# FORM OF ORDER SHEET

Court of

#### Appeal No. 1508/2024

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. Nacem Munir 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.	
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			By order of the Chairman /	
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The appeal of Mr. Naeem Munir 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.\_\_\_\_\_\_/Inst./2024/KPST,

12/4\_/2024. Dt.\_

SERVICE TRIBUNAL **KHYBER PAKHTUNKHWA** PESHAWAR.

Ali Gohar Durrani Adv. High Court Peshawar.

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# BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL

Service Appeal No. . 2024

Naeem Munir Versus The Government of Khyber Pakhtunkhwa and others

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4.	Copy of Notification dated 25- 06-2019	B	11-14
5.	Copy of the Service Appeal No. 1244/2020	с	15-20
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Through,

Appellant

(ALI COHAR DURRANI) Advocate Supreme Court 0332-9297427

# Before The Honorable Khyber Pakhtunkhwa service Tribunal

Service Appeal No. 1508/

Naeem Munir, 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 Ateas, 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 17-03-2009.



#### 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 <u>25-06-2019</u>, and for their further adjustment/placement w.e.f.<u>01-07-2019</u>by virtue of which the civil servants were adjusted in the Surplus pool of Establishment Department and Administration Department. Copy of Notification dated <u>25-06-2019</u> is Annexure-B:

3. That an appeal was filed in this regard, before the Honourable Service Tribunal and the same was heard on <u>14-01-2022</u>. The said appeal was accepted, and subsequently, the impugned notification dated <u>25-06-</u> <u>2019</u> 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 <u>Tikka Kahn & other vs</u> <u>Syed Muzafar Hussain Shah & others (2018 SCMR 332</u>), the seniority would be determined accordingly.

5. That the Honourable Tribunal rendered its judgment dated <u>14-01-</u> <u>2022</u>, 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.

<u>Grounds:</u>



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 <u>Service should be treated as judgments in rem, and not in</u> personam, when they settle a point of law in respect of the same

set of civil servants. Reference can be given to the relevant pottion of judgment cited 2023 SCMR, 8, produced herein below:

a. Because the impugned nonfications are based on

נס מלאגוסמכון נוזה בגוחונומן מג מנול מנווגני והצמון למגוונוי .. mout suffer not of the purities to the above litigation, instead of competiting them livio rodio of bubing be transpired about out of the about of the extended to other even run fogal proceedings, in such a case, the dictates of fustice and rules of good cashi senerati who filling the class of a contraction with the most more and the act to ease act the ton some control turales that a to ease to employ of suther of a guilder and to more a served that if the Tribund or this Court devides a point of lan and others (1996 SchAR 1185), this Court, while remained the case to the Abblian Niarti n. The Secretary, Establishment Division, Covernment of Pakistan paaunty fo as a appear in the alfest of a fulfament in the rate of same the panets cited, it does not not not to machant the effect of the judgments rendered in the other nood and inorganit the reference of the Postanana Ligh Court fundament has been abudya treated as being in rem, and not in personam. If in two Judgments definered si trongent has all trongent it to tail by dail by the solution the solution is pound of find wind multiple of the are out the plant of the form when that it a learned polition may not maintainable under Article 212 of the Constitution, hence the No. 3162-9/2019, which was simply dismissed with the observations that the purit placed on the order passed by the learned Peshanar Fligh Court in Writ Petition Tribunal passed in Appeals Ness 1452/2019 and 248/2020, reliance mas "The learned Additional A.G., KPK argued that, in the order of the KP Service

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. [452/2019 and 248/2020, reliance nus placed on the order passed by the learned Peshanar High Court in Writ Petition No. 3162-P/2019, which was simply dismissed with the observations that the nucl reference nus immuterial. In this regard, we are of the Jirm niew that if a learned reference nus immuterial. In this regard, we are of the Jirm niew that if a learned to include the service appeals the rem, and not in personan. If in two judgments delinered in the service appeals the reference of the Peshawar High Court judgment has been evited, it does not not to mustion of taw by dint of its judgment, the said judgment is advays treated as being in rem, and not in personan. If in two judgment has been in the service appeals the reference of the Peshawar High Court judgment has been evited, it does not not to mustion the effect of a judgment in the other service appeals the reference of the Peshawar High Court judgment has been evited, it does not not to mustion the effect of a judgment rendered in the other service appeals the reference, Establishment Division, Genermont of Padatistan evited if does not use to mustion the effect of a judgment in the cuse of the service apprents related to be effect of a judgment in the cuse of the and others (1996, SCMR 1185), this Court, while remainding the cuse to the and others (1996, SCMR 1185), this Court, while remainding the cuse to the and others (1996, SCMR 1185), this Court, while remaindered to the and others (1996, SCMR 1185), this Court, while remaindered to the and others (1996, SCMR 1185), this Court, while remaindered to the and others (1996, SCMR 1185), this Court, while remaindered to the and others (1996, SCMR 1185), this Court, while remaindered to the and others (1996, SCMR 1185), this Court, while remaindered to the direct others (1996, SCMR 1185), this Court, while remaindered 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 cuil servent 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 he 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."

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 Supteme Court, the applicant may also be subjected to the judgment rendered by the Honourable Service Tribunal.

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 Att. 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.

. Because the Appeliant 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.



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

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 Rehmanys. 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.

Appella Through,

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



# BEFORE THE

# HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.\_\_\_\_/2024

Naeem Munir, Sweeper (BPS-1), Establishment & Administration Department Civil Secretariat, Peshawar.

(Appellant)

Versus

The Government of Khyber Pakhtunkhwa and others

(Respondents)

## AFFIDAVIT Of,

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

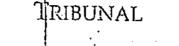
I am personally conversant with the facts and circumstances of the case as contained therein and the facts and circumstances mentioned in the enclosed writ petition are true and correct to the best of my knowledge and belief.

Deponent Marian CNIC# 17301-7866947

Mefterheddre All Gohar Durkani Advocate Supreme Court



# BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE



Service Appeal No.<u>/</u>/2024

Naeem Munir, 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 GOHĂR DURRANI) Advocate Supreme Court 0332-9297427 <u>khaneliegohar@yahoo.com</u> SHAH | DURRANI | KHATTAK



## APPOINTMENT ORDER.

FATA SECRETARIAT (Activitistication, Tubestructure & Coordination Department

No. 101-20/EO/ADMN-Vol-II:-- Consequent upon the recommendations of the Departmental Selection / Promotion Committee, Mr. Naeem Munir S/O Munir Maseeh, Sawati Phatk Mohallah Omeed Abad No.2 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.
  - He shall be governed by the Khyber Pakhhunkhwa 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.
- 5. He has to join duties at his own expenses.

If the above terms & conditions are acceptable to him, he should report for duty to (A,1&C) Department, FATA Secretariat within 14 days of issuance of this order.

## Secretary (a,1 &¢)

### No. 101-20/EO/ADMN-Vol-11 132号子5

Dated 21 1/0/2016

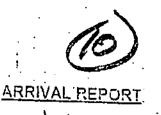
Estate Officer

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.

A CANAL AND A C

- 6 . Bill Clerk (A,I&C) Department, FATA Secretariat.
  - Official concerned.
- B Personal File.



In pursuance of Deputy Commissioner, Peshawar office Letter No. 0065/EA dated 27<sup>jh</sup> July, 2020 I, Mr. Naeem Muneer (BPS-02) do hereby assume the charge as Sweeper, in the Directorate General of Law and Human Rights, Government of Khyber Pakhtunkhwa, today on 05/08/2020 (F/N).

Naeem Munir Sweeper Directorate General of Law and Human Rights, Government of Khyber Pakhtunkhwa

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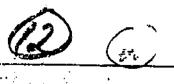
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31.   Vouget Fusedin   Driver   3     33.   Dinul Shah   Driver   5     34.   Qlamat Writi   Driver   5     35.   Daniel Shah   Driver   5     34.   Qlamat Writi   Driver   5     35.   Shafqanullah   Driver   5     36.   Shafqanullah   Driver   5     37.   Oismatullah   Driver   5     38.   Wall Khan   Tracer   5     40.   Nizz Akhar   Driver   4     41.   Mena Jan   Driver   4     42.   Zaki ulah   NiQarid   3     43.   Sabir Shuh   Nolo Guid   2     44.   Mathanimad Sharif   Nab Guid   2     45.   Zukri Khan   Nab Guid   2     46.   Muhanumad Sharif   Nab Guid   2     47.   Dost All   Nab Guid   2     48.   Nabhan Khan   Nab Guid   2     49.   Wadan Shah   Nab Guid   2     51.   M	30.	Mubaslilr Alam	
13.   Hisamulfali   Driver   5     33.   Daud Shali   Driver   6     34.   Qismau Wafi   Driver   6     35.   Mara Zub   Driver   5     36.   Shalfqaulfali   Driver   5     37.   Qismaullain   Tracer   5     38.   Wall Khan   Tracer   5     39.   Muhammad Zalir Shah   Tracer   5     40.   Nizz Akhar   Driver   4     41.   Mena Jan   Driver   4     42.   Zuki ullah   Nrgo Stall   2     43.   Sabir Shah   Nab Qatid   2     44.   Muhammad Hussain   Nab Qatid   2     45.   Zukur Shah   Nab Qatid   2     46.   Muhammad Sharif   Nab Qatid   2     47.   Dist All   Nab Qatid   2     48.   Misha Khan   Nab Qatid   2     51.   Mangood Jan   Nab Qatid   2     52.   Zeeşhan   Nab Qatid   2     53.	<u> </u>		
33. Daud Shah Driver 5   34. Qianni Wali Driver 4   35. Adam Zeb Driver 5   36. Shalfqatullah Driver 5   37. Qismatullah Driver 5   38. Well Khan Tracer 5   39. Muhammad Zukir Shah Tracer 5   40. Nizz Akhar Driver 4   41. Mena Jan Driver 4   42. Zukir Ulah WQafil 3   43. Sabir Shuh Walb Outif 2   44. Muhammad Sharif Walb Outif 2   45. Zukuir Shah Wizb Oatif 2   46. Muhammad Sharif Nab Oatif 2   47. Dott All Wab Oatif 2   48. Nishar Khan Nab Oatif 2   49. Wadau Shah Nab Oatif 2   50. Inannullah Nab Oatif 2   51. Margaoaf Jan Nab Oatif 2   52. Zatifar Ali Shah Nab Oatif 2   53. Safidr Ali Shah Nab Oatif 2   54. Khifidyautllah Nab Oa			
34.     Olamat Valit     Driver     4       35.     Alam Zeb     Driver     5       36.     Shafqatullah     Driver     5       37.     Oismatullah     Driver     5       38.     Weilt Khan     Tracer     5       39.     Muhummad Zukir Slinh     Tracer     5       31.     Muca Akling     Driver     4       41.     Muca Xkling     Driver     4       42.     Zuki ullah     Nahopald     2       43.     Sabit Slub     Nahopald     2       44.     Muhammed Hussein     Nahopald     2       44.     Muhammed Hussein     Nahopald     2       44.     Muhammed Hussein     Nahopald     2       45.     Zubit Slub     Nahopald     2       46.     Muhammed Hussein     Nahopald     2       47.     Dost All     Nahopald     2       48.     Magsood Jan     Nahopald     2       51.     Mangsood Jan     Nahopald     2 </th <th></th> <th></th> <th></th>			
35.   Alen Zeb   Driver   3     36.   Shalfquuillah   Driver   3     37.   Qiantaultah   Driver   3     38.   Walk Rhan   Driver   3     39.   Muhanmad Zahir Shah   Tracer   5     39.   Muhanmad Zahir Shah   Tracer   5     40.   Niuz Akhiar   Driver   4     41.   Mena Jan   Driver   4     42.   Zuki ullah   Nilo Quild   3     43.   Sobir Shuh   Naho Quild   2     44.   Muhammad Sharif   Naho Quild   2     45.   Zukir Shah   Naho Quild   2     46.   Muhammad Sharif   Naho Quild   2     47.   Dost All   Naho Quild   2     48.   Naho Cauld   2   2     49.   Wadan Shah   Naho Quild   2     50.   Iraniultah   Naho Quild   2     51.   Magan Mihan   Naho Quild   2     52.   Zeeshon   Naho Quild   2 <td< th=""><th></th><th></th><th></th></td<>			
16. Shalfqatullah Driver 3   77. Qismatullah Driver 3   38. Wall Khan Tracer 5   39. Muhammad Zahir Shah Tracer 5   40. Nizz Akhuar Driver 4   41. Mena Jan Driver 4   42. Zaki ulah NiQasid 3   43. Sabir Shuh Nabo Qaid 2   44. Muhammad Hussain Nabo Qaid 2   45. Zuber Shah Niba Qaid 2   44. Muhammad Sharif Nabo Qaid 2   45. Zuber Shah Nabo Qaid 2   46. Muhammad Sharif Nabo Qaid 2   47. Dost All Nabo Qaid 2   48. Nisha Khan Nabo Qaid 2   51. Magsond Jan Nabo Qaid 2   52. Zeeşhon Nabo Qaid 2   53. Safilar Ali Shah Nabo Qaid 2   54. Hikilag Khan Nabo Qaid 2   55. Safilar Ali Shah Nabo Qaid 2   54. Hikilag Khan Nabo Qaid 2   55. Safilar Ali Shah <th></th> <th></th> <th></th>			
37.   Qianaulitah   Driver   3     38.   Wali Khon   Tracer   5     39.   Muhammad Zehir Shah   Tracer   5     30.   Muka Khitar   Driver   4     41.   Mena Jan   Driver   4     42.   Zuki ullah   Noh Osili   2     43.   Sobir Shuh   Noh Osili   2     44.   Muhammad Hussain   Noh Osili   2     45.   Zuki ullah   Noh Osili   2     46.   Muhammad Shafi   Nih Osili   2     47.   Dost All   Nah Osili   2     48.   Mishat Khan   Nah Osili   2     49.   Wadan Shah   Nah Osili   2     50.   Irnanutlah   Nah Osili   2     51.   Magsod Jan   Nah Osili   2     52.   Zeoshon   Nah Osili   2     53.   Saftler Ali Shah   Nah Osili   2     54.   Khong Khan   Nah Osili   2     55.   Saftler Ali Shah   Nah Osili   2			
38.   Wall Khon   Tracer   5     39.   Muhummad Zelir Shah   Tracer   5     40.   Nizz Akluar   Difver   4     41.   Mena Jan   Difver   4     42.   Zuki ullah   Nole Quil   1     43.   Sobir Shub   Nole Quil   2     44.   Wuhammad Hussain   Nole Quil   2     45.   Zukir Shah   Nab Quil   2     46.   Muhammad Sharif   Nels Quild   2     47.   Dost All   Nels Quild   2     48.   Mishat Khan   Nels Quild   2     49.   Wadan Sháh   Nels Quild   2     50.   Irannullah   Nels Quild   2     51.   Anstind Khan   Nels Quild   2     52.   Zeeshan   Nels Quild   2     53.   Safular Ali Shah   Nels Quild   2     54.   Ikilang Khan   Nels Quild   2     53.   Safular Ali Shah   Nels Quild   2     54.   Ikilang Khan   Nels Quild   2			
39.   Muhummad Zahir Shah   Treer   5     40.   Niuz Akhira   Driver   4     41.   Micna Jam   Driver   4     42.   Zuku illah   MQpsid   3     43.   Sabir Shuh   Nali Qazili   2     44.   Muhammad Hussain   Nalio Qazili   2     45.   Zukuir Shah   Nilo Qazili   2     46.   Muhammad Sharifi   Nilo Qazili   2     47.   Host All   Neib Qazili   2     48.   Mishat Khan   Neib Qazili   2     49.   Wadan Shah   Neib Qazili   2     40.   Wadan Shah   Neib Qazili   2     50.   Irnanullah   Nalib Qazili   2     51.   Maqsood Jan   Nalib Qazili   2     52.   Zeeshan   Nalib Qazili   2     53.   Saftar Ali Shah   Nalib Qazili   2     54.   Khilid Khan   Nalib Qazili   2     57.   Hitday Khan   Nalib Qazili   2     58.   Saftar Ali Shah   Nalib Qaz			
40.   Niuz Aklinar   Driver   4     41.   Micna Jan   Driver   4     42.   Zuki ullah   MiQusid   3     43.   Sobir Sludi   Noli Quid   2     44.   Muhammad Hussain   Nali-Quid   2     45.   Zukuir Shah   Nali-Quid   2     46.   Mulianumad Sharif   Nali-Quid   2     47.   Dost All   Nali-Quid   2     48.   Mishat Klain   Nali-Quid   2     49.   Wadan Shah   Nali-Quid   2     49.   Wadan Shah   Nali-Quid   2     40.   Innniuhlah   Nali-Quid   2     51.   Magsood Jan   Nali-Quid   2     52.   Zeeshan   Nali-Quid   2     53.   Saftar Ali Shah   Nali-Quid   2     54.   Ikihag Khan   Nali-Quid   2     55.   Saftar Ali Shah   Nali-Quid   2     56.   Klfayatullah   Nali-Quid   2     57.   Ikidn Ali Shan   Nali-Quid   2 <th></th> <th></th> <th></th>			
41.   Micna Jun   Differ   4     42.   Zuki ullah   Noh Qasid   2     43.   Sobir Sluah   Noh Qasid   2     44.   Mutnammad Hussain   Noh Qasid   2     45.   Zukur Shah   Nah Qasid   2     46.   Mutnammad Sharlf   Nah Qasid   2     47.   Dost All   Neh Qasid   2     49.   Wadan Shah   Nah Qasid   2     40.   Madan Shah   Nah Qasid   2     50.   Innnullah   Nah Qasid   2     51.   Magsond Jan   Nah Qasid   2     52.   Zeeshan   Nah Qasid   2     53.   Arstind Khen   Nah Qasid   2     54.   Ikhlag Khen   Nah Qasid   2     55.   Saftor Ali Shah   Nah Qasid   2     56.   Kfifuyatullah   Nah Qasid   2     57.   Hidnyutullah   Nah Qasid   2     58.   Saftor Ali Shah   Nah Qasid   2     59.   Shabir Kham   Nah Qasid   2			
42.   Zukit ultan   N/Qusiti   3     43.   Snbir Sluth   Noh Quiti   2     44.   Muthanumad Hussain   Nath-Quiti   2     45.   Zubair Shah   Nath-Quiti   2     46.   Muthanumad Sharti   Nath-Quiti   2     47.   Dost All   Neth-Quiti   2     47.   Dost All   Neth-Quiti   2     48.   Nishat Khan   Nath-Quiti   2     49.   Wadau Shati   Nath-Quiti   2     50.   Innonullatis   Nath-Quitid   2     51.   Magsond Jan   Nath-Quitid   2     52.   Zeeshan   Nath-Quitid   2     53.   Ansthod Khan   Nath-Quitid   2     54.   Jikilan Khan   Nath-Quitid   2     55.   Saftar Ali Shath   Nath-Quitid   2     56.   Klifayautilah   Nath-Quitid   2     57.   Hidnay Khan   Nath-Quitid   2     58.   Saftar Ali Shath   Nath-Quitid   2     57.   Hidnyautilah			
43.   Sohir Slaub   Noth Galid   2     43.   Muthanumad Hussain   Nafr-Qalid   2     45.   Zubair Shah   Nafr-Qalid   2     46.   Muthanumad Hussain   Nafr-Qalid   2     47.   Dost All   Nafr-Qalid   2     47.   Dost All   Nafr-Qalid   2     48.   Mishar Khan   Nafr-Qalid   2     49.   Wndan Shah   Nafr-Qalid   2     50.   Innanutlah   Nafr-Qalid   2     51.   Magsond Jan   Nafr-Qalid   2     52.   Zeeshan   Nafr-Qalid   2     53.   Ansfind Khan   Nafr-Qalid   2     54.   Ikilag Khan   Nafr-Qalid   2     55.   Safiler Ali Shah   Nafr-Qalid   2     56.   Kthrild Khan   Nafr-Qalid   2     57.   Hitdnyutullah   Nafr-Qalid   2     58.   Shabir Khan   Nafr-Qalid   2     59.   Shabir Khan   Nafr-Qalid   2     60.   Seeed Gul   Nafr-Qalid			
44.   Muhammad Hussain   Mañ-Qadd   2     45.   Zuhofr Shah   Nañ-Qadd   2     46.   Muhammad Sharlf   Nañ-Qadd   2     47.   Dost All   Nañ-Qadd   2     47.   Dost All   Nañ-Qadd   2     49.   Wadan Shah   Nañ-Qadd   2     49.   Wadan Shah   Nañ-Qadd   2     50.   Inoniultah   Nañ-Qadd   2     51.   Magsod Jan   Nañ-Qadd   2     52.   Zeushan   Nañ-Qadd   2     53.   Arslind Khen   Nañ-Qadd   2     54.   Jkihlog Khen   Nañ-Qadd   2     55.   Safter Ali Shah   Nañ-Qadd   2     56.   Klieyatullah   Nañ-Qadd   2     57.   Hidnyutullah   Nañ-Qadd   2     58.   Shabir Khen   Nañ-Qadd   2     59.   Shabir Khen   Nañ-Qadd   2     60.   Saced Gul   Nañ-Qadd   2     61.   Zahfduilah   Nañ-Qadd   2     6			
45.   Zulvair Shah   Nab Qasid   2     46.   Muhammad Sharlf   Nah Qasid   1     47.   Dost All   Nah Qasid   2     48.   Nishat Klian   Nah Qasid   2     49.   Wadan Shah   Nah Qasid   2     50.   Inanultah   Nah Qasid   2     51.   Marsood Jan   Nah Qasid   2     52.   Zeeyhan   Nah Qasid   2     53.   Arshad Khan   Nah Qasid   2     54.   Ikilag Khan   Nah Qasid   2     55.   Saftler Ali Shah   Nah Qasid   2     56.   Kilayaullah   Nah Qasid   2     57.   Hidnyutulah   Nah Qasid   2     58.   Saftler Ali Shah   Nah Qasid   2     59.   Shabir Khan   Nah Qasid   2     61.   Zahidullah   Nah Qasid   2     62.   Parhad Gul   Nah Qasid   2     63.   Jumred Khan   Nah Qasid   2     64.   Rushid Khan   Nah Qasid   2 <th></th> <th></th> <th></th>			
46.   Mulhanumad Sharlf   Nafb Quild   2     47.   Dost All   Nafb Quild   2     48.   Nishat Khan   Nafb Quild   2     49.   Wadan Shah   Nafb Quild   2     50.   Inanuflah   Nafb Quild   2     51.   Zeeshan   Nafb Quild   2     52.   Zeeshan   Nafb Quild   2     53.   Arslind Khan   Nafb Quild   2     54.   Ikhlag Khan   Nafb Quild   2     55.   Saftar Ali Shah   Nafb Quild   2     56.   Kfloyaullah   Nafb Quild   2     57.   Iddynullah   Nafb Quild   2     56.   Kfloyaullah   Nafb Quild   2     57.   Iddynullah   Nafb Quild   2     58.   Shabir Khan   Nafb Quild   2     59.   Shabir Khan   Nafb Quild   2     60.   Seeed Gul   Nafb Quild   2     61.   Zahidullah   Nafb Quild   2     63.   Jumeed Khan   Nafb Quild   2			
47.   Dost All   Neib Oasid   2     43.   Nishat Klan   Neib Oasid   2     49.   Wadap Shih   Neib Ozsid   2     50.   Inenuillati   Naib Oasid   2     51.   Magsood Jan   Naib Oasid   2     52.   Zeeshan   Naib Oasid   2     53.   Arstind Khan   Naib Oasid   2     54.   Ikhlag Khen   Naib Oasid   2     55.   Safdar Ali Shah   Naib Oasid   2     56.   Klinyaullah   Naib Oasid   2     57.   Hidnyatullah   Naib Oasid   2     56.   Klinyaullah   Naib Oasid   2     57.   Hidnyatullah   Naib Oasid   2     58.   Safdar Ali Shah   Naib Oasid   2     59.   Shabir Kham   Naib Qasid   2     59.   Shabir Kham   Naib Qasid   2     60.   Sacced Gul   Naib Qasid   2     61.   Zahidullah   Naib Qasid   2     62.   Parhaud Gul   Naib Qasid <t< th=""><th></th><th></th><th></th></t<>			
41.   Dost All   Naib Quid   2     43.   Nishat Klian   Naib Quid   2     40.   Wadau Stiäh   Naib Quid   2     50.   Inoniuhlai   Naib Quid   2     51.   Magsood Jan   Naib Quid   2     52.   Zeeshan   Naib Quid   2     53.   Arstind Khon   Naib Quid   2     54.   Jikilag Khen   Naib Quid   2     55.   Saftlar Ali Shah   Naib Quid   2     56.   Klinya ullah   Naib Quid   2     56.   Klinya ullah   Naib Quid   2     57.   Hidnyutulah   Naib Quid   2     58.   Saftlar Ali Shah   Naib Quid   2     59.   Shabir Kham   Näb Quid   2     61.   Zahiduilah   Naib Quid   2     62.   Parhad Gul   Naib Quid   2     63.   Humiced Khan   Naib Quid   2     64.   Rushid Khan   Naib Quid   2     65.   Dyst Muhammed Amir   Naib Quid   2			
49.   Wadan Shah   Neib Ourid   2     50.   Innnullai   Naib Oasid   2     51.   Maqsoad Jan   Naib Oasid   2     52.   Zeeshan   Naib Oasid   2     53.   Arshind Khan   Naib Oasid   2     54.   İkhlaq Khan   Naib Qasid   2     55.   Saftder Ali Shah   Naib Qasid   2     56.   Klibyatullah   Naib Qasid   2     57.   Hidnyutullah   Naib Qasid   2     58.   Khniid Khan   Naib Qasid   2     59.   Shabir Khan   Naib Qasid   2     60.   Saced Gul   Naib Qasid   2     61.   Zahifuilah   Naib Qasid   2     62.   Purhud Gul   Naib Qasid   2     63.   Iumiced Khan   Naib Qasid   2     64.   Rushid Khen   Naib Qasid   2     65.   Dust Muhammad   Naib Qasid   2     66.   Sajidullah   Nuib Qasid   2     76.   Dust Muhammad   Naib Qasid <t< th=""><th></th><th></th><th></th></t<>			
50.   Innnullali   Nali Qasid   2     51.   Magsood Jan   Nalib Qasid   2     52.   Zeeshan   Nalib Qasid   2     53.   Arstund Khan   Nalib Qasid   2     54.   Iklilaq Khan   Nalib Qasid   2     55.   Şafdar Ali Shah   Nalib Qasid   2     56.   Killayatullah   Nalib Qasid   2     57.   Hidayutullah   Nalib Qasid   2     58.   Khuid Khan   Nalib Qasid   2     59.   Shabir Khan   Nalib Qasid   2     60.   Saced Gul   Nalib Qasid   2     61.   Zahiduilah   Nalib Qasid   2     62.   Parhad Gul   Nalib Qasid   2     63.   Ilumed Khan   Nalib Qasid   2     64.   Rushid Khan   Nalib Qasid   2     65.   Dust Muhammad   Nalib Qasid   2     66.   Sajidullah   Nalib Qasid   2     76.   Iluking Khan   Nalib Qasid   2     76.   Dust Muhammad   Nalib	-		
Si. Margood Jan Nsib Qasid 2   Si. Zecshon Nsib Qasid 2   Si. Arshind Khon Nsib Qasid 2   Si. Arshind Khon Nsib Qasid 2   Si. Arshind Khon Nsib Qasid 2   Si. Safular Ali Shah Nsib Qasid 2   Si. Kilioyatullah Nsib Qasid 2   Si. Kinid Khon Nsib Qasid 2   Si. Kinid Khon Nsib Qasid 2   Si. Kinid Khon Nsib Qasid 2   Si. Shabir Khon Nsib Qasid 2   Si. Shabir Khon Nsib Qasid 2   So. Saccd Gul Naib Qasid 2   Go. Saccd Gul Naib Qasid 2   Go. Saccd Gul Naib Qasid 2   Go. Sajidullah Naib Qasid 2   Go. Sajidullah Naib Qasid 2   Go. Sajidullah Naib Qasid 2   Go.			
51. Zeushan Naño Qasid 2   53. Arshind Khan Naño Qasid 2   54. Jikhlag Khan Naño Qasid 2   55. Safdar Ali Shah Naño Qasid 2   56. Killayatullah Naño Qasid 2   57. Hidnyutullah Naño Qasid 2   57. Hidnyutullah Naño Qasid 2   57. Hidnyutullah Naño Qasid 2   58. Khuiid Khan Naño Qasid 2   59. Shabir Khan Naño Qasid 2   60. Saced Gul Naño Qasid 2   61. Zabiduilah Naño Qasid 2   62. Purhad Gul Naño Qasid 2   63. Justed Khan Naño Qasid 2   64. Rushid Khan Naño Qasid 2   65. Duşsi Muhammud Naño Qasid 2   65. Duşsi Muhammud Naño Qasid 2   166. Sajiduiluh Nuño Qasid 2   167. Itikhar ud Din Naño Qasid 2   168. Atlaf' ur Rehman Chowkidar 2   170. Yusar Amlai Chowkidar 2			
53.   Arshnid Khan   Nalb Qasld   2     54.   İkihaq Khan   Nalb Qasld   2     55.   Saftar Ali Shah   Nalb Qasld   2     56.   Kllayaullah   Nalb Qasld   2     57.   İkihaq Khan   Nalb Qasld   2     57.   İlidnyutullah   Nalb Qasld   2     57.   İlidnyutullah   Nalb Qasld   2     59.   Shabir Khan   Nalb Qasld   2     60.   Saccd Gul   Nalb Qasld   2     61.   Zahidullah   Nalb Qasld   2     62.   Purhad Gul   Nalb Qasld   2     63.   Itumeed Khan   Nalb Qasld   2     64.   Rushid Khan   Nalb Qasld   2     64.   Rushid Khan   Nalb Qasld   2     65.   Duşt Muhammad   Naib Qasld   2     66.   Sajidullah   Nuib Qasld   2     76.   Sajidullah   Nuib Qasld   2     76.   Aliaf ur Rehman   Chowkidar   2     70.   Yusar Amlai   Chowkidar	51,	Magsood Jan -	
54.   İkihlaq Khan   Nalb Qasid   2     55.   Saftlar Ali Shah   Nalb Qasid   2     56.   Kilayatullah   1   Nalb Qasid   2     57.   Hidnyutullah   1   Nalb Qasid   2     57.   Khuitid Khan   Nalb Qasid   2     59.   Shabir Khan   Nälb Qasid   2     60.   Saced Gul   Nalb Qasid   2     61.   Zahidullah   Nalb Qasid   2     62.   Parhad Gul   Nalb Qasid   2     63.   Humed Khan   Nalb Qasid   2     64.   Rashid Khen   Nalb Qasid   2     65.   Dyst Muhammod   Nalb Qasid   2     66.   Sajidullah   Nuib Qasid   2     66.   Sajidullah   Nuib Qasid   2     76.   Just Muhammod   Naib Qasid   2     76.   Mukammad Amir   Chowkidar   2     76.   Yusar Amfai   Chowkidar   2     77.   Zamrud Khan   Chowkidar   2     77.   Zamrud Khan </th <th>52.</th> <th></th> <th></th>	52.		
34.   Maile Quil   2     35.   Safilar Ali Shah   Naib Qasid   2     36.   Kliayatullah   Naib Qasid   2     37.   Hidnyatullah   Naib Qasid   2     37.   Hidnyatullah   Naib Qasid   2     38.   Khutid Khan   Naib Qasid   2     39.   Shabir Khan   Näb Qasid   2     461.   Zahidullah   Naib Qasid   2     461.   Zahidullah   Naib Qasid   2     462.   Parhad Gul   Naib Qasid   2     463.   Humed Khan   Naib Qasid   2     464.   Rushid Khan   Naib Qasid   2     465.   Dust Muhammad   Naib Qasid   2     466.   Sajidullah   Naib Qasid   2     466.   Sajidullah   Naib Qasid   2     467.   Itikhar ud Din   Naib Qasid   2     468.   Aliaf ur Rehman   Chowkidar   2     469.   Muhammad Amir   Chowkidar   2     470.   Yüsar Amfai   Chowkidar   2 <th>Š3.</th> <th>Arshind Khon</th> <th></th>	Š3.	Arshind Khon	
33. Sandor (n) Gran   36. Killoyatullah   37. Hidnyutullah   1 Silabir Khun   1 Naib Qasid   2 Silabir Khun   1 Silabir Khun   1 Naib Qasid   2 Silabir Khun   1 Silabir Khun   1 Silabir Khun   1 Silabir Khun   1	54.	Ikhlog Khon	
56.   KIloyatullah   Nate Qastd   2     57.   Liidnyutullah   Nalb Qasid   1     1 38.   Khmiid Khan   Nalb Qasid   2     59.   Shabir Khan   Nälb Qasid   2     1 60.   Saced Gul   Nälb Qasid   2     1 60.   Saced Gul   Nälb Qasid   2     1 60.   Saced Gul   Nälb Qasid   2     1 61.   Zahidullah   Nälb Qasid   2     62.   Parhad Gul   Nälb Qasid   2     63.   Itumeed Khan   Nälb Qasid   2     64.   Rushid Khan   Nälb Qasid   2     65.   Dyst Muhammad   Nälb Qasid   2     1 66.   Sojidullah   Nuib Qasid   2     1 66.   Sojidullah   Naib Qasid   2     1 67.   Inliktar ud Din   Naib Qasid   2     1 68.   Atiaf ur Rehman   r Chowkidar   2     1 69.   Muhammad Amir   Chowkidar   2     70.   Yusar Arafai   Chowkidar   2     71.   Zuarce Khan <td< th=""><th>35,</th><th>Safilar Ali Shah</th><th></th></td<>	35,	Safilar Ali Shah	
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2. In order to ensure proper and expeditious adjustment/absorption of the more inentioned surplus staff, Deputy Scoretary (Establishment), Establishment Depurtment has

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declared as focal person to property monitor the whole process of adjustment/ factment of the surplus poul stuff ÷.,

Consequent upon allave all the move surgers' staff alongwith their ariginal . 1 receipted of service are directed to report to the Deputy Scoretary (Establishment). Establishment Department for further necessary nethon.

## CHIEF SECRETARY GOVT. OF KHYBER PARITUNKHWA

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SECTION OFFICEN (O

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## Endst: No. & Date Even

Copy In:-

- 1. Additional Chief Secretary, 9&D Department,
- Additional Chief Secretary, Merged Areas Secretariat. 2.
- Senior Member Board of Revenue. 3.
- 4. Principal Secretary to Governor, Khyber Pakhtunkhwa,
- 5. Peincipal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- All Administrative Secretaries, Khyher bikhunkhwa, 6.
- The Accommon Ocaccal, Khyher Pakhtupkhwa, 7.
- 8. Secretary (Al&C) Merged Areas Secretariat.
- 9. Additional Secretary (Ah&C) Merged Areas Secretariat with the request to hand
  - over the relevant record of the above staff to the Estublishment Department for further necessary action and taking up the case with the Finance Department with regard to linancial implications of the smill w.c.f. 01,07.2019.
- 10. All Divisional Commissinaers in Khyber Pakhtuakhwa.
- 11. All Deputy Commissioners in Khyher Pakhumkhwa.
- 12. Director General Information, Khyher Pakhtunkhwa,
- 43, PS to Chief Secretary, Khyber Pakhtonkhwa,
- 14. Deputy Secretary (Establishment), Establishment Department for necessary
- 15. Section Officer (II-I), Establishment Department.
- 16. Section Officer (E-III) Establishment Department for necessary action.
- 17. Section Officer (II-IV) Establishment Department.
- 18, PS to Secretary Establishment Department.
- 19, PS to Special Secretory (Regulation), Establishment Department, 20. PS in Special Secretary (Establishment), listablishment Deputymey.

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	BEFORE THE HON'BLE SERVICES TRIBUNAL. KPK, PESHAWAR	
	Service Appeal No. 1244 12020	
	The second second second second second second second second second second second second second second second se	
	Ndib Qasid, Haseeb Zeb S/o Aurangzeb, Parce 11/9/202	
	Khyber Pakhtunkhwa Ombudsperson Secretoriat,	
	Room No.212, Benevolent Fund Building, Peshawar CanitAppellant	
	VERSUS	
	1. The Govt of KPK	
	Through Chlef Secretary, Civil Secretariot, Peshawar.	, <b> </b>
· · ,	2. The Govt of KPK Through Secretary Establishment	
• • •	Establishment & Administration Department. Civil Secretariat, Peshawar.	
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	3. The Govi of KPK Through Secretory Finance.	
-	Finance Department, Civil Secretariat, Peshawar	
	4. Government of KPK	
	Through Additional Chief Secretary Merged Areas. Office al Warsak Road, Peshawar	
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* ; [ ]		
Ì	Niccita-day Service appeal u/s 4 of the Services Iribunal Act,	
	میں محصر ( 1974 ugainst the Impugned Notification	•
	No.SO(O&M/E&AD/3-18/2019 dated 25.06.2019 1) 9 - vide which the 117 employees including the	
	appellant appointed by erstwhile FATA Secretariat	
	as "Surplus" and placed them in the Surplus Pool	ł
	of Establishment & Administration Department for Iheir further adjustment/ placement w.e.f.	:
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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, loffice 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:

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The appellant humbly submits as under:

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

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").

That the respondent No.1 vide Notification No.SO(E-1)/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").



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").

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. (Coples of writ petition and order/ judgment dated 05,12,2019 are Annexure "E" & "F").

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").

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

#### <u>GROUNDS</u>:

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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.

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

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

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 Pokistan, 1973.

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.

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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.

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.

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

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.

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 rayour of the appellant.

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## Through

a Zahid Gilani Syed to

Ateeq-ur-Rehma

Syed Murtazoríaniá Gllan Advocates High Court

Date: 11: / 09/2020



## 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 Pokhtunkhwa Ombudsperson Secretarlat, 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.

## EFORE THE KHYBER PARHTUNEHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020 Date of Decision ... 14.01.2022

### VERSUS

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

...

Syed Yahya Zahid Gillani, Talmur Haider Khan & Ali Gohar Durrani, Advocates

Muhammad Adeel Butt, Additional Advocate General

. For respondents .

For Appellants

AHMAD SULTAN TAREEN

## CHAIRMAN 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 Faroog Khan
- 3. 1230/2020 Illied 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

8. 1245/2020 titled Multernmad Zahlr Shair

9. 11125/2020 tided Zahid Khan

10.11126/2020 titled Touseef Ideal

Brief facts of the case are that the appeliant was initially appointed as Assistant (BPS-11) on contract basis in Ex-FATA Secretariat vide order dated 01-02. 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 cábinet 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. 681/2020. 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 heen violated; that the impugned order has not been 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 lilegal 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 spoll 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/erstwhlle 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.

Learned Additional Advocate General for the respondents has contended i 04. 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 erstwhlle 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 partles and have perused the record.

Before embarking upon the issue in hand, it would be appropriate to .06 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.

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 vias 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 Srepare 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.

During the course of hearing, the respondents produced coples of 08. 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 Shan 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 appeliants 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 appeliants in the instant service appear 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.

In view of the foregoing explanation, in the first place, it would be 10. appropriate to count the discriminatory behaviors of the respondents with the appellants, due to which the appellants spent almost tweive 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,

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 maiafide 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 ourner 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 salarles 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 aliowances admissible to them in their new places of adjustment were less than the one admissible in civil secretariat. Moreover, their seniority was also affected 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 poel policy applied on them was totally illegal. Moreover the concerned learned counsel for the appellants had added to their miserles 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 spolled 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.

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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 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.

In view of the foregoing ofscussion, the instant appeal alongwith 13. 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

ANNOUNCED 14.01.2022

room.

(AHMAD CHAIRMAN

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

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BEFORE THE

# HONORABLE KHYBER PAKHTUNKHWA SERVICE

## Tribunal

Execution Petition No.\_\_\_\_/2023 In Service Appeal No. 1227/2020

In Re:

Decided on: 14. 01. 2022

Naeem Munir S/o Munir Masih R/o Swati gate, Mohallah Uneed Abad No. 02, Tehsil and District Peshawar

(PETITIONER)

Versus.

 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)

EXECUTION PETITION TO GIVE ÉFFECT & 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 <u>25-06-2019</u>, and for their further adjustment/placement w.e.f <u>01-07-2019</u> 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

That an appeal was filed in this regard, before the Honourable Service Tribunal and the same was heard on <u>14-01-2022</u>. The said appeal was accepted, and subsequently, the impugned notification dated <u>25-06-2019</u> 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 <u>Tikka Kahn & other vs Sved Muzafar Hussain Shah & others (2018 SCMR 332</u>), the seniority would be determined accordingly.

That the Honourable Tribunal rendered its judgment dated <u>14-01-</u>
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 flue to the inaction of the respondents to comply with the directions of the Flonourable Service Tribunal, post lapse of 3 months, an <u>execution petition no. 250 of 2022</u> 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 <u>judgments of the Honourable</u> <u>Service should be treated as judgments in rem, and not in</u> <u>personam.</u> Reference can be given to the relevant portion of judgment cited<u>2023 SCMR 8</u>, 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 divit 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 appenls which have the effect of a judgment in rem. In the case of Hameed Aldatar 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 servinit 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 <u>14-07-2021</u> 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 <u>Article 189 of the Constitution of Pakistan, 1973</u>, 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 patitioner 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 Pakiston 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 Petitioner, 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 DURRAM) Advocate High Court 0332-9297427 <u>khaneliegohar@yahoo.com</u> SHAH | DURRANI | KHATTAK



## BEFORE THE

# HONORABLE KHYBER PAKHTUNKHWA SERVICE

## TRIBUNAL

Execution Petition No.\_\_\_\_/2023

In Re:

In Service Appeal No. 1227/2020

Decided on: 14. 01. 2022

## Naeem Munir S/o Munir Masih R/o Swati gate, Mohallah Uneed 👘

Abad No. 02, Tehsil and District Peshawar

(PETITIONER)

#### Versus

The Government of Khyber Pakhtunkhwa and others

### (Respondents)

#### AFFIDAVIT Of,

I, Naeem Munir S/o Munir Masih R/o Swati gate, Mohallah Uneed Abad No. 02, Tehsil and District 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

CNIC#

### Identified by:

ALI GOHAR DURRANI

### Advocate High Court

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

Amerc"F"

ORDER 9<sup>th</sup> 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. Farecha 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 Tribunc I on this 9<sup>th</sup> day of July, 2024.

STED

ale leve

hnazem Shah \*

Calim Arshad Kha

Chairman



The Chief Secretary,

Government of Khyber Pakhtunkhwa, Peshawar.

ε.

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 Naeem Munir//

Sweeper (Ex- FATA) 03180457627

يىت 50ىز ي پشاوربارايسوس ايشن، خسيبر پخستونواه 48256 Zohand Kinggat Iste PESHAWAR BAR ASSOCIATION ◉ਛੋ₩.(● دابطنير: Sequice Kple بعدالت جناب: <u>مسمع سیسی کم م</u> Too ber Appellent . د عویٰ:. Necess Mune علت نمبر: بنام مورخه: :p7 you تھانہ: اعث تحرير آنك مقدمه مندرجه عنوان بالاميں اپن طرف سے داسطے پیروی وجواب دہی کاروانی متعلقہ Lingat Change bergat آن مقام مس*ور کو کر کر* كرك اقراركياجاتا ب- لمصاحب موصوف كومقده كي فل كاردان كاكال اختبار بوكار صاحب كو ويصله برحلف دليخ جواب دعوى أقبال دعوى ادر درجواست الزبرتسم كي تصديق راضی نامہ کرنے دیتے رزنا کہ Ø زری پردستخط کرد کی خلی کرده این بعضورت عدم پیردی یاد گری میطر نه پا پیل کی برآیدگی ادرمنسوخی ، نیز دائر کرنے ایل تر آن د نظر تانی و بیرون کر بینے کا بنار ہوگا اور بھور سے خطر در ت مقدرة بُدكور ( بحك يا جزو ت کاروائی کے واسطے اور ویک یا مختار كالاختيار بوكا ادرمه اخته منظور وتبول مقرر شده کو دبی جمله مذکوره پالا دِبَى تَ**ارِينَ بِي**َنَّى مقام دورہ <u>ما</u> حد ددران مقدمه ميں جوخر چه ہر جانيہ ک ب... ماہر ہوتو دکیل صاحب پابنڈ کئہ ہوگ فكافت نامة لكره دياتا كدسندرب A CAD AS /20 الرقوم:\_ کسسواہ شد الع الع Pashawa مقام\_ - کے لئے منظور ہے۔ Acus Preal Twis نوث: اس وكالت نامه كى فو ثو كابي نا قابل قبول موكى به

يتادر بارايسوى المشن ، خسيبه بخستونواه 53604-Khon Yousatzar ahkar\_ PESHAWAR باركونس اايسوى ايش نمبر: <u>135 || - 19 - 20</u> دابط<sup>ن</sup>مز: <u>0414444 -0337-0414444</u> ΚP Service بعدالت جناب: Peshawar Tribungl مخاب: Appellant Service Appeal : 13 # afreen When? علت تمبر: مورخه :**7**7: Govi تحانه: اعث تحرير آنك مقدمه مندرجه عنوان بالامیں اپنی طرف سے داسطے پیروی وجواب دہی کار دائی متعلقہ Jus Shahkar Khan Yousaf 2 Peshawar In Just كر ب اقراركيا جايا ب كر صاحب موصوف ومقدمة في كل كاروائى كا كال أضيار ، وكا ، نيز وكل صاحب كو راضی نامه کرنے وتقریر ثالث و فصله بر حلف دین جواب دعویٰ اقبال دعویٰ اور درخواست از برقتم کی تصدیق زری بر دستخط کرمن کا اختیار موکا ، نیز بصورت عدم بروی یا دیکری میطرفه یا ایل کی برآمدگی اور منسوفی ، نیز دائر كرن ايل تكراني ونظيرتاني و بيردى كران كالمجار مو كالدر بصورت ضردرت مقدمه مذكوره يح كل ياجز دري کاردائی کے داسطے آور ویک یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقر رکا اختیار ہوگا ادر صاحب مقرر شدہ کو دہی جملیہ مذکورہ بالا اختیارات حاصل ہو ں کے اور اس کا سابنیتہ پر داختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ جرجانہ النوالیے مقدمہ کے سب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد ے باہر ہو تو وکیل صاحب بابند نہ ہوں کے کہ پرون رة كري البذا وكالت مامد لكه دبا تاكه سند رب WAR BAR ASSOC /20\_\_\_ الرقوم : \_ ER PAKHTO ید ا<mark>گیستواه شد</mark> ال Peshawas 15 کے لیے منظور ب Accepted S. Khang

نوٹ: اس د کالت نامہ کی نوٹو کا پی نا تاہل قبول ہوگی۔