FORM OF ORDER SHEET

Court of _____

Appeal No. 1507/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/09/2024	The appeal of Mr. Majid Anwar resubmitted today by Mr. Ali Gohar Durrani Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 30.09.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman REGISTRAR

The appeal of Mr. Majid Anwar received today i.e on 04.09.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of departmental appeal is not attached with the appeal be placed on it.
2- In order dated 25.6.2019 the name of the appellant be highlighted.

No. 735 /Inst./2024/KPST,

Dt. 12/9 /2024.

OFFICE ASSISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Ali Gohar Durrani Adv.
High Court Peshawar.

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1507/2024

Majid Anwar Versus The Government of Khyber Pakhtunkhwa and others

I N D E X

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Appellant

Through,

(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427

(1)

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1507/2024

Majid Anwar, Sweeper (BPS-1), Establishment & Administration Department Civil Secretariat, Peshawar.

(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of Khyber Pakhtunkhwathrough Secretary Establishment, Establishment & Administration Department Civil Secretariat, Peshawar.
3. The Government of Khyber Pakhtunkhwathrough Secretary Finance, Finance Department, Civil Secretariat Peshawar.
4. The Government of Khyber Pakhtunkhwathrough Additional Chief Secretary Merged Areas, Office at Warsak Road, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR ADJUSTMENT/PLACEMENT W.E.F. 01.07.2019 OF THE APPELLANT IN HIS RESPECTIVE DEPARTMENT AND TO GIVE EFFECT & IMPLEMENT THE JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED 14-01-2022.

Respectfully Sheweth.

That the appellant earnestly submits as under:

1. That the Appellant is a law-abiding citizen of Pakistan and also hails from a respectable family. Thatthe appellant was appointed as a Sweeper (BPS-1), against the vacant post vide notification dated 21-10-2016.

Copy of appointment order is Annexure-A.

2. That along with the appellant a total number of 117 employeesappointed by erstwhile FATA Secretariat were declared as surplus and placed them in surplus pool of Establishment & Administration Department vide order dated 25-06-2019, and for their further adjustment/placement w.e.f.01-07-2019by virtue of which the civil servants were adjusted in the Surplus pool of Establishment Department and Administration Department.
Copy of Notification dated 25-06-2019 is Annexure-B.

3. That an appeal was filed in this regard, before the Honourable Service Tribunal and the same was heard on 14-01-2022. The said appeal was accepted, and subsequently, the impugned notification dated 25-06-2019 was set-aside, and directions were given to respondent i.e. the concerned authorities, to adjust the appellants to their respective departments.
Copy of the Service Appeal No. 1227/2020is Annex-C.

4. That along with the aforementioned directions, the Honourable Service Tribunal rendered that upon adjustment to their respective department, the appellants would be entitled to all consequential benefits. Moreover, that the issue of seniority/promotion would be dealt with accordance with the provisions contained in Civil Servants (Appointment, Promotion and Transfer) Rules 1989, and in the view of the ratio as contained in the judgment titled Tikka Kahn & other vs Syed Muzafar Hussain Shah & others (2018 SCMR 332), the seniority would be determined accordingly.

5. That the Honourable Tribunal rendered its judgment dated 14-01-2022, the appellant sought the implementation of the judgment in his respect also, but to no avail.
Copy of the judgment dated 14-01-2022 has been Annex-D.

6. That the judgment being in rem, and not personam, the Appellant approach this tribunal for seeking implementation of the judgment directly in Execution Petition. The Execution Petition for implementation of the judgment dated 14.01.2021was disposed off vide judgment dated 09.07.2024 by this Honourable Tribunal wherein the appellant was allowed to file a service appeal for the redressal of his grievance as he was not a party to the Appeal No. 1227/2020 dated 14.01.2022.
Copy of the Execution Petition and Order dated 09.07.2024 are Annexures - E & F.

7. Now the appellant approaches this Tribunal on the following grounds amongst others.

Grounds:

a. Because the impugned notifications are based on discrimination as is clearly laid out in the facts above.

b. That the judgment dated 14-01-2022 rendered by the Honourable Service Tribunal is also applicable on those civil servants who were not a part of the said appeal, because *judgments of the Honourable Service should be treated as judgments in rem, and not in personam, when they settle a point of law in respect of the same set of civil servants.* Reference can be given to the relevant portion of judgment cited 2023 SCMR 8, produced herein below:

> *"The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos. 1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum."*

c. That the judgment dated 14-01-2022 rendered by the Honourable Service Tribunal is also applicable on those civil servants who were not a part of the said appeal, because *judgments of the Honourable Service should be treated as judgments in rem, and not in personam.* Reference can be given to the relevant portion of judgment cited 2023 SCMR 8, produced herein below:

> *"The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos. 1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the*

Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum."

d. That the applicant is relying upon judgment cited 2023 SCMR 8, whereby, the essence of Article 212 of the Constitution of Pakistan, 1973, was fulfilled, by observing that any question of law decided by the Service Tribunal shall be treated as Judgment in rem, and not in personam. In order, to give force to the judgment of the Supreme Court, the applicant may also be subjected to the judgment rendered by the Honourable Service Tribunal.

e. Because blatant discrimination has been committed in the adjustment of the appellant as compared to other similarly placed employees of erstwhile FATA Secretariat have been adjusted in different departments of Khyber Pakhtunkhwa Civil Secretariat.

f. Because the Appellant has been treated illegally, unlawfully and against the spirit of the law.

g. Because the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, and lie with this Honorable Tribunal.

h. Because the right to due process as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is being made redundant in the instant case against the Appellant. The right is absolute and cannot be done away with and it needs to be taken as liberally as possible as per the dictum laid by the Honorable Supreme Court in PLD 2022 SC 497.

> "Incorporation of the right to a fair trial and due process by Article 10-A in the Constitution as an independent fundamental right underscores the constitutional significance of fair trial and due process and like other fundamental rights, it is to receive a liberal and progressive interpretation and enforcement."

i. Because the Honorable Supreme Court of Pakistan in the recent judgment in Justice Qazi Faez Isa case has held in unequivocal terms that even the highest of offices are not to be denied the fundamental rights so guaranteed by the Constitution. The judgment is reported as PLD 2022 SC 119 and lay as under:

> "Right to be dealt with in accordance with law. No one, including a Judge of the highest court in the land, is above the law, At the same time, no one, including a Judge of the highest court in the land, can be denied his right to be dealt with in accordance with law; it matters little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law."

The judgment referred to above further lay clear that the principles of natural justice are to be met in every circumstance in the following terms:

> "After recognition of the right to fair trial and due process as a fundamental right by insertion of Art. 10A in the Constitution, violation of the principles of natural justice, which are the necessary components of the right to fair trial and due process, is now to be taken as a violation of the said fundamental right as well."

These principles are time and again reiterated by the Honorable Supreme Court and have been recently held of immense value in PLD 2021 SC 600 in the following words:

> "Constitutional guarantee of the right to be dealt with in accordance with law, under Art. 4 of the Constitution, is available not only to every citizen of the country but also to every other person for the time being within Pakistan, Said constitutional guarantee cannot be curtailed or limited in the case or matter of any person whosoever he may be and whatever the allegations against him may be."

j. Because the actions on part of the respondents seriously are in the negation of the Constitution of the Islamic Republic of Pakistan, 1973 and the Civil Servants Act.

k. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the Constitution the terms and conditions of service of the Appellant and this Honorable Court being the custodian of the Fundamental Rights of citizens of Pakistan, as well as the protection afforded by the Constitution of Islamic Republic of Pakistan 1973, is why the Appellant seeks the redress of their grievances and to end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.

l. Because the Appellant has got the fundamental right of being treated in accordance with law but the treatment meted out to the Appellant is on consideration other than legal and he has been deprived of his rights duly guaranteed to him by the constitution of Pakistan.

m. Because the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the Law are badly violated.

n. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Tribunal highlighting further contraventions of the provisions of the Constitution & Laws which adversely affected the Appellant.

Prayer:

It is, therefore, most humbly prayed that on the acceptance of this appeal, this Honorable Tribunal may so kindly declare that the notification whereby the appellant was declared to be in the surplus pool, and which has already been set-aside by this Honorable Tribunal, vide its judgment dated 14.01.2022 in Service Appeal No. 1227/2022 titled Hanif Ur Rehmanvs. Government of Khyber Pakhtunkhwa through Chief Secretary, be also declared illegal to the extent of the Appellant and the appellant may so kindly be adjusted/placedin his respective department W.E.F 01-07-2019.

Any other relief that this Honorable Tribunal may deem fit and appropriate may also be granted.

MATIQ

Appellant

Through,

(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427
khancliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

(7

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No._____/2024

Majid Anwar, Sweeper (BPS-1), Establishment & Administration Department Civil Secretariat, Peshawar.

(Appellant)

Versus

The Government of Khyber Pakhtunkhwa and others

(Respondents)

AFFIDAVIT Of,

I, Majid Anwar, Sweeper (BPS-1), Establishment & Administration Department Civil Secretariat, Peshawar, do hereby solemnly declare and affirm on oath:-

I am personally conversant with the facts and circumstances of the case as contained therein and the facts and circumstances mentioned in the enclosed writ petition are true and correct to the best of my knowledge and belief.

Deponent Majid
CNIC# 17301-603857

Identified by:

ALI GOHAR DURRANI
Advocate Supreme Court

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No._____/2024

Majid Anwar, Sweeper (BPS-1), Establishment & Administration Department Civil Secretariat, Peshawar.

(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KPthrough Secretary Establishment, Establishment & Administration Department Civil Secretariat, Peshawar.
3. The Government of KPthrough Secretary Finance, Finance Department, Civil Secretariat Peshawar.
4. The Government of KPthrough Additional Chief Secretary Merged Areas, Office at Warsak Road, Peshawar.

(Respondents)

Appellant

Through,

(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

Annex 'A'

FATA SECRETARIAT

(Administration, Infrastructure & Coordination Department)

APPOINTMENT ORDER.

No. 101-20/EO/ADMN-Vol-II:- Consequent upon the recommendations of the Departmental Selection / Promotion Committee, Mr. Majid Anwar S/O Anwar Maseeh, Gadi Ikhata House No.2 Mohallah Kali Bari Peshawar Cantt. is hereby appointed as Sweeper (BPS-1) (7640-240-14840) against the vacant post with immediate effect on the following terms and conditions. His appointment will be governed under Rule-10 sub rule-2 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

1. He will get pay at the minimum of BS-1 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by the Khyber Pakhtunkhwa Civil Servant Act 1973 and all the laws applicable to the civil servants and rules made there under.
3. He shall produce a Medical Certificate of fitness from Medical Superintendent, Services Hospital Peshawar, before, joining duties in (A,I&C) Department, FATA Secretariat, as required under the rules
4. In case, he wishes to resign at any time, 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.

If the above terms & conditions are acceptable to him, he should report for duty to (A,I&C) Department, FATA Secretariat within 14 days of issuance of this order.

SECRETARY (A,I &C)

No. 101-20/EO/ADMN-Vol-II 13663-730 Dated 21/12/2016

Copy to the;

1. Additional Accountant General PR Sub-Office, Peshawar.
2. Estate Officer/ DDO, FATA Secretariat, Peshawar.
3. Section Officer (B&A) Admn, FATA Secretariat, Peshawar.
4. Section Officer (B&A), FATA Secretariat, Peshawar.
5. PS to Secretary (A,I&C) Department, FATA Secretariat, Peshawar.
6. Bill Clerk (A,I&C) Department, FATA Secretariat.
7. Official concerned.
8. Personal File.

Estate Officer

GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 25th June, 2019

Annexure (')

NOTIFICATION

No. SO(O&M)E&AD/3-18/2019: In pursuance of integration and merger of erstwhile FATA with Khyber Pakhtunkhwa, the Competent Authority is pleased to declare the following 117 employees appointed by erstwhile FATA Secretariat as "Surplus" and place them in the Surplus Pool of Establishment and Administration Department for their further adjustment/placement w.e.f. 01.07.2019:-

Sr.No.	Name of employee	Designation	BPS (Personal)
1.	Ashiq Hussain	Assistant	16
2.	Hanif ur Rehman	Assistant	16
3.	Shaukat Khan	Assistant	16
4.	Zahid Khan	Assistant	16
5.	Qaiser Khan	Assistant	16
6.	Shahid Ali Shah	Computer Operator	16
7.	Farman Khan	Computer Operator	16
8.	Tauseef Iqbal	Computer Operator	16
9.	Waseem	Computer Operator	16
10.	Altaf Hussain	Computer Operator	16
11.	Amir Ali	Computer Operator	16
12.	Rab Nawaz	Computer Operator	16
13.	Kamran	Computer Operator	16
14.	Hafiz Muhammad Amjad	Computer Operator	16
15.	Fazl-ur-Rehman	Computer Operator	16
16.	Rajab Ali Khan	Head Draftsman	13
17.	Bakhtiar Khan	Sub Engineer	11
18.	Hakeem-ud-Din	Draftsman	11
19.	Naseem Khan	Storekeeper	7
20.	Inamullah	Driver	5
21.	Hazrat Gul	Driver	5
22.	Said Ayaz	Driver	5
23.	Abdul Qadir	Driver	5
24.	Shurbat Khan	Driver	5
25.	Iqbal Shah	Driver	5
26.	Muhammad Ali	Driver	5

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27.	Khan Muhammad	Driver	5
28.	Waheedullah Shah	Driver	5
29.	Mustan Shah	Driver	5
30.	Mubashir Alam	Driver	5
31.	Yousaf Hussain	Driver	5
32.	Ihsanullah	Driver	5
33.	Daud Shah	Driver	5
34.	Qismat Wali	Driver	5
35.	Alam Zeb	Driver	5
36.	Shafqatullah	Driver	5
37.	Qismatullah	Driver	5
38.	Wali Khan	Tracer	5
39.	Muhammad Zahir Shah	Tracer	5
40.	Niaz Akhtar	Driver	4
41.	Mena Jan	Driver	4
42.	Zaki ullah	Ill/Qasid	3
43.	Sabir Shah	Naib Qasid	2
44.	Muhammad Hussain	Naib Qasid	2
45.	Zuhair Shah	Naib Qasid	2
46.	Muhammad Sharif	Naib Qasid	2
47.	Dost Ali	Naib Qasid	2
48.	Nishat Khan	Naib Qasid	2
49.	Wadan Shah	Naib Qasid	2
50.	Inamullah	Naib Qasid	2
51.	Maqsood Jan	Naib Qasid	2
52.	Zeeshan	Naib Qasid	2
53.	Arshad Khan	Naib Qasid	2
54.	Ikhlaq Khan	Naib Qasid	2
55.	Saldar Ali Shah	Naib Qasid	2
56.	Kifayatullah	Naib Qasid	2
57.	Hidayatullah	Naib Qasid	2
58.	Khalid Khan	Naib Qasid	2
59.	Shabir Khan	Naib Qasid	2
60.	Saeed Gul	Naib Qasid	2
61.	Zahidullah	Naib Qasid	2
62.	Farhad Gul	Naib Qasid	2
63.	Hameed Khan	Naib Qasid	2
64.	Rashid Khan	Naib Qasid	2
65.	Dost Muhammad	Naib Qasid	2
66.	Sajidullah	Naib Qasid	2
67.	Mukhar ud Din	Naib Qasid	2
68.	Altaf ur Rehman	Chowkidar	1
69.	Muhammad Amir	Chowkidar	2
70.	Yasar Arafat	Chowkidar	2
71.	Zamrud Khan	Chowkidar	2
72.	Kimya Gul	Chowkidar	2
73.	Azizullah	Chowkidar	2

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74.	Zahullah	Chowkidar	2
75.	Safiullah	Chowkidar	2
76.	Inayatullah	Chowkidar	2
77.	Muhammad Abid	Chowkidar	2
78.	Daud Khan	AC Cleaner	2
79.	Muhammad Saleem	AC Cleaner/N/Qasid	2
80.	Fazale Haq	Mali	2
81.	Alamzeb	Mali	2
82.	Nehad Badshah	Mali	2
83.	Niaz Ali	Cook	2
84.	Muhammad Arshad	Cook	2
85.	Roohullah	Khadim Masque	2
86.	Lal Jan	Regulation Beldar	2
87.	Muhammad Arshad	Sweeper	2
88.	Ramish	Sweeper	2
89.	Kiran	Sweeper	2
90.	Majid Anwar	Sweeper	2
91.	Shumail	Sweeper	2
92.	Rohid Maseeh	Sweeper	2
93.	Naeem Munir	Sweeper	2
94.	Pardeep Singh	Sweeper	2
95.	Mukesh	Sweeper	2
96.	Muhammad Naveed	Sweeper	2
97.	Dala Ram	Sweeper	2
98.	Muhammad Nisar	Naib Qasid	1
99.	Said Anwar	Naib Qasid	1
100.	Haseeb Zeb	Naib Qasid	1
101.	Abid	Naib Qasid	1
102.	Wakeel Khan	Naib Qasid	1
103.	Muhammad Amjad Ayaz	Naib Qasid	1
104.	Samiullah	Naib Qasid	1
105.	Habib-ur-Rehman	Naib Qasid	1
106.	Muhammad Shoaib	Naib Qasid	1
107.	Bawar Khan	Naib Qasid	1
108.	Misbahullah	Naib Qasid	1
109.	Muhammad Tanveer	Naib Qasid	1
110.	Waqas Khurshid	Naib Qasid	1
111.	Muhammad Zahir Shah	Naib Qasid	1
112.	Javed Khan	Bera	1
113.	Noor Nabia	Mali	1
114.	Amjad Khan	Mali	1
115.	Jawad Khan	Chowkidar	1
116.	Inam ul haq	Chowkidar	1
117.	Siraj-ud-din		

2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment), Establishment Department has

ATTESTED

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...declared as focal person to properly monitor the whole process of adjustment/ placement of the surplus pool staff.

2. Consequent upon above, all the above surplus staff alongwith their original record of service are directed to report to the Deputy Secretary (Establishment) Establishment Department for further necessary action.

CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA

Endst: No. & Date Even

Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Additional Chief Secretary, Merged Areas Secretariat.
3. Senior Member Board of Revenue.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries, Khyber Pakhtunkhwa.
7. The Accountant General, Khyber Pakhtunkhwa.
8. Secretary (A1&C) Merged Areas Secretariat.
9. Additional Secretary (A1&C) Merged Areas Secretariat with the request to hand over the relevant record of the above staff to the Establishment Department for further necessary action and taking up the case with the Finance Department with regard to financial implications of the staff w.e.f. 01.07.2019.
10. All Divisional Commissioners in Khyber Pakhtunkhwa.
11. All Deputy Commissioners in Khyber Pakhtunkhwa.
12. Director General Information, Khyber Pakhtunkhwa.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. Deputy Secretary (Establishment), Establishment Department for necessary action.
15. Section Officer (E-I), Establishment Department.
16. Section Officer (E-III) Establishment Department for necessary action.
17. Section Officer (E-IV) Establishment Department.
18. PS to Secretary Establishment Department.
19. PS to Special Secretary (Regulation), Establishment Department.
20. PS to Special Secretary (Establishment), Establishment Department.

ATTESTED

(GAUHAR ALI) 25/06/19
SECTION OFFICER (O&M)

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Annex

14

BEFORE THE HON'BLE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 1244 /2020

Khyber Pakhtunkhwa Service Tribunal
Diary No. 10099
Dated 11/9/2020

Haseeb Zob S/o Aurangzeb,
Naib Qasid,
Khyber Pakhtunkhwa Ombudsperson Secretariat,
Room No.212, Benevolent Fund Building,
Peshawar Cantt.....Appellant

VERSUS

1. The Govt of KPK
Through Chief Secretary,
Civil Secretariat, Peshawar.

2. The Govt of KPK
Through Secretary Establishment,
Establishment & Administration Department,
Civil Secretariat, Peshawar.

3. The Govt of KPK
Through Secretary Finance,
Finance Department, Civil Secretariat, Peshawar

4. Government of KPK
Through Additional Chief Secretary Merged Areas,
Office at Warsak Road, Peshawar.....Respondents

Filedto-day
Registrar
11/9/2020

Service appeal u/s 4 of the Services Tribunal Act, 1974 against the impugned Notification No.SO(O&M/E&AD/3-18/2019 dated 25.06.2019 vide which the 117 employees including the appellant appointed by erstwhile FATA Secretariat as "Surplus" and placed them in the Surplus Pool of Establishment & Administration Department for their further adjustment/ placement w.e.f.

01.07.2019. Office Order No.00209/EA dated 23.08.2019 and Office Order No.SOG(SWD)1-60/Staff/2019/1946-55 dated 27.08.2019 vide which the appellant has been adjusted in Ombudsperson Secretariat from the Surplus Pool.

Prayer In Appeal:

On acceptance of this appeal, the impugned Notification dated 25.06.2019, office orders dated 23.08.2019 and 27.08.2019 may please be set aside and consequently the respondents be directed to adjust the appellant in Civil Secretariat of Establishment & Administration Department or Finance Department.

Respectfully Sheweth:

The appellant humbly submits as under:

1. That the appellant was the employee of erstwhile FATA Secretariat and he was serving as Naib Qasid in Administration Department of erstwhile FATA Secretariat.

2. That after merger of FATA into Province of Khyber Pakhtunkhwa, the respondent No.1 vide Notification SO(O&M/E&AD/3-18/2019 dated 25.06.2019, declared 117 employees including appellant as "Surplus" and placed them in the Surplus Pool of E&AD for their further adjustment/ placement w.e.f. 01.07.2019. (Copy of Notification dated 25.06.2019 is Annexure "A").

3. That the respondent No.1 vide Notification No.SO(E-I)/E&AD/9-126/2019 dated 24.01.2019 directed the Finance Department Office working under the erstwhile FATA Secretariat, henceforth report to Secretary Finance Department KPK. (Copy of Notification dated 24.01.2019 is Annexure "B").

4. That the appellant should have been adjusted in Finance Department KPK but was adjusted in Ombudsperson Secretariat from the Surplus Pool vide office order dated 23.08.2019 and 27.08.2019. (Copies of office orders dated 23.08.2019 and 27.08.2019 are Annexure "C" & "D").

5. That it is pertinent to mention here that, the employees of erstwhile FATA Secretariat including appellant impugned the notification dated 25.06.2019 ibid through writ petition No.3704-P of 2019 in the Honourable Peshawar High Court, Peshawar and the Hon'ble Court dismissed the said petition vide order/ judgment dated 05.12.2019. (Copies of writ petition and order/ judgment dated 05.12.2019 are Annexure "E" & "F").

6. That thereafter, the employees of erstwhile FATA Secretariat including the appellant filed CPLA No.881/2020 in the august Supreme Court of Pakistan against the order/ judgment dated 05.12.2019 passed by the Hon'ble Peshawar High Court, Peshawar and the Honourable Apex Court while deciding the CPLA vide order/ judgment dated 04.08.2020 held that the correct forum to adjudicate upon is the Service Tribunal and the petitioner should have approach the competent forum. (Copy of order/ judgment dated 04.08.2020 is Annexure "G").

7. That the appellant being aggrieved from the notifications and orders, files the instant appeal, inter alia, on the following amongst other grounds:

GROUNDS:

A. That the impugned Notification dated 25.06.2019, office orders dated 23.08.2019 and 27.08.2019, are illegal, against facts and law on the subject as well as Surplus Policy.

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B. That the impugned notifications and orders are the sheer violation of law on the subject and the Constitution as well.

C. That the impugned notifications and orders are illegal, unlawful, void and ineffective upon the rights of the appellant.

D. That the impugned notifications and orders are against the principles of natural justice and fundamental rights as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.

E. That in fact, the appellant's case is not of abolition of posts, or service or setup to begin with and the concerned departments and attached department together with the posts continue to exist and have not been abolished.

F. That neither conscious application of mind has been undertaken nor speaking nor reasoned order has been passed and Surplus Pool Policy, 2001 has been senselessly applied to the appellant.

G. That the impugned notifications and orders have been issued/ passed in flagrant violation of the law and the Surplus Pool Policy itself and deserves to be set aside.

H. That the mechanism provided for adjustment and fixation of seniority of the surplus employees in the Surplus Pool Policy, 2001 will deprive the appellant of his seniority and other benefits will render him junior to those who have been appointed much later in time than the appellant.

I. That as there is no service structure and service rules and promotion for the employees of Ombudsperson Secretariat the adjustment of appellant in the said Secretariat will damage the service career and rights of the appellant by

means of discrimination and misapplication of Surplus Pool Policy, 2001.

J. That blatant discrimination has been committed in the adjustment of the appellant as compared to other similarly placed employees of erstwhile FATA Secretariat have been adjusted in different departments of KP Civil Secretariat.

K. That the appellant seeks leave to agitate more grounds at the time of arguments in the instant appeal.

It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned Notification dated 25.06.2019, office orders dated 23.08.2019 and 27.08.2019 may please be set aside and consequently the respondents be directed to adjust the appellant in Civil Secretariat of Establishment & Administration Department or Finance Department.

Any other remedy which deems fit by this Honourable Tribunal may also be granted in favour of the appellant.

Appellant

Through

Syed Yahya Zahid Gilani

Ateeq-ur-Rehman

Syed Murtaza Zahid Gilani
Advocates High Court

Date: 11/09/2020

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BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No._____/2020

~~Muhammad~~ Haseeb Zeb.....Appellant

VERSUS

Govt of KPK and others.....Respondents

AFFIDAVIT

I, Muhammad Haseeb Zeb s/o Aurangzeb, Naib Qasid, Khyber Pakhtunkhwa Ombudsperson Secretariat, Room No.212, Benevolent Fund Building, Peshawar Cantt, do hereby solemnly affirm and declare on oath that the contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

ABDUL RAUF KHAN ADVOCATE OATH COMMISSIONER Peshawar High Court

DEPONENT

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Annex D

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 Haider 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

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

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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07. In 2009, the provincial government promulgated regularization of service Act, 2009 and in pursuance, the appellants approached the additional chief secretary ex-FATA for regularization of their services accordingly, but no action was taken on their requests, hence the appellants filed writ petition No 969/2010 for regularization of their services, which was allowed vide judgment dated 30-11-2011 and services of the appellants were regularized under the regularization Act, 2009, against which the respondents filed civil appeal No 29-P/2013 and the Supreme Court remanded the case to the High Court Peshawar with direction to re-examine the case and the Writ Petition No 969/2010 shall be deemed to be pending. A three member bench of the Peshawar High Court decided the issue vide judgment dated 07-11-2013 in WP No 969/2010 and services of the appellants were regularized and the respondents were given three months time to prepare service structure so as to regulate their permanent employment in ex-FATA Secretariat vis-à-vis their emoluments, promotions, retirement benefits and inter-se-seniority with further directions to create a task force to achieve the objectives highlighted above. The respondents however, delayed their regularization, hence they filed COC No. 178-P/2014 and in compliance, the respondents submitted order dated 13-06-2014, whereby services of the appellants were regularized vide order dated 13-06-2014 with effect from 01-07-2008 as well as a task force committee had been constituted by Ex-FATA Secretariat vide order dated 14-10-2014 for preparation of service structure of such employees and sought time for preparation of service rules. The appellants again filed CM No. 182-P/2016 with IR in COC No 178-P/2014 in WP No 969/2010, where the learned Additional Advocate General alongwith departmental representative produced letter dated 28-10-2016, whereby service rules for the secretariat cadre employees of Ex-FATA Secretariat had been shown to be formulated and had been sent to secretary SAFRAN for approval, hence vide judgment dated 08-09-2016, Secretary SAFRAN was directed to finalize the matter within one month, but the respondents instead of doing the needful,

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.

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 04-09-2009. 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,

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

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

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 Muzaffar 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)

Annex F
(3)

Execution Petition No.715/2023, in Service Appeal No.1227/2020, titled "Waheed Ullah Shah Vs. Government of Khyber Pakhtunkhwa"

ORDER

9th July, 2024 **Kalim Arshad Khan, Chairman:** Learned counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. The matter has been received from the Single Bench of Ms. Fareeha Paul, learned Member (Executive). Special SB of the undersigned (Chairman) was constituted.

3. This application is for implementation of judgment dated 14.01.2022, passed in Service Appeal No.1227/2020 titled "Hanif Ur Rehman Vs. Government of Khyber Pakhtunkhwa" wherein, the petitioner was not party. The learned counsel informed that the petitioner has filed departmental appeal. Since the petitioner has himself simultaneously resorted to the provisions of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, therefore, let him file Service Appeal before this Tribunal. Disposed of. Consign.

4. *Pronounced in open Court at Peshawar under my hand and seal of the Tribunal on this 9th day of July, 2024.*

(Kalim Arshad Khan)
Chairman

*Murazani Shah *

Annexure 'E' (35)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No._____/2023

InService Appeal No. 1227/2020

Decided on: 14. 01. 2022

Majid Anwar S/o Anwar Masih R/o Guddi Ihata, Post Office GPO, House no, 02, Mohallah Kali Bari, Tehsil and District

(PETITIONER)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KPthrough Secretary Establishment, Establishment & Administration Department Civil Secretariat, Peshawar,
3. The Government of KPthrough Secretary Finance, Finance, Finance department at Civil Secretariat Peshawar.
4. The Government of KPthrough Additional Chief Secretary Merged Areas, Office at Warsak Road, Peshawar.

(Respondents)

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EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT THE JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED 14-01-2022, UPON THE EXECUTION PETITIONER.

Respectfully Sheweth.

That the petitioner earnestly craves the permission of the Honorable Service Tribunal to submit as under:

1. THAT the petitioner was appointed as a Sweeper (BPS-1) against the vacant post vide notification dated 21-10-2016.
   Copy of appointment order is Annexure-A.

2. That along with the petitioner a total number of 117 employees appointed by erstwhile FATA Secretariat were declared as surplus and placed them in surplus pool of Establishment & Administrative Department vide order dated 25-06-2019, and for their further adjustment/placement w.e.f 01-07-2019 by virtue of which the civil servants were adjusted in the Surplus pool of Establishment Department and Administration Department.
   Copy of Notification dated 25-06-2019 is Annexure-B

3. That an appeal was filed in this regard, before the Honourable Service Tribunal and the same was heard on 14-01-2022. The said appeal was accepted, and subsequently, the impugned notification dated 25-06-2019 was set-aside, and directions were given to respondent i.e the concerned authorities, to adjust the appellants to their respective departments.
   Copy of the Service Appeal No. 1227/2020is Annex-C

4. That along with the aforementioned directions, the Honourable Service Tribunal rendered that upon adjustment to their respective department, the appellants would be entitled all consequential benefits. Moreover, that the issue of seniority/promotion would be dealt within accordance with the provisions contained in Civil Servants (appointment, promotion and Transfer) Rules 1989, and in the view of the ratio as contained in the judgment titled Tikka Kahn

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& other vs Syed Muzafar Hussain Shah & others (2018 SCMR 332), the seniority would be determined accordingly.

5. That the Honourable Tribunal rendered its judgment dated 14-01-2022, but after the lapse of about three months, the respondent did not implement the judgment dated 14-01-2022 of this Honourable Tribunal.
   Copy of the judgment dated 14-01-2022 has been Annex-D

6. That due to the inaction of the respondents to comply with the directions of the Honourable Service Tribunal, post lapse of 3 months, an execution petition no. 250 of 2022 was filed in this regard, and the same was decided affirmative.

7. That the judgment dated 14-01-2022 rendered by the Honourable Service Tribunal is also applicable on those civil servants who were not a part of the said appeal, because *judgments of the Honourable Service should be treated as judgments in rem, and not in personam.* Reference can be given to the relevant portion of judgment cited 2023 SCMR 8, produced herein below:

"The learned Additional A.G., KPK argued that, in the order of the KP Service Tribunal passed in Appeals Nos. 1452/2019 and 248/2020, reliance was placed on the order passed by the learned Peshawar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the writ petition was not maintainable under Article 212 of the Constitution, hence the reference was immaterial. In this regard, we are of the firm view that if a learned Tribunal decides any question of law by dint of its judgment, the said judgment is always treated as being in rem, and not in personam. If in two judgments delivered in the service appeals the reference of the Peshawar High Court judgment has been cited, it does not act to washout the effect of the judgments rendered in the other service appeals which have the effect of a judgment in rem. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185), this Court, while remanding the case to the Tribunal clearly observed that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may

have not taken any legal proceedings, in such a case, the dictates of justice and rules of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum."

8. That relying upon the judgment of the Honourable Supreme Court, the execution petitioner would also be subject to the judgment dated 14-07-2021 rendered by the Honourable Service Tribunal, since the above mentioned judgment of the Supreme Court would be applicable on all Courts sub-ordinate to it. Reference can be given to Article 189 of the Constitution of Pakistan, 1973, for easy reference, produced herein below:

   "Decisions of Supreme Court binding on other Courts

   189. Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan."

9. That the judgment of the Honourable Service tribunal cited 2023 SCMR 8, whereby, the essence of Article 212 of the Constitution of Pakistan, 1973, was fulfilled, by observing that any question of law decided by the Service Tribunal shall be treated as Judgment in rem, and not in personam. In order, to give force to the judgment of the Supreme Court, the execution petitioner may also be subjected to the judgment rendered by the Honourable Service Tribunal. Reference can be given to Article 190 of the Constitution of Pakistan, 1973, for easy reference, produced herein below:

   "Action in aid of Supreme Court

   190.All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court."

10. That the execution petitioner now approaches this Honorable Tribunal for directions to implement the judgment dated 14.01.2021 in the larger interest of justice and fair play.

Prayer:

It is therefore most humbly prayed that on the acceptance of this petition, may it please this honorable tribunal to so kindly direct the

implementation of judgment dated 14.01.2022 in Service Appeal No 1227/2022 titled Hanif Ur Rehman vs. Government of Khyber Pakhtunkhwa through Chief Secretary on the Execution Petition and any other relief that this Honorable Tribunal may deem appropriate in the circumstances of the case may also be given.

Execution Petitioner

Through

(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khanaliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

(6) 140

BEFORE THE

HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

In Re:

Execution Petition No._____/2023

In Service Appeal No. 1227/2020

Decided on: 14. 01. 2022

Majid Anwar S/o Anwar Masih R/o Guddi Ihata, Post Office GPO, House no. 02, Mohallah Kali Bari, Tehsil and District

(PETITIONER)

Versus

The Government of Khyber Pakhtunkhwa and others

(Respondents)

AFFIDAVIT Of,

I, Majid Anwar S/o Anwar Masih R/o Guddi Ihata, Post Office GPO, House no. 02, Mohallah Kali Bari, Tehsil and District

, do hereby solemnly declare and affirm on oath:-
I am personally conversant with the facts and circumstances of the case as contained therein and the facts and circumstances mentioned in the enclosed writ petition are true and correct to the best of my knowledge and belief.

Deponent

CNIC#

Identified by:

ALI GOHAR DURRANI

Advocate High Court

Annex C "F"

Execution Petition No.715/2023, in Service Appeal No.1227/2020, titled "Waheed Ullah Shah Vs. Government of Khyber Pakhtunkhwa"

ORDER

9th July. 2024 Kalim Arshad Khan, Chairman: Learned counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. The matter has been received from the Single Bench of Ms. Fareeha Paul, learned Member (Executive). Special SB of the undersigned (Chairman) was constituted.

3. This application is for implementation of judgment dated 14.01.2022, passed in Service Appeal No.1227/2020 titled "Hanif Ur Rehman Vs. Government of Khyber Pakhtunkhwa" wherein, the petitioner was not party. The learned counsel informed that the petitioner has filed departmental appeal. Since the petitioner has himself simultaneously resorted to the provisions of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, therefore, let him file Service Appeal before this Tribunal. Disposed of. Consign.

4. *Pronounced in open Court at Peshawar under my hand and seal of the Tribunal on this 9th day of July, 2024.*

(Kalim Arshad Khan)
Chairman

Mutazem Shah

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 11/7/24
Number of Words ----
Copying Fee ----
Urgent ----
Total ----
Name of Copyist 11/7/24
Date of Completion of Copy 24/7/24
Date of Delivery of Copy

To,

The Chief Secretary,

Government of Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL FOR ADJUSTMENT IN CIVIL SECRETARIAT AS PER SERVICE TRIBUNAL JUDGMENT DATED 14.01.2022

Respected Sir,

It is stated with great reverence that in pursuance of integration and merger of erstwhile FATA with Province of Khyber Pakhtunkhwa I, the undersigned besides others, was declared as "Surplus" by the Establishment and Administration Department Regulation Wing), Khyber Pakhtunkhwa vide Notification No. SO(O&M)/E&AD/3-18/2019 dated 25.06.2019. Later on, I was adjusted in the Directorate of Irrigation and Hyde Power, Khyber Pakhtunkhwa.

2. Some of the officials filed case in the Court and the Hon'ble Service Tribunal, Khyber Pakhtunkhwa passed a Judgment dated 14.01.2022 and set aside the above Surplus Notification. Operative part of the Judgment is reproduced as under (Page-14 of the judgment);

"In view of the foregoing discussion, the instant appeal along with 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..."

3. In pursuance of the above judgment, I am also entitled to be adjusted in Civil Secretariat, Khyber Pakhtunkhwa Peshawar.

4. Above in view, it is humbly requested to kindly issue my adjustment order Civil Secretariat, Khyber Pakhtunkhwa as per judgment of the Service Tribunal dated 14.01.2022, please.

Faithfully Yours

Majid Anwar,

Sweeper (Ex- FATA)

0336-9085165

قیمت 50/- روپے

48260

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION

ایڈوکیٹ: Zohaib Kiyat

بار کونسل/ایسوسی ایشن نمبر: 09-2562

رابطہ نمبر: _____

بعدالت جناب: KPK Service Tribunal Peshawar

منجانب: Appellant

Matiq Awan

بنام

Govt

دعویٰ: _____

علت نمبر: _____

مورخہ: _____

جرم: _____

تھانہ: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام Peshawar کیلئے Zohaib Kiyat کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

PESHAWAR BAR ASSOCIATION KHYBER PAKHTUNKHWA

المرقوم: _____ / 20

العبد گواہ شد العبد

مقام Peshawar کے لئے منظور ہے۔

Accepted

Zuwaib

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔