

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 723/2024

AKBAR HUSSAIN WAITER (BPS-06), PAKISTAN AUSTRIAN INSTITUTE OF TOURISM & HOTEL MANAGEMENT (PAITHOM), CAMP OFFICE, SAIDU SHARIF SWAT

VERSUS

THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE SECRETARY CULTURE, TOURISM, ARCHEOLOGY & MUSEUM DEPARTMENT, PESHAWAR

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DEPONENT

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SWAT**

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 18661

Dated 10-09-24

**THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH THE SECRETARY
CULTURE, TOURISM, ARCHEOLOGY & MUSEUM DEPARTMENT, PESHAWAR**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT OF RESPONDENT
No. 1**

Respectfully Sheweth,

Preliminary objections:

- i. That the appellant has no cause of action to file the instant service appeal.
- ii. That the appeal in hand is not maintainable in its present form.
- iii. That the appeal is bad for mis-joinder/non-joinder of unnecessary and necessary parties.
- iv. That under section 4(b) of Khyber Pakhtunkhwa Services Tribunal Act 1974, no appeal shall lie in the tribunal against an order or decision of a departmental authority regarding the fitness or otherwise of a person to be appointed to or to hold a particular post or to be promoted a higher post or cadre on this score alone the appeal is not maintainable (Annex-A).
- v. That the appeal is based on misrepresentation of facts, hence the appellant is estopped by his conduct to file the appeal.
- vi. That the appellant has got all his back benefits along with increments and salaries etc.
- vii. That the appellant has already been conditionally regularized vide this department notification dated 21.01.2022 as a waiter in BS-06.
- viii. That the appellant has not come to the court with clean hands.
- ix. That the appeal is barred by law and limitation.

ON FACTS

1. Pertains to the record. Hence no comments.
2. Incorrect. The appellant was an employee of PAITHOM which was a corporate body registered under the Societies Act, 1860 on 4th June 2003 as a Joint Venture between the Government of Pakistan and the Government of Austria which was devolved to the provinces along with its employees. The PAITHOM employees did not fall in the definition of section 11B of the Civil Servants Act of 1973 being corporate employees. Therefore, the relief requested under section 11B (1) of the Civil Servant Act was not applicable in respect of the appellant.

3. The appellant along with other employees of PAITHOM filed WP No. 507-M/2017, which was clubbed with 546-M/2017 and 655-M/2017 and a joint decision was announced on 18.04.2018 directing the department to treat them like other regular employees of PAITHOM by extending them the privileges on the analogy of civil servants. The foundation of the judgment rested on Judgement in WP No. 67-M/2017, wherein Mr. Hurmat Yab In-charge PAITHOM who himself was a corporate employee promised the court that he will regularize the petitioners and thus a wrong order had made a precedent for judgement in 546-M/2017 and other by the appellant. The Tourism Department filed CPLA No 556,557 and 558-P of 2018 in the Supreme Court of Pakistan which was time barred by twenty-one days. The operative part of the Judgement of the August Supreme Court of Pakistan is reproduced as below: -

Learned Additional Advocate General further states that before the High court, parties have apparently committed fraud and made a misrepresentation and the High court itself had wrongly exercised jurisdiction under article 199 of the constitution and thus the petitioner will avail remedy by way of an application under section 12/2 CPC to ensure that whatever wrong has been done through the impugned order is corrected. In view of the submission of the learned Additional Advocate General, we find nothing to enter into merits of these cases. All the petitions are therefore dismissed. The applications for condonation of delay are also disposed of.

The department regularized the corporate employees of PAITHOM conditionally on 21st January 2022.

4. Correct to the extent of filing of application under 12/2 CPC in the Peshawar High court on the directions of the Supreme Court of Pakistan, rest of the para is incorrect. The subject application was converted into WP No. 655-M/2027 in the Peshawar high court which was again clubbed with the COC No. 54-M/2019 filed by the appellant which was dismissed vide detailed judgment in 2-M/2020.
5. Incorrect, hence denied. Employees of PAITHOIM were promoted to various posts in contravention of law by the in-charge PAITHOM and he was awarded penalty for the ibid illegal act after proper inquiry. As explained in the above paras, PAITHOM was a company/corporate body and the civil servant act was not applicable in respect of its employees. Mr. Waheed Murad was appointed as Housekeeping in-charge as a company employee by In-charge PAITHOM. He was neither promoted nor appointed by the department under the civil servant act. He was later on conditionally regularized as instructor in BS-17 on the directions of Peshawar high court in its judgement on 18.04.2018.
6. Incorrect.
7. No comments.
8. Incorrect. As explained vide para 05.
9. Incorrect. The request of the appellant is against the law and rules.
10. Incorrect. The request of the appellant is against the law and rules.

REPLY ON GROUNDS

- A. Incorrect. The request of the appellant is illegal and thus void.
- B. Incorrect. None of the rights of the appellant is violated. The request of the appellant is illegal and baseless.
- C. Incorrect. As explained above.
- D. Incorrect. As explained above.
- E. Incorrect. The appellant is always trying to misguide the court. No right of the appellant is violated. The PAITHOM was a company / body corporate and the appellant has been

conditionally regularized on the directions of the Peshawar high court in its judgment on 18.04.2018.

F. No comments.

G. No comments.

Therefore, keeping in view, the position explained above the appeal may be set aside as not based on facts, with cost.



(Dr. Muhammad Bakhtiar Khan)
Secretary,
Culture Tourism Archaeology and
Museums Department
Respondent No. 01



①

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

13-A, KHYBER ROAD, PESHAWAR CANTT:

NO. SO (LIT)/C&TD/1- 565/2023/ Akbar Ali
Dated Peshawar the, 09th September, 2024.

AUTHORITY LETTER

Mr. Arshad Iqbal, Section Officer, is hereby authorized to submit the joint Parawise comments and attend the Service Tribunal, Peshawar in Service Appeal No. 723/2024 titled "Akbar Hussain vs Govt. of Khyber Pakhtunkhwa & others "on behalf of the undersigned till the final decision of the case.

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

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Affidavit

I, Dr. Muhammad Bakhtiar Khan, Secretary, Culture & Tourism Department Khyber Pakhtunkhwa, do hereby solemnly affirm and declare an oath that the contents of Parawise Comments in the above Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed form this Hon'ble Tribunal. It is further stated on the oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense is struck off.

DEPENDENT
CNIC
Cell No.

Identified By

LD. ADVOCATE GENERAL
KHYBER PAKHTUNKHWA

**THE ¹[KHYBER PAKHTUNKHWA]
SERVICE TRIBUNALS ACT, 1974.**

²[KHYBER PAKHTUNKHWA] ACT NO. I OF 1974.

[28th March, 1974]

CONTENTS.

PREAMBLE

SECTIONS:

1. Short title, commencement and application.
2. Definitions.
3. Tribunals.
- 3A. Adhoc Appointment.
- 3B. Tenure, Terms and condition of service of Chairman and member.
4. Appeals to Tribunals.
5. Constitution of Benches.
6. Hearing of appeals and, their disposals.
7. Power of Tribunals.
8. Abatement of Suits and other proceeding.
9. Limitation.
10. Re-appeal and transfer of cases.
11. Power to make Rules.
12. Repeal.

Abdul A

¹ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

**THE ¹[KHYBER PAKHTUNKHWA]
SERVICE TRIBUNALS ACT 1974.**

²[KHYBER PAKHTUNKHWA] Act NO. I OF 1974.

[28th March, 1974]

*[First published after having received the assent of the Governor of the
³[Khyber Pakhtunkhwa] in the Gazette of ⁴[Khyber Pakhtunkhwa]
(Extraordinary), dated the 28th March, 1974].*

**AN
ACT**

*to provide for the establishment of Service Tribunals to exercise jurisdiction in
respect of matters relating to the terms and conditions of service of civil
servants.*

WHEREAS it is expedient to provide for establishment of
Administrative Tribunals, to be called Service Tribunals, to exercise
exclusive jurisdiction in respect of matters relating to the terms and
conditions of service of civil servants, and for matters connected therewith or
ancillary thereto;

Preamble.

It is hereby enacted as follows:-

1. (1) This Act may be called the ⁵[Khyber Pakhtunkhwa] Service
Tribunals Act, 1974.
- (2) It shall come into force at once.
- (3) It applies to all civil servants wherever they may be.

Short title,
commencement and
application.

2. In this Act, unless the context otherwise requires, the following
expressions shall have the meanings hereby respectively assigned to them,
that is to say

Definitions.

¹ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.
² Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.
³ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.
⁴ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.
⁵ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

*Attest
A Jh*

- 1[(a) 'civil servant' means a person who is or has been a civil servant the meaning of the 2[Khyber Pakhtunkhwa] Civil Servants Act, 1973 3[Khyber Pakhtunkhwa] Act No. XVIII of 1973) but does not include a civil servant covered by the 4[Khyber Pakhtunkhwa] Subordinate Judiciary Service Tribunal Act, 1991.]
- (b) "Government" means the Government of the 5[Khyber Pakhtunkhwa]
- (c) "Province" means the 6[Khyber Pakhtunkhwa Province] and
- (d) "Tribunal" means a Service Tribunal established under section 3.

3. (1) The Governor may, by notification in the official Gazette, establish one or more Service Tribunals and, where there are established more than one Tribunal, the Governor shall specify in the notification the class or classes of civil servants in respect of whom or the territorial limits within which, each such Tribunal shall exercise jurisdiction under this Act. Tribunals.

(2) A Tribunal shall have exclusive jurisdiction in respect of matter relating to the terms and conditions of service of civil servants, including disciplinary matters.

(3) A Tribunal shall consist of-

- (a) A Chairman being a person who 7[is] or has been, or is qualified to be Judge of High Court; and
- 8[(b) four members, two of whom shall be from amongst District and Sessions Judges and two from amongst civil servants in BPS-20 and above.]

¹ Substituted vide Khyber Pakhtunkhwa Act No IX of 1991, S. 2.

² Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

³ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

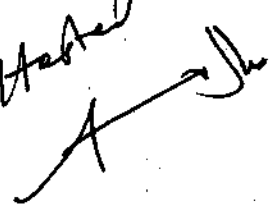
⁴ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

⁵ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

⁶ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

⁷ Inserted vide Khyber Pakhtunkhwa Ord. No. XV of 1982, S. 2.

⁸ Substituted vide Khyber Pakhtunkhwa Act No. XL of 2014, S. 2.

Attached


¹[(4) The Chairman and members of a Tribunal shall be appointed by the Governor in consultation with the Chief Justice of the Peshawar High Court.]

(5) The Chairman or a member of a Tribunal may resign his office by writing under his hand addressed to the Governor.

(6) The Chairman or a member of a Tribunal may be appointed by name or by designation.

²[3-A Adhoc appointment.—The Governor may, if necessary or expedient, for a particular case or cases, make an ad hoc appointment on the Tribunal of person qualified to be Chairman or a member as the case may be.]

³[3-B Tenure, Terms and conditions of service of Chairman and members. (1) The Chairman and a member shall hold office for a period of three years or until he attains the age of sixty years, whichever is earlier, and shall not be eligible for re-appointment:

Tenure, Terms and conditions of service of Chairman and members.

Provided that if a judge of the High Court is appointed as Chairman, he shall hold office for a period of three years or until he attains the age of superannuation as judge of the High Court whichever is earlier.

(2) In case, a retired judge of the High Court is appointed as Chairman under clause (a) of sub-section (3) of section 3, he shall hold office for a period of three years and shall not be eligible for re-appointment.

(3) The other terms and conditions of service of the Chairman and members shall be such as may be determined by the Governor.]

4. Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him ⁴[or within six months of the establishment of the appropriate Tribunal, whichever is later], prefer an appeal to the Tribunal having jurisdiction in the matter:

Appeals to Tribunals.

Provided that ----

*Attested
A. Jh*

¹ Substituted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S.2(b).

² Inserted vide Khyber Pakhtunkhwa Act No. XIII of 1976, S.2.

³ Inserted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S.3.

⁴ Inserted vide Khyber Pakhtunkhwa Act No. IX of 1974, S.3 (a).

(a) Where an appeal, review or representation to a departmental authority is provided under the¹[Khyber Pakhtunkhwa]Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred;²

(b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining-

(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade :or

(ii) the quantum of departmental punishment or penalty imposed on a civil servant as a result of a departmental inquiry, except where the penalty imposed is dismissal from service, removal from service or compulsory retirement³ [; and].

⁴[(c) no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.]

Explanation.—In this section, "departmental authority" means any authority other than a Tribunal which is competent to make an order in respect of any of the terms and conditions of service of civil servants.

5. (1) There may be constituted one or more Benches, each consisting of— Constitution of Benches.

(a) the Chairman alone ; or

(b) the Chairman and one or more members ; or

(c) ⁵[one preferably judicial member] or more member,

Attested
A Jhu

¹ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

² Omitted vide Khyber Pakhtunkhwa Act No. IX of 1974, S.3(b)(i).

³ Replaced vide Act No IX of 1974, S.3 (b)(ii).

⁴ Added vide Khyber Pakhtunkhwa Act No IX of 1974, S.3 (b) (iii).

⁵ Substituted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S.4(i)(a)

to be nominated by the Chairman for the purpose of admitting appeals for hearing or dismissing appeals in limine on grounds to be recorded in writing after having heard the applicant or his counsel;

Provided that notwithstanding anything to the contrary contained in this Act, the Bench consisting of the Chairman and one or more members ¹[or] ²[two members] may finally hear and dispose of appeal on merits:

Provided further that no orders shall be made by the Bench under this subsection before giving the appellant or, as the case may be, the parties and their counsel an opportunity of being heard.

³[(2) In case a Bench consisting of more than one member is unable to arrive at a unanimous decision, the appeal shall be referred to the chairman for consideration by the Tribunal.]

Provided that where no majority view can be formed, the appeal shall be referred to other member to be nominated by the Chairman and the decision of the Bench shall be expressed in terms of the view of the majority.

(3) The Chairman may at any stage transfer cases from one Bench to another Bench or to the Tribunal.

(4) Any decision made by the Bench shall be deemed to be the decision of the Tribunal.

6. (1) Except as otherwise provided, the appeals admitted for hearing shall be heard and decided by the Tribunal after giving the parties and their counsel an opportunity of being heard.

Hearing of appeals and their disposal.

(2) If any member of the Tribunal is for any reason, unable to take part in the proceedings of the Tribunal, the Chairman and the other member ⁴[or members] may hear or continue to hear and finally dispose of the appeal.

(3) If a Tribunal is unable to arrive at a unanimous decision, its decision shall be expressed in terms of the view of the majority.

Attested
A. Jh

¹ Inserted vide Act No. XIII of 1976, S.3.
² Substituted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S.4(i)(b).
³ Substituted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S.4(ii).
⁴ Deleted vide Act No. XXII of 2013, S.5(i).

(4) ¹[***]

7. (1) A Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against.

Power of Tribunals.

(2) A Tribunal or a Bench constituted under section 5 shall, for the purpose of deciding any appeal, be deemed to be a civil court and shall have the same powers as are vested in such court, under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) issuing commission for the examination of witnesses and documents ²[; and].

³[(d) execution of its decisions.]

(3) No. court-fee shall be payable for preferring an appeal to, or filing, exhibiting or recording any document in, or obtaining any document from, a Tribunal.

8. (1) Save as otherwise provided in section 10 all suits, appeals or applications regarding any matter within the jurisdiction of a Tribunal pending in any court immediately before the commencement of this Act shall abate forthwith:

Abatement of Suits and other proceeding.

Provided that any party to such a suit, appeal or application may, within ninety days of the commencement of this Act, prefer an appeal to the appropriate Tribunal in respect of any such matter which is in issue in such suit, appeal or application.

(2) Where any suit, appeal or application regarding any matter within the jurisdiction of a Tribunal has been disposed of by any court other than the Supreme Court before the commencement of the ⁴[Khyber Pakhtunkhwa] Service

¹ Deleted vide Khyber Pakhtunkhwa Act No. XXII of 2013, S. 5(ii).

² Replaced and added vide Khyber Pakhtunkhwa Act No. IV of 2010, S.2.

³ Added vide Khyber Pakhtunkhwa Act No. IV of 2010, S.2.

⁴ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

Attested
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Tribunals Ordinance, 1973 ¹[Khyber Pakhtunkhwa] Ordinance No. 1 of 1974). any party felling aggrieved by the decision of such suit, appeal or application may, if such decision has not become final, within ninety days of the commencement of this Act, prefer an appeal to the appropriate Tribunal in respect of any such matter which was in issue in such suit, appeal or application.

9. The provisions of sections 5 and 12 of the limitation Act, 1908 (Act Limitation IX of 1908), shall apply for the purpose of appeals under this Act.

Limitation.

10. (1) The ²[Khyber Pakhtunkhwa] Civil Services (Appellate Tribunal) Ordinance, 1971 ³[Khyber Pakhtunkhwa] Ord No. II of 1971), is hereby repealed.

Re-appeal and transfer of cases.

(2) All Appeals pending before the Tribunal Constituted under the ⁴[Khyber Pakhtunkhwa] Civil Services (Appellate Tribunals) Ordinance 1971 ⁵[Khyber Pakhtunkhwa] Ord No. II of 1971), Shall, with effect from the date of commencement of this act, stand transferred to the appropriate service Tribunal established under this act and be deemed as instituted under this Act.

11. Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power to make Rules.

12. The ⁶[Khyber Pakhtunkhwa] Service Tribunals Ordinance, 1973 ⁷[Khyber Pakhtunkhwa] Ordinance No. I of 1974), is hereby repealed.

Repeal.

*Attended
A. J. Khan*

¹ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

³ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁵ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁶ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁷ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.