counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.

02. Learned counsel for the appellant submitted application through office to file amended appeal. Request is allowed. Appellant is directed to submit amended memo of appeal within a week. To come up on 09.09.2024 before S.B. P.P given to the parties.

Date of Presentation 29-8-24

Number of Words 2-1

Copying Fee 10/-

Urgent 8/-

Total 18/-

Name of Clerk

Date of Receipt

Place of Receipt

(Muhammad Akbar Khan)  
Member (E)

ATTESTED  
29-8-24  
EXAMINER  
Service Tribunal  
Peshawar



Adm. Person (ASST)

19-02-2024

*[Handwritten signature]*

- 2024 (Adjust)

Personal Assistant (Adjust)

19-02-2024

- 2024 (Adjust)

Personal Assistant (Adjust)

19-02-2024

Personal Assistant (Adjust)

19-02-2024

- 2024 (Adjust)

Personal Assistant (Adjust)

19-02-2024

19-02-2024

19-02-2024

19-02-2024

19-02-2024

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

Amended appeal  
\_\_\_\_\_ No \_\_\_\_\_ /20 24

Adnan Khan

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Govt of KPK etc

(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. \_\_\_\_\_ / \_\_\_\_\_ /202

**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

**WALEED ADNAN**

**UMAR FAROOQ MOHMAND**

**KHANZAD GUL**

&

**ABID ALI SHAH  
ADVOCATES**

**OFFICE:**

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