

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

Service Appeal No. 639/2024

Muhammad Tariq

Appellant

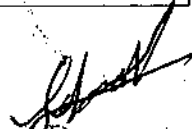
VERSUS

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary Government of khyber pakhtunkhwa
& Others

Respondents

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Deponent

CNIC-----

**BEFORE THE HONOURABLE KHYBER PAKHTUN KHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal # 639/2024

Muhammad Tariq Appellant

Versus

Govt. of Khyber Pakhtunkhwa,
Through Chief Secretary,
& Others

Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2.

Respectfully Sheweth:-

Preliminary Objections:-

1. That the appellant has neither cause of action nor locus stani to lodge the instant service appeal.
2. That the service appeal is based on misconceptions.
3. That the appellant has concealed material facts from this Hon'ble Tribunal.
4. That the appeal is barred by law and limitation.

**Khyber Pakhtunkhwa
Service Tribunal**

Docket No. 15669

Date: 10-09-24

Facts:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct.
5. Correct. Although no directives were given by Peshawar High Court, yet the circumstances emerging as a result of the decision of Peshawar High Court in the case of Mr. Rizwan-Ul-Haq (writ petition No. 1918-P/2022), withdrawal of the appointment order of Muhammad Tariq was necessary to accommodate the actual claimant of the post in question. In simple words, due to appointment of Mr. Rizwan-Ul-Haq on account of grace marks granted by Peshawar High Court, withdrawal of the order in r/o Muhammad Tariq ^{was} essential.
6. Correct.
7. Correct.
8. Pertains to record.

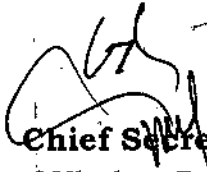
Grounds:-

- a) Pertains to record.
- b) Pertains to record.
- c) Incorrect: The applicant's order was withdrawn on the recommendation of Public Service Commission.
- d) Incorrect: The judgment of the Peshawar High Court has been implemented.

- e) The appointment order of the appellant was withdrawn as a result of the court proceedings hence, show cause notice was not deemed appropriate in the circumstances.
- f) Correct. Some positions are still lying vacant with the department.
- g) Incorrect, hence, denied. There is no malafide on the part of department as withdrawal of the order in respect of Muhammad Tariq was made on the recommendation of KPPSC and through a formal process of moving a summary in this regard for approval of the competent authority (**Annex-A**).

Prayer:-

It is therefore, requested that on acceptance of the instant parawise comments the appeal of the appellant may kindly be dismissed.



Chief Secretary,
Govt. of Khyber Pakhtunkhwa
Respondent No. 01

NADEEM ASLAM CHAUDHERY



Secretary,
Higher Education, Archives
& Library Department
Respondent No. 02

KAMRAN AHMAD ARIDI

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

Service Appeal No. 639/2024

Muhammad Tariq

.....

Appellant

VERSUS

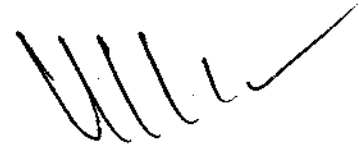
Govt. of Khyber Pakhtunkhwa
Through Chief Secretary,
& Others

.....

Respondents

Affidavit

I, Capt (R) Kamran Ahmad Afridi Secretary, Higher Education, Archives & Libraries Department Government of Khyber Pakhtunkhwa do hereby solemnly affirm and declare that contents of the accompanying Joint Para-wise Comments are correct to the best of my knowledge and belief and nothing has been concealed therein from this Service Tribunal Khyber Pakhtunkhwa, Peshawar. Furthermore the respondents have neither been placed as ex-party nor right of defense struck-off.



(Capt (R) Kamran Ahmed Afridi)
Secretary,
Higher Education, Archives,
Libraries Department

CNIC- _____

Secretary
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries
Department.

ATTESTED



10/11/2024



**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

NOTE FOR CHIEF SECRETARY ,KHYBER PAKHTUNKHWA

SUBJECT: RECRUITMENT OF NINETY SEVEN (97) MALE LECTURERS PHYSICS (BPS-17) IN HIGHER EDUCATION DEPARTMENT. Advt. 06/2021 Sr.1

Pursuant to the requisition placed by the Higher Education Department and in compliance with the Peshawar High Court Peshawar orders dated 24.08.2022 in writ petition No.1918-P/2022 (F/A), the Khyber Pakhtunkhwa Public Service Commission has recommended **Mr. Rizwanul Haq S/O Ihsanul Haq of District Lower Dir/3** for appointment as Lecturer in the subject of Physics (BS-17) (F/B) and requested to return the original application alongwith enclosures of Mr. Muhammad Tariq earlier recommended as lecturer in the subject of Physics (BS-17).

2. It is pertinent to mention here that in pursuance of Khyber Pakhtunkhwa Public Service Commission recommendation, the subject case including Mr. Muhammad Tariq was processed for approval of the competent authority. After the approval of the competent authority appointment order including others were issued accordingly (F/C). After that Mr. Rizwan ul Haq S/O Ihsan ul Haq, feeling aggrieved that Khyber Pakhtunkhwa Public Service Commission has not awarded one mark for his distinction in BS Physics, filed a case in Peshawar High Court Peshawar for redressal. The Hon'ble Court passed the judgement in favour of the Petitioner i.e Mr. Rizwan Ul Haq S/O Ihsan ul Haq (F/A Ibid). In compliance with the court decision, the Khyber Pakhtunkhwa Public Service Commission has now recommended Mr. Rizwan ul Haq for appointment as Lecturer in the subject of Physics (BS-17), while taking back the earlier recommendations in respect of Mr. Muhammad Tariq. As per the revised merit list, provided by the Khyber Pakhtunkhwa Public Service Commission, the name of the candidate Mr. Rizwan ul Haq has been placed at revised Merit No.61 in place of Muhammad Tariq at S,no.85 in the previous merit list.

3. Now the Khyber Pakhtunkhwa Public Service Commission has recommended Mr. Rizwan ul Haq in pursuance of court order and is requesting for withdrawal of the subject order upto the extent of Mr. Muhammad Tariq which was approved and notified. The subject case has also been taken-up with Establishment Department for views/comments (F/D) wherein the Establishment Department has advised to route the same for approval of the Competent Authority through Law Department being court case (F/E).

HEE-15-75-02191



**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

NOTE FOR CHIEF SECRETARY, KHYBER PAKHTUNKHWA

SUBJECT: **RECRUITMENT OF NINETY SEVEN (97) MALE LECTURERS PHYSICS
(BPS-17) IN HIGHER EDUCATION DEPARTMENT. Advt. 06/2021
Sr.1**

4. On his appointment, he will be on probation for a period of one year extendable for another year in terms of Rule-15 of Khyber Pakhtunkhwa, Government Servants (Appointment, Promotion & Transfer) Rules, 1989 (F/F).

5. The Hon'ble Chief Secretary, Khyber Pakhtunkhwa being competent authority in respect of officers in BPS-17 under Rule-4(1)(b) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (F/G), is requested to kindly accord approval to the appointment of the recommendee mentioned at Para-1 above, as Lecturer in Physics (BPS-17) in Higher Education Department subject to the provision of requisite documents (medical/Character Certificates & Police verification etc), and withdraw appointment of Mr. Muhammad Tariq S/O Abdul Wahab ab-initio.

6. Law, Parliamentary Affairs & Human Rights Department may add views en-route.

[Signature]
4-8-23

SECRETARY
Higher Education Department

**Secretary, Law, Parliamentary Affairs
& Human Right Department**

Secretary, Establishment Department

Chief Secretary, Khyber Pakhtunkhwa

Chief Minister, Khyber Pakhtunkhwa

[Signature]

N.P.O.



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

**SUBJECT: RECRUITMENT OF NINETY SEVEN (97) MALE LECTURERS
PHYSICS (BPS-17) IN HIGHER EDUCATION DEPARTMENT,
ADVT. 06/2021 Sr.1.**

Reference Para-06 of the Note:

- 301
25/8/23
07. The instant case has been examined. The Peshawar High Court, Peshawar vide judgment dated: 24-08-2022 disposed of the Writ Petition No. 1918-P-P/2022 at "Flag-A" and directed the Public Service Commission to grant one distinction mark to the petitioner in accordance with marking criteria and reconsider his merit position by placing him amongst the candidates figure at serial No. 44 to 60 as per merit policy and recommend him for appointment against the post of Male Lecturer Physics (BPS-17) if he is otherwise eligible.
08. The Scrutiny Committee of Law Department has declared the instant case un-fit for filing CPLA in the Supreme Court of Pakistan on the ground that it was established from the record that the petitioner has got first position in order of merit in the University of Malakand and was entitled for additional marks on account of his first position in BS Physics which fact has also not been denied by the Administrative Department. The Scrutiny Committee further held that not awarding distinction marks during calculation of total marks for preparation of merit list was not based on legal footing (Flag-H).
09. In compliance with the decision of High Court, the Public Service Commission has now recommended Mr. Rizwan ul Haq for appointment as Lecturer in the subject of Physics (BPS-17), and has withdrawn its recommendations in respect of Mr. Muhammad Tariq and has accordingly provided a revised merit list vide "Flag-B".
10. Keeping in view the foregoing factual position, Law Department is of the view that since the Public Service Commission has withdrawn its recommendations in respect of Mr. Muhammad Tariq vide F/B, therefore, the proposal of Higher Education Department contained in Para-5 of the Note is endorsed.
11. The Establishment Department being Administrative Department in service matters, may add comment on the modus operandi for dispensing with the service of Mr. Muhammad Tariq under the relevant provisions, please.

(Signature)
25-8-2023
(SHAGUPTA NAVEED),
SECRETARY LAW

SECRETARY ESTABLISHMENT DEPARTMENT:

PS/Secy E&AD KP

Diry No 2268

FTS No

Date 29/8/20

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
25/10/2023

17. *Proposed at para 5 same w.c. para 10, 14 & 15/16*
Chief Secretary, Khyber Pakhtunkhwa

Minister for Establishment & Administration Department
Khyber Pakhtunkhwa

(AKHTAR SAED TURK)
Secretary Establishment
October 13, 2023

15/10/23

PS/SAOY ESAD KP
DAILY NO. 22652
HIS NO. 15/10/23

16. *read with Section 21 of the General Clauses Act (F/G & I).*

15. Proposal of the Administrative Department contained in Para-5 read with Para-14 under Rule-4 (1) (b) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 of the Note is submitted for approval of the Chief Secretary, Khyber Pakhtunkhwa being competent authority very or rescind any (notifications), orders, rules or by-laws so (issued). (F/I)

a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, (F/I) or Regulation, a power to (issue notifications), orders, rules or by-laws is conferred, then that power includes Administrative Department in light of Section 21 of General Clauses Act which provides "Where by any (central Department are on one page in the matter, therefore, Establishment Department endorses proposal of the stakeholders i.e. Khyber Pakhtunkhwa Public Service Commission, Higher Education Department and Law the Supreme Court of Pakistan and has endorsed the proposal of the Administrative Department. Since all the (Muhammad Tang. The Scrutiny Committee of Law Department has declared the case unfit for filing of CPLA in decision, has now recommended Mr. Rizwan ul Haq while taking back its earlier recommendation in respect of Rizwan ul Haq (F/A ibid) The Khyber Pakhtunkhwa Public Service Commission, in compliance with the Court High Court Peshawar *reverses* the Peshawar High Court decided the case in favor of the petitioner i.e. Mr. of Public Service Commission in respect of Mr. Muhammad Tang along with others, filed a case in Peshawar The case has been examined. The petitioner being aggrieved with the earlier recommendation provisions.

14. The case has been examined. The petitioner being aggrieved with the earlier recommendation provisions. sought advice of Establishment Department dispensing with the service of Muhammad Tang under the relevant has endorsed proposal of the Administrative Department. However, Law Department vide Para-11 ante has endorsed proposal of the Administrative Department. However, Law Department vide Para-10 ante Mr. Rizwan ul Haq for appointment and has withdrawn its earlier recommendation in respect of Muhammad Tang and has accordingly provided a revised merit list vide (F/B), therefore, Law Department vide Para-10 ante the Supreme Court of Pakistan (F/H). Law Department has opined that since the Commission has recommended Scrutiny Committee of Law Department has declared the instant case unfit for filing CPLA in

13. requested for withdrawal of the subject order to the extent of Muhammad Tang only. Commission has now recommended Mr. Rizwan ul Haq for appointment as Lecturer in Physics (BS-17) and judgment on 24.08.2022 in favor of the petitioner (F/A). In compliance with the Court decision, the Public Service Court, Peshawar for award of one mark for his distinction in BS Physics, whereupon, the Court passed the (F/B) was passed on 15.07.2022 (F/C). After that Mr. Rizwan ul Haq filed a writ Petition in Peshawar High Court, Peshawar for award of one mark for his distinction in BS Physics, whereupon, the Court passed the (F/A) in compliance with the Court decision, the Public Service Commission has recommended Mr. Rizwan ul Haq for appointment and has withdrawn its earlier recommendation in respect of Muhammad Tang (at

12. The Administrative Department has stated that upon approval of the competent authority in

Chief Secretary
DAILY NO. 289
HIS NO. 17-10-2023

CA. to Chief Secretary
Khyber Pakhtunkhwa
Daily No: 28.10.23
Dated: 28.10.23

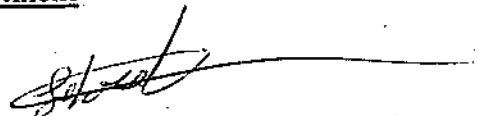
(BETTER COPY)

12. The Administrative Department has stated that upon approval of the competent authority in pursuance of Public Service Commission recommendation, appointment order including Muhammad Tariq (at 5 to 85) was issued on 15 07 2022 (FIC) After that Mr. Rizwan ul Haq filed a Writ Petition in Peshawar High Court. Peshawar for award of one mark for his distinction in BS Physics, whereupon, the Court passed the Judgment on 24 08 2022 in favor of the petitioner (FIA) In compliance with the Court decision, the Public Service Commission has now recommended Mr. Rizwan ul Haq for appointment as Lecturer in Physics (BS-17) and requested for withdrawal of the subject order to the extent of Muhammad Tang only
13. Scrutiny Committee of Law Department has declared the instant case unfit for filing CPLA in the Supreme Court of Pakistan (F/H). Law Department has opined that since the Commission has recommended Mr. Rizwan ul Haq for appointment and has withdrawn its earlier recommendation in respect of Muhammad Tariq and has accordingly provided a revised merit list vide (F/B), therefore, Law Department vide Para-10 ante has endorsed proposal of the Administrative Department However, Law Department vide Para-11 ante has sought advice of Establishment Department dispensing with the service of Muhammad Tariq under the relevant provisions
14. The case has been examined. The petitioner being aggrieved with the earlier recommendation of Public Service Commission in respect of Mr. Muhammad Tariq along with others, filed a case in Peshawar High Court Peshawar whereupon the Peshawar High Court decided the case in favor of the petitioner i.e. Mr Rizwan ul Haq (F/A ibid) The Khyber Pakhtunkhwa Public Service Commission, in compliance with the Court decision, has now recommended Mr. Rizwan ul Haq while taking back its earlier recommendation in respect of Muhammad Tariq The Scrutiny Committee of Law Department has declared the case unfit for filing of CPLA in the Supreme Court of Pakistan and has endorsed the proposal of the Administrative Department Since all the stakeholders i.e Khyber Pakhtunkhwa Public Service Commission, Higher Education Department and Law Department are on one page in the matter, therefore, Establishment Department endorses proposal of the Administrative Department in light of Section 21 of General Clauses Act which provides "Where by any (central Act) or Regulation, a power to (issue notifications), orders, rules or by-laws is conferred, then that power includes a power, exercisable in the live manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (provisions), orders, rules or by laws so (issued) (F/I)
15. Propose of the Administrative Department contained Para 5 read with Para-14 of the Note is submitted for approval of the Chief Secretary, Khyber Pakhtunkhwa being competent authority under Rule 4 (1) (b) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 read with Section 21 of the General Clauses Act (F/G & I).

(AKHTAR SAEED TURK)
Secretary establishment
October 13, 2023

Minister for Establishment & Administration Department

Chief Secretary, Khyber Pakhtunkhwa





**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARY DEPARTMENT**

AUTHORITY LETTER

Mr. Sohrab Khan, Law Officer (BPS-17), Higher Education, Archives & Libraries Department Government of Khyber Pakhtunkhwa is hereby authorized to submit Joint Parawise Comments in the Peshawar Services Tribunal, Peshawar on behalf of Respondents in Service Appeal No. 639/2024 Titled Muhammad Tariq Versus Govt. of Khyber Pakhtunkhwa & others on behalf of official respondents.


(Capt (R) Kamran Ahmed Afridi)
Secretary,

Higher Education, Archives,
Libraries Department

Secretary
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries
Department.