FORM OF ORDER SHEET

Court of _____

Appeal No. 1606 **/2024**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2024	The appeal presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 01.10.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1606 /2024

MR. REEDAD KHAN **V/S** **GOVT: OF KP ETC**

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Dated: -09-2024

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO 1606 / 2024

Mr. Reedad Khan, Naib Qasid (BPS-03),
Home & Tribal Affairs Department,
Government of Khyber Pakhtunkhwa, Peshawar

.....**APPELLANT**

VERSUS

1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3- The Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar.
4- The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ABSORBING/ADJUSTING THE APPELLANT IN THE ESTABLISHMENT DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR AND NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Prayer:-

That on acceptance of the instant service appeal, the respondents may kindle be directed to adjust/absorbed the appellant in Establishment Department against his respective post of Naib Qasid (BPS-3) 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 Naib Qasid in the erstwhile FATA Tribunal vide order dated 04/04/2019. Copy of appointment order is attached as annexure.....**A**

2) That after the merger of FATA into province of KP as a result of 25th Constitutional amendment, the services of the appellant was placed

at the disposal of Home Department instead of Establishment Department like other employees of FATA Secretariat.

3) That astonishingly the appellant was removed from service, whereafter the appellant feeling aggrieved, filed Service Appeal No 777/2022 before the Khyber Pakhtunkhwa Service Tribunal and the same was allowed by reinstating the appellant with back benefits vide order dated 03/03/2023. Copies of the judgment and order dated 03/03/2023 & office order dated 15/05/2023 are attached as annexure.....**B&C**

4) That after reinstatement in service the appellant was granted secretariat performance allowance in shape of arrears amounting to Rs. 1,96,690/-, however, the said allowance was discontinued in the next month. Copy of order pay slips are attached as annexure.....**D**

5) That the erstwhile FATA Secretariat employees were absorbed /adjusted in the Establishment Department vide consolidated judgment of this Honourable Tribunal dated 14/01/2022. Copy of judgment dated 14/01/2022 is attached as annexure.....**E**

6) That in light of the ibid judgment, the appellant being an employee of erstwhile FATA Tribunal is also entitled to be adjusted/absorbed in the Establishment Department, hence the appellant filed a departmental appeal for his adjustment/absorption in the Establishment Department, but to no avail. Copy of departmental appeal is attached as annexure.....**F**

7) That the appellant feeling aggrieved having no other remedy, but to file instant service appeal on the grounds inter-alia as under:

GROUNDS

A. That the in action and action of the respondents by not absorbing/adjusting the appellant in the Establishment Department 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 appellant is fully entitled to be absorbed/adjusted in the Establishment Department against his receptive post under the principal of parity in light of consolidated judgment dated 14/01/2024 of this Honourable Tribunal.

D. That the action of the respondents is arbitrary and based on clear malafide by not absorbing/adjusting the appellant in the Establishment Department.

E. That as all the FATA secretariat employees have been adjusted in the respective Departments, therefore the appellant is also entitled for adjustment/absorption in the Establishment Department.

F. That till date neither the appellant and his colleagues have been adjusted in the Secretariat Group nor they have been adjusted in the Establishment Department which affects the basic rights of seniority and promotion.

G. 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: -09-2024

Reedad Khan
APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN

&

KHANZADA GUL
ADVOCATES 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. Reedad Khan, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

Reedad Khan
DEPONENT

"A" -4-

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

FATA TRIBUNAL

ORDER

No. R/11/2018-19/ 1129 dated: 04.04.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Mr. Reedad S/o Gul Dad Khan against the vacant post of Chowkidar BPS-01 (9130-290-17830) 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-01 including usual allowances as admissible under the rules. He v 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 gratuity, he shall be entitled to receive such amount as would be contributed by him towards Gen Provident Fund (GPF) along with the contributions made by Govt: to his account in the said fund prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before jo 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 o order.

REGISTRAR
FATA TRIBUNA

Copy to;

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

REGISTRAR
FATA TRIBUNA

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No.774/2022

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

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

.....***Appellant***

Versus

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

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

Service Appeal No.775/2022

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

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

.....***Appellant***

Versus

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

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

Service Appeal No.776/2022

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

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

.....***Appellant***

Versus

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

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

Service Appeal No.777/2022

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

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

.....***Appellant***

Versus

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

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

Service Appeal No.778/2022

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

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

.....*Appellant*

Versus

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

.....(*Respondents*)

Service Appeal No.779/2022

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

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

.....*Appellant*

Versus

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

.....(*Respondents*)

Service Appeal No.780/2022

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

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

.....*Appellant*

Versus

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

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***)

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.

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

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

.....*Appellant*

Versus

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

.....(*Respondents*)

Service Appeal No.811/2022

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

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

.....*Appellant*

Versus

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

.....(*Respondents*)

Service Appeal No.812/2022

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

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

.....*Appellant*

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.

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.

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

Service Appeal No.815/2022

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

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

.....***Appellant***

Versus

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

Service Appeal No.816/2022

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

Mr. Khair Ul Bashar S/O Sahib Din R/O PO Shah Qabool Awliya House No. 2938, Mohallah Dabgari Bazar 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.

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

Service Appeal No.817/2022

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

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

.....***Appellant***

Versus

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

Service Appeal No.818/2022

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

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

.....***Appellant***

Versus

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

Present:

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

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

Muhammad Riaz Khan Paindakhel,
Assistant Advocate 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.

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 l*
> *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

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

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

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 appellantshad 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,

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

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

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*

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

> *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 on1996 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*

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

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

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

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

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

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

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

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

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,

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

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

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

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

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

KALIM ARSHAD KHAN
Chairman

ROZINA REHMAN
Member (Judicial)

"C" -28-

(TO BE SUBSTITUTED WITH EVEN NUMBER AND DATE)

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

091-9211101 091-9210201

Dated Peshawar the May 15, 2023

ORDER

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

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

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

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

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

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

Endst: No. & Date even

Home Secretary

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)

S#:1

P Sec:006 Month:January 2024
PR8073 -EX-FATA TRIBUNAL MERGED AR
FCR TRIBUNAL MERGED AREAS

Pers #: 50508866 Buckle:
Name: REEDAD KHAN
CHOWKIDAR
CNIC No.1730140760321
GPF Interest Applied
03 Active Temporary

NTN:
GPF #:
Old #:

PR8073

PAYS AND ALLOWANCES:

0001-Basic Pay	17,160.00
1004-House Rent Allow 45% MP21	3,542.00
1210-Convey Allowance 2005	1,795.00
1300-Medical Allowance	1,500.00
2311-Dress Allowance - 2021	1,000.00
2312-Washing Allowance-2021	1,000.00
2313-Integrated Allowance 2021	600.00
2341-Disps. Red All 15% 2022KP	1,559.00
2348-Adhoc Rel Al 15%22(seven)	1,442.00
Gross Pay and Allowances	891,110.00

DEDUCTIONS:

IT Payable	0.00	Deducted	13,129.00	TAX:(3609) 13,129.00
GPF Balance	2,310.00			Subrc: 770.00
3501-Benevolent Fund				600.00
3534-R. Ben & Death Comp Fresh				300.00

Total Deductions 14,799.00

866,311.00

S#:2

P Sec:006 Month:January 2024
PR8073 -EX-FATA TRIBUNAL MERGED AR
FCR TRIBUNAL MERGED AREAS

Pers #: 50508866 Buckle:
Name: REEDAD KHAN
CHOWKIDAR
CNIC No.1730140760321
GPF Interest Applied
03 Active Temporary

NTN:
GPF #:
Old #:

PR8073

PAYS AND ALLOWANCES:

2378-Adhoc Relief All 2023 35%	5,803.00
5002-Adjustment House Rent	77,924.00
5011-Adj Conveyance Allowance	39,270.00
5012-Adjustment Medical All	33,000.00
5026-Adj Dress/Uniform Allowan	22,000.00
5070-Adj Washing Allowance	22,000.00
5127-Adj.Secretariat Perfm All	196,690.00
5151-Adj. Adhoc Rel Allow 2021	6,468.00
5155-Adj. Disp. Red All 2022KP	25,972.00
Gross Pay and Allowances	891,110.00

DEDUCTIONS:

IT Payable	0.00	Deducted	13,129.00	
GPF Balance	2,310.00			Subrc:

Total Deductions 14,799.00

866,311.00

-30-

S#: 1 AG KP Peshawar

P Sec:006 Month:April 2024
PR8073 -EX-FATA TRIBUNAL MERGED
FCR TRIBUNAL MERGED AREAS

Pers #: 50508866 Buckle:
Name: REEDAD KHAN
CHOWKIDAR
CNIC No.1730140760321
GPF Interest Applied
03 Active Temporary

NTN:
GPF #:
Old #:

PR8073

PAYS AND ALLOWANCES:				
0001-Basic Pay				17,160.00
1004-House Rent Allow 45% KP21				3,542.00
1210-Convey Allowance 2005				1,785.00
1300-Medical Allowance				1,500.00
2311-Dress Allowance - 2021				1,000.00
2312-Washing Allowance 2021				1,000.00
2313-Integrated Allowance 2021				600.00
2341-Dispr. Red All 15% 2022KP				1,559.00
2348-Adhoc Rel Al 15%22(newen)				1,442.00
Gross Pay and Allowances				38,641.00
DEDUCTIONS:				
IT Payable	53.74	Deducted 13,238.00	TAX:(3609)	109.00
GPF Balance	4,620.00		Subrc:	770.00
3501-Benevolent Fund				600.00
3534-R. Ben & Death Comp Fresh				300.00

Total Deductions 1,779.00

36,862.00

D.O.B 14.02.1994
05 Years 00 Months 014 Days

LFP Quota: 4
NATIONAL BANK OF PAKKHYBER BAZAR
004157931616

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020

Date of Decision ... 14.01.2022

Hanif Ur Rehman, Assistant (BPS-16), Directorate of Prosecution Khyber Pakhtunkhwa. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through its Chief Secretary at Civil Secretariat Peshawar and others. ... (Respondents)

Syed Yahya Zahid Gillani, Taimur Halder Khan & Ali Gohar Durrani,
Advocates ... For Appellants

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. 1228/2020 titled Zubair Shah
2. 1229/2020 titled Farooq Khan
3. 1230/2020 titled Muhammad Amjid Ayaz
4. 1231/2020 titled Qaiser Khan
5. 1232/2020 titled Ashiq Hussain
6. 1233/2020 titled Shoukat Khan
7. 1244/2020 titled Haseeb Zeb

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8. 1245/2020 titled Muhammad Zahir Shah

9. 11125/2020 titled Zahid Khan

10. 11126/2020 titled Touseef Iqbal

02. Brief facts of the case are that the appellant was initially appointed as Assistant (BPS-11) on contract basis in Ex-FATA Secretariat vide order dated 01-12-2004. His services were regularized by the order of Peshawar High Court vide judgment dated 07-11-2013 with effect from 01-07-2008 in compliance with cabinet decision dated 29-08-2008. Regularization of the appellant was delayed by the respondents for quite longer and in the meanwhile, in the wake of merger of Ex-FATA with the Province, the appellant alongwith others were declared surplus vide order dated 25-06-2019. Feeling aggrieved, the appellant alongwith others filed writ petition No 3704-P/2019 in Peshawar High Court, but in the meanwhile the appellant alongwith others were adjusted in various directorates, hence the High Court vide judgment dated 05-12-2019 declared the petition as infructuous, which was challenged by the appellants in the supreme court of Pakistan and the supreme court remanded their case to this Tribunal vide order dated 04-08-2020 in CP No. 881/2020. Prayers of the appellants are that the impugned order dated 25-06-2019 may be set aside and the appellants may be retained/adjusted against the secretariat cadre borne at the strength of Establishment & Administration Department of Civil Secretariat. Similarly seniority/promotion may also be given to the appellants since the inception of their employment in the government department with back benefits as per judgment titled Tikka Khan & others Vs Syed Muzafar Hussain Shah & others (2018 SCMR 332) as well as in the light of judgment of larger bench of high court in Writ Petition No. 696/2010 dated 07-11-2013.

03. Learned counsel for the appellants has contended that the appellants has not been treated in accordance with law, hence their rights secured under the Constitution has badly been violated; that the impugned order has not been

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passed in accordance with law, therefore is not tenable and liable to be set aside; that the appellants were appointed in Ex-FATA Secretariat on contract basis vide order dated 01-12-2004 and in compliance with Federal Government decision dated 29-08-2008 and in pursuance of judgment of Peshawar High Court dated 07-11-2013, their services were regularized with effect from 01-07-2008 and the appellants were placed at the strength of Administration Department of Ex-FATA Secretariat; that the appellants were discriminated to the effect that they were placed in surplus pool vide order dated 25-06-2019, whereas services of similarly placed employees of all the departments were transferred to their respective departments in Provincial Government; that placing the appellants in surplus pool was not only illegal but contrary to the surplus pool policy, as the appellants never opted to be placed in surplus pool as per section-5 (a) of the Surplus Pool Policy of 2001 as amended in 2006 as well as the unwillingness of the appellants is also clear from the respondents letter dated 22-03-2019; that by doing so, the mature service of almost fifteen years may spoil and go in waste; that the illegal and untoward act of the respondents is also evident from the notification dated 08-01-2019, where the erstwhile FATA Secretariat departments and directorates have been shifted and placed under the administrative control of Khyber Pakhtunkhwa Government Departments, whereas the appellants were declared surplus; that billion of rupees have been granted by the Federal Government for merged/erstwhile FATA Secretariat departments but unfortunately despite having same cadre of posts at civil secretariat, the respondents have carried out the unjustifiable, illegal and unlawful impugned order dated 25-06-2019, which is not only the violation of the Apex Court judgment; but the same will also violate the fundamental rights of the appellants being enshrined in the Constitution of Pakistan, will seriously affect the promotion/seniority of the appellants; that discriminatory approach of the respondents is evident from the notification dated 22-03-2019, whereby other employees of Ex-FATA were not placed in surplus pool but Ex-FATA Planning Cell of P&D was placed and merged into Provincial

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P&D Department; that declaring the appellants surplus and subsequently their adjustment in various departments/directorates are illegal, which however were required to be placed at the strength of Establishment & Administration department; that as per judgment of the High Court, seniority/promotions of the appellants are required to be dealt with in accordance with the judgment titled Tikka Khan Vs Syed Muzafar (2018 SCMR 332), but the respondents deliberately and with malafide declared them surplus, which is detrimental to the interests of the appellants in terms of monitory loss as well as seniority/promotion, hence interference of this tribunal would be warranted in case of the appellants.

04. Learned Additional Advocate General for the respondents has contended that the appellants has been treated at par with the law in vogue i.e. under section-11(A) of the Civil Servant Act, 1973 and the surplus pool policy of the provincial government framed thereunder; that proviso under Para-6 of the surplus pool policy states that in case the officer/officials declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall loose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from government service provided that if he does not fulfill the requisite qualifying service for pre-mature retirement, he may be compulsory retired from service by the competent authority, however in the instant case, no affidavit is forthcoming to the effect that the appellant refused to be absorbed/adjusted under the surplus pool policy of the government; that the appellants were ministerial staff of ex-FATA Secretariat, therefore they were treated under section-11(a) of the Civil Servant Act, 1973; that so far as the issue of inclusion of posts in BPS-17 and above of erstwhile agency planning cells, P&D Department merged areas secretariat is concerned, they were planning cadre employees, hence they were adjusted in the relevant cadre of the provincial government; that after merger of erstwhile FATA with the Province, the Finance Department vide

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order dated 21-11-2019 and 11-06-2020 created posts in the administrative departments in pursuance of request of establishment department, which were not meant for blue eyed persons as is alleged in the appeal; that the appellants has been treated in accordance with law, hence their appeals being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Before embarking upon the issue in hand, it would be appropriate to explain the background of the case. Record reveals that in 2003, the federal government created 157 regular posts for the erstwhile FATA Secretariat, against which 117 employees including the appellants were appointed on contract basis in 2004 after fulfilling all the codal formalities. Contract of such employees was renewed from time to time by issuing office orders and to this effect; the final extension was accorded for a further period of one year with effect from 03-12-2009. In the meanwhile, the federal government decided and issued instructions dated 29-08-2008 that all those employees working on contract against the posts from BPS-1 to 15 shall be regularized and decision of cabinet would be applicable to contract employees working in ex-FATA Secretariat through SAFRON Division for regularization of contract appointments in respect of contract employees working in FATA. In pursuance of the directives, the appellants submitted applications for regularization of their appointments as per cabinet decision, but such employees were not regularized under the pleas that vide notification dated 21-10-2008 and in terms of the centrally administered tribal areas (employees status order 1972 President Oder No. 13 of 1972), the employees working in FATA, shall, from the appointed day, be the employees of the provincial government on deputation to the Federal Government without deputation allowance, hence they are not entitled to be regularized under the policy decision dated 29-08-2008.

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declared all the 117 employees including the appellants as surplus vide order dated 25-06-2019, against which the appellants filed Writ Petition No. 3704-P/2019 for declaring the impugned order as set aside and retaining the appellants in the Civil Secretariat of establishment and administration department having the similar cadre of post of the rest of the civil secretariat employees.

08. During the course of hearing, the respondents produced copies of notifications dated 19-07-2019 and 22-07-2019 that such employees had been adjusted/absorbed in various departments. The High Court vide judgment dated 05-12-2019 observed that after their absorption , now they are regular employees of the provincial government and would be treated as such for all intent and purposes including their seniority and so far as their other grievance regarding their retention in civil secretariat is concerned, being civil servants, it would involve deeper appreciation of the vires of the policy, which have not been impugned in the writ petition and in case the appellants still feel aggrieved regarding any matter that could not be legally within the framework of the said policy, they would be legally bound by the terms and conditions of service and in view of bar contained in Article 212 of the Constitution, this court could not embark upon to entertain the same. Needless to mention and we expect that keeping in view the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly, hence the petition was declared as infructuous and was dismissed as such. Against the judgment of High Court, the appellants filed CPLA No 881/2020 in the Supreme Court of Pakistan, which was disposed of vide judgment dated 04-08-2020 on the terms that the petitioners should approach the service tribunal, as the issue being terms and condition of their service, does fall within the jurisdiction of service tribunal, hence the appellant filed the instant service appeal.

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09. Main concern of the appellants in the instant service appeal is that in the first place, declaring them surplus is illegal, as they were serving against regular posts in administration department Ex-FATA, hence their services were required to be transferred to Establishment & Administration Department of the provincial government like other departments of Ex-FATA were merged in their respective department. Their second stance is that by declaring them surplus and their subsequent adjustment in directorates affected them in monitory terms as well as their seniority/promotion also affected being placed at the bottom of the seniority line.

10. In view of the foregoing explanation, in the first place, it would be appropriate to count the discriminatory behaviors of the respondents with the appellants, due to which the appellants spent almost twelve years in protracted litigation right from 2008 till date. The appellants were appointed on contract basis after fulfilling all the codal formalities by FATA Secretariat, administration wing but their services were not regularized, whereas similarly appointed persons by the same office with the same terms and conditions vide appointments orders dated 08-10-2004, were regularized vide order dated 04-04-2009. Similarly a batch of another 23 persons appointed on contract were regularized vide order dated 04-09-2009 and still a batch of another 28 persons were regularized vide order dated 17-03-2009; hence the appellants were discriminated in regularization of their services without any valid reason. In order to regularize their services, the appellants repeatedly requested the respondents to consider them at par with those, who were regularized and finally they submitted applications for implementation of the decision dated 29-08-2008 of the federal government, where by all those employees working in FATA on contract were ordered to be regularized, but their requests were declined under the plea that by virtue of presidential order as discussed above, they are employees of provincial government and only on deputation to FATA but without deputation allowance,

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hence they cannot be regularized, the fact however remains that they were not employee of provincial government and were appointed by administration department of Ex-FATA Secretariat, but due to malafide of the respondents, they were repeatedly refused regularization, which however was not warranted. In the meanwhile, the provincial government promulgated Regularization Act, 2009, by virtue of which all the contract employees were regularized, but the appellant were again refused regularization, but with no plausible reason, hence they were again discriminated and compelling them to file Writ Petition in Peshawar High Court, which was allowed vide judgment dated 30-11-2011 without any debate, as the respondents had already declared them as provincial employees and there was no reason whatsoever to refuse such regularization, but the respondent instead of their regularization, filed CPLA in the Supreme Court of Pakistan against such decision, which again was an act of discrimination and malafide, where the respondents had taken a plea that the High Court had allowed regularization under the regularization Act, 2009 but did not discuss their regularization under the policy of Federal Government laid down in the office memorandum issued by the cabinet secretary on 29-08-2008 directing the regularization of services of contractual employees working in FATA, hence the Supreme Court remanded their case to High Court to examine this aspect as well. A three member bench of High Court heard the arguments, where the respondents took a U turn and agreed to the point that the appellants had been discriminated and they will be regularized but sought time for creation of posts and to draw service structure for these and other employees to regulate their permanent employment. The three member bench of the High Court had taken a serious view of the unessential technicalities to block the way of the appellants, who too are entitled to the same relief and advised the respondents that the petitioners are suffering and are in trouble besides mental agony, hence such regularization was allowed on the basis of Federal Government decision dated 29-08-2008 and the appellants were declared as civil servants of the FATA

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Secretariat and not of the provincial government. In a manner, the appellants were wrongly refused their right of regularization under the Federal Government Policy, which was conceded by the respondents before three member's bench, but the appellants suffered for years for a single wrong refusal of the respondents, who put the matter on the back burner and on the ground of sheer technicalities thwarted the process despite the repeated direction of the federal government as well as of the judgment of the courts. Finally, Services of the appellants were very unwillingly regularized in 2014 with effect from 2008 and that too after contempt of court proceedings. Judgment of the three member bench is very clear and by virtue of such judgment, the respondents were required to regularize them in the first place and to own them as their own employees borne on the strength of establishment and administration department of FATA Secretariat, but step-motherly behavior of the respondents continued unabated, as neither posts were created for them nor service rules were framed for them as were committed by the respondents before the High Court and such commitments are part of the judgment dated 07-11-2013 of Peshawar High Court. In the wake of 25th Constitutional amendments and upon merger of FATA Secretariat into Provincial Secretariat, all the departments' alongwith staff were merged into provincial departments. Placed on record is notification dated 08-01-2019, where P&D Department of FATA Secretariat was handed over to provincial P&D Department and law & order department merged into Home Department vide notification dated 16-01-2019, Finance department merged into provincial Finance department vide notification dated 24-01-2019, education department vide order dated 24-01-2019 and similarly all other department like Zakat & Usher Department, Population Welfare Department, Industries, Technical Education, Minerals, Road & Infrastructure, Agriculture, Forests, Irrigation, Sports, FDMA and others were merged into respective Provincial Departments, but the appellants being employees of the administration department of ex-FATA were not merged into Provincial Establishment & Administration Department, rather they were

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declared surplus, which was discriminatory and based on malafide, as there was no reason for declaring the appellants as surplus, as total strength of FATA Secretariat from BPS-1 to 21 were 56983 of the civil administration against which employees of provincial government, defunct FATA DC, employees appointed by FATA Secretariat, line directorates and autonomous bodies etc were included, amongst which the number of 117 employees including the appellants were granted amount of Rs. 25505.00 million for smooth transition of the employees as well as departments to provincial departments and to this effect a summery was submitted by the provincial government to the Federal Government, which was accepted and vide notification dated 09-04-2019, provincial government was asked to ensure payment of salaries and other obligatory expenses, including terminal benefits as well of the employees against the regular sanctioned 56983 posts of the administrative departments/attached directorates/field formations of erstwhile FATA, which shows that the appellants were also working against sanctioned posts and they were required to be smoothly merged with the establishment and administration department of provincial government, but to their utter dismay, they were declared as surplus inspite of the fact that they were posted against sanctioned posts and declaring them surplus, was no more than malafide of the respondents. Another discriminatory behavior of the respondents can be seen, when a total of 235 posts were created vide order dated 11-06-2020 in administrative departments i.e. Finance, home, Local Government, Health, Environment, Information, Agriculture, Irrigation, Mineral and Education Departments for adjustment of the staff of the respective departments of ex-FATA, but here again the appellants were discriminated and no post was created for them in Establishment & Administration Department and they were declared surplus and later on were adjusted in various directorates, which was detrimental to their rights in terms of monetary benefits, as the allowances admissible to them in their new places of adjustment were less than the one admissible in civil secretariat. Moreover, their seniority was also affected

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as they were placed at the bottom of seniority and their promotions, as the appellant appointed as Assistant is still working as Assistant in 2022, are the factors, which cannot be ignored and which shows that injustice has been done to the appellants. Needless to mention that the respondents failed to appreciate that the Surplus Pool Policy-2001 did not apply to the appellants since the same was specifically made and meant for dealing with the transition of district system and resultant re-structuring of governmental offices under the devolution of powers from provincial to local governments as such, the appellants service in erstwhile FATA Secretariat (now merged area secretariat) had no nexus whatsoever with the same, as neither any department was abolished nor any post, hence the surplus pool policy applied on them was totally illegal. Moreover the concerned learned counsel for the appellants had added to their miseries by contesting their cases in wrong forums and to this effect, the supreme court of Pakistan in their case in civil petition No. 881/2020 had also noticed that the petitioners being pursuing their remedy before the wrong forum, had wasted much of their time and the service Tribunal shall justly and sympathetically consider the question of delay in accordance with law. To this effect we feel that the delay occurred due to wastage of time before wrong forums, but the appellants continuously contested their case without any break for getting justice. We feel that their case was already spoiled by the respondents due to sheer technicalities and without touching merit of the case. The apex court is very clear on the point of limitation that cases should be considered on merit and mere technicalities including limitation shall not debar the appellants from the rights accrued to them. In the instant case, the appellants has a strong case on merit, hence we are inclined to condone the delay occurred due to the reason mentioned above.

11. We are of the considered opinion that the appellants has not been treated in accordance with law, as they were employees of administration department of the ex-FATA and such stance was accepted by the respondents in their comment

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submitted to the High Court and the High Court vide judgment dated 07-11-2013 declared them civil servants and employees of administration department of ex-FATA Secretariat and regularized their services against sanctioned posts, despite they were declared surplus. They were discriminated by not transferring their services to the establishment and administration department of provincial government on the analogy of other employees transferred to their respective departments in provincial government and in case of non-availability of post, Finance department was required to create posts in Establishment & Administration Department on the analogy of creation of posts in other Administrative Departments as the Federal Government had granted amount of Rs. 25505 million for a total strength of 56983 posts including the posts of the appellants and declaring them surplus was unlawful and based on malafide and on this score alone the impugned order is liable to be set aside. The correct course would have been to create the same number of vacancies in their respective department i.e. Establishment & Administrative Department and to post them in their own department and issues of their seniority/promotion was required to be settled in accordance with the prevailing law and rule.

12. We have observed that grave injustice has been meted out to the appellants in the sense that after contesting for longer for their regularization and finally after getting regularized, they were still deprived of the service structure/rules and creation of posts despite the repeated directions of the three member bench of Peshawar High Court in its judgment dated 07-11-2013 passed in Writ Petition No. 969/2010. The same directions has still not been implemented and the matter was made worse when impugned order of placing them in surplus pool was passed, which directly affected their seniority and the future career of the appellants after putting in 18 years of service and half of their service has already been wasted in litigation.

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13. In view of the foregoing discussion, the instant appeal alongwith connected service appeals are accepted. The impugned order dated 25-06-2019 is set aside with direction to the respondents to adjust the appellants in their respective department i.e. Establishment & Administration Department Khyber Pakhtunkhwa against their respective posts and in case of non-availability of posts, the same shall be created for the appellants on the same manner, as were created for other Administrative Departments vide Finance Department notification dated 11-06-2020. Upon their adjustment in their respective department, they are held entitled to all consequential benefits. The issue of their seniority/promotion shall be dealt with in accordance with the provisions contained in Civil Servant Act, 1973 and Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989, particularly Section-17(3) of Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989. Needless to mention and is expected that in view of the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 18/04/22
Number of Words 5600
Copying Fee 56/-
Urgent 56/-
Total 62/-
Name of Copyist
Date of Completion of Copy 18/04/22
Date of Delivery of Copy 18/04/22

1985-P
30-03-2023

-45-

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

29/05

Subject:- ***DEPARTMENTAL APPEAL AGAINST FOR ABSORPTION/ADJUSTMENT OF THE APPELLANT IN THE ESTABLISHMENT DEPARTMENT***

Respected Sir!

1. That the appellant was initially appointed as Chokidar in the erstwhile FATA Tribunal vide order dated 08-03-2019.

2. That after 25th amendment when FATA was merged in the Province of Khyber Pakhtunkhwa, the services of the appellant was handed over to the Home Department of the Provincial Government of Khyber Pakhtunkhwa instead of handing over to Establishment Department like other FATA secretariat employees.

3. That unfortunately the Secretary Home Department instead of adjustment of the appellant in the secretariat group imposed major penalty of removal from service on the allegation that the appellant himself appointed against the ibid post in violation of rules and policy vide order dated 17/01/2022.

4. That feeling aggrieved the appellant knocked the door of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No 774/2022 and the august Services Tribunal allowed the service appeal of the appellant and reinstated the appellant in to service with all back benefits vide judgment dated 03/03/2023.

5. In response the Secretary Home Department implemented the judgment of the Service Tribunal by reinstating the appellant into service with all back benefits.

6. That after reinstatement in service the appellant was allowed/ granted Secretariat allowance by receiving Rs. 196690/- as arrear of secretariat allowance but unfortunately during the next month the said allowance was dis-continued to the appellant without assigning any reason and rhyme.

7. That as all the employees of FATA Secretariat were absorbed in the Khyber Pakhtunkhwa Secretariat as employee of the Establishment Department, therefore, the appellant being employee of the FATA Tribunal is also entitle to absorption/ adjustment as Secretariat employees i.e. employee of the Establishment Department.

8. That recently vide a consolidated judgment of the Khyber Pakhtunkhwa Service Tribunal dated 14/01/2022 the Khyber Pakhtunkhwa Service Tribunal allowed the Service Appeal of the erstwhile FATA Secretariat employees by directing the Establishment Department to absorb them in the secretariat group of Khyber Pakhtunkhwa i.e. Establishment Department.

9. That in light of the ibid judgment the Establishment Department whereby all the employees of the FATA Secretariat were absorbed/adjusted in the Establishment Department, therefore, the appellant being employee of the Erstwhile FATA Tribunal is also deserve to be adjusted/absorbed in the Establishment Department/Secretariat group against their respective posts.

Forgoing in view, it is humbly requested that the appellant may kindly be adjusted /absorbed in the Establishment Department, Civil Secretariat and on the analogy of similarly placed person as per judgments of august Khyber Pakhtunkhwa Service Tribunal Peshawar dated 14.1.2022.

Reedad Khan
(Chokidar BPS-03)
Reedad Khan

Dated:- 29 / 05 /2024

APPELLANT

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA
SERVICETRIBUNAL,PESHAWAR.

APPEAL NO: _____ OF 2024

Reedad Khan (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt (RESPONDENT)
(DEFENDANT)

I/We Reedad 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

Reedad Khan
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

WALEED ADNAN

UMAR FAROOQ MOHMAND

KHANZAD GUL

&

MUJEEB UR REHMAN
ADVOCATES

OFFICE:
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(0311-9314232)