

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.866/2024

1. Adnan Khan.

(APPELLANT)


VERSUS

1. Government of Khyber Pakhtunkhwa.

(RESPONDENTS)

I N D E X

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(TAHID KHAN)

Superintendent (Litigation-III)
Govt. of Khyber Pakhtunkhwa
Home & TA's Department
CNIC # 17301-9455498-7
Mobile # 0310-0926235

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 866/2024

1. Adnan Khan

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa.

RESPONDENTS

**PARA-WISE COMMENTS ON BEHALF OF
RESPONDENTS NO.1, (CHIEF SECRETARY, KHYBER
PAKHTUNKHWA) AND RESPONDENT NO.2
(ADDITIONAL CHIEF SECRETARY, HOME & TRIBAL
AFFAIRS DEPARTMENT).**

Khyber Pakhtunkhwa
Service Tribunal

Dinry No. 16357

Dated 07-10-24

**RESPECTFULLY SHEWETH:
PRELIMINARY OBJECTIONS:**

1. That this Hon'ble Tribunal with profound respect has got no jurisdiction to entertain and adjudicate upon the instant appeal.
2. That the appellant is estopped by his own words and conduct to file the instant appeal before this Hon'ble Tribunal.
3. That the appellant has got no locus standi to invoke the jurisdiction of this Hon'ble Tribunal.
4. That the appellant has concealed the entire material facts from this Hon'ble Tribunal.
5. That the appellant has not come to this Hon'ble Tribunal with clean hands. Therefore, he is not entitled for any relief from this Hon'ble Tribunal.
6. That the appellant has got no cause of action to file the instant appeal before this Hon'ble Tribunal.
7. That the appeal is not maintainable in its present form.
8. That the instant appeal is based on surmises and conjectures.
9. That the appellant is not aggrieved person by virtue of Section-4 of the Service Tribunal Act, 1974. Therefore, the appeal in hand may graciously be dismissed.
10. That the appellant has not preferred any departmental appeal to the Secretary Home, Khyber Pakhtunkhwa regarding the redressal of his grievances and a fake departmental appeal has been appended by him just to validate and admit the institution of the instant service appeal before this Hon'ble Tribunal. Therefore, the appeal in hand may be dismissed on this score alone.

FACTS:

1. That para-1 is incorrect and misconceived as the appellant was initially appointed as Key Punch Operator (BPS-12) in Ex-Fata Tribunal vide order dated 08.03.2019 (Annexure-A). Later on, major penalty of "Removal from Service" was imposed on him as the process of his recruitment was made against the law and rules vide Home Department order dated 17.01.2022 (Annexure-B). Aggrieved from the said order, the appellant filed a service appeal No. 782/2022 before this Hon'ble Tribunal which was accepted and in compliance

of the judgment dated 03-03-2023, the appellant was reinstated into service (as Key Punch Operator-BPS-16) subject to the final decision of the CPLA which is pending before the Supreme Court of Pakistan (**copy of judgment and reinstatement order are appended as C&D**).

2. Incorrect. Same reply as give in para-1.
3. That para-3 is incorrect, misconceived and denied. The appellant was initially appointed as Key Punch Operator (BPS-12) in Ex-Fata Tribunal and later on, due to non-observance of the essential legal formalities, in respect of his recruitment, major penalty of "Removal from Service" was imposed on him. He assailed the above order before this Hon'ble Tribunal in service appeal No. 781/2022 which was accepted and in compliance of the judgment dated 03-03-2023, the appellant was reinstated into service (as Key Punch Operator-BPS-16) subject to the final outcome of the CPLA which is pending before the Supreme Court of Pakistan. Moreover, it is also worthwhile to mention herein that at the time of his reinstatement, no post of Key Punch Operator was in existence at the strength of the Provincial Government therefore, to completely implement the judgment in respect of his salary and back benefits, the salary of the appellant was started against the post of the Computer Operator. Furthermore, if this Hon'ble Tribunal could draw his kind attention by requisitioning the service appeal (bearing No. 781/2022 judgment dated 03-03-2023) from the record room, wherein the appellant has specifically mentioned his name and detail of his post as "Mr. Adnan Khan, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar". Hence, this admission of the appellant alone is sufficient for the dismissal of the appeal in hand.
4. Incorrect. The appellant concealing the actual fact that he was dismissed from government service under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011 vide order dated 17.1.2022, (order Annex-B already appended vide para-1 of the facts).
5. Detailed reply offered in para-1 and para-3 of the facts above.
6. That para-6 is incorrect and denied. The appellant has not preferred any departmental appeal whatsoever to the Secretary Home, Khyber Pakhtunkhwa regarding the redressal of his grievances and a fake departmental appeal has been appended by him to validate and admit the institution of the instant service appeal before this Hon'ble Tribunal. Moreover, no diary/dispatched number was given by the respondent department on the so-called departmental appeal neither the appellant has appended any proof to justify the same. Hence, the instant appeal is liable to be dismissed with special cost.

GROUND:

- A. That para-A is incorrect and misconceived. Detailed reply offered in para-1 and para-3 of the facts.
- B. That para-B is also incorrect and denied. The respondents have treated the appellant in accordance with the provisions of **Article 04 read with Article 25 of the constitution of Islamic Republic of Pakistan, 1973**.
- C. Same reply as given in para-B.
- D. Same reply as narrated in para-1, para-3 and para-6 of the facts.

E. Detailed reply offered in para-1, para-3 and para-6 of the facts.

F. That after seeking permission of this Hon'ble Tribunal, the respondent department will add some additional grounds during the course of arguments where necessary.

PRAYER:

In view of the above narrated facts and grounds, it is, therefore, most humbly prayed that the instant service appeal may graciously be dismissed with special cost been devoid of merits and substances.



**Chief Secretary,
Govt. of Khyber Pakhtunkhwa
(Respondent No.1)**

**CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa**



**Additional Chief Secretary
Govt. of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department
(Respondent No.2)**

**Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.**

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR**

Service Appeal No.866/2024

Adnan Khan

.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa & Others

.....(Respondents)

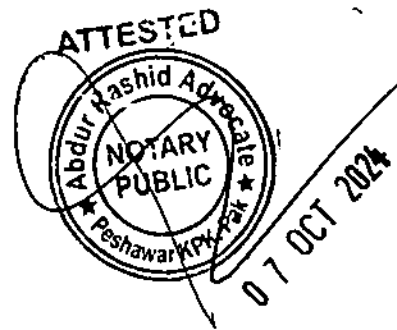
AFFIDAVIT

I, Abid Majeed, Additional Chief Secretary, Home & T.A's Department, do hereby solemnly on oath that the contents of accompanying Para-wise comments/ Reply on behalf of respondents No.1 to 3 to the Service Appeal are to the best of our knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this Service Appeal, The answering respondents have neither been placed ex-parte nor their defense is struck off/*cost*.



(ABID MAJEED)
Addl. Chief Secy Home & T.A's Deptt
Govt. of Khyber Pakhtunkhwa
(Respondent No. 1)



**BEFORE THE HON"BLE KHYBER PAKHTUNKHWA, SERVICES
TRIBUNAL PESHAWAR**

Adnan Khan

Service Appeal No.866/2024

.....(Appellant)


VERSUS


Government of Khyber Pakhtunkhwa & Others

.....(Respondents)

AUTHORITY LETTER

Mr. Tahir Khan Superintend (Lit-III) is authorized to submit Para-wise Comments/ reply and also to defend the captioned Service Appeal on behalf of Respondent No. 1 & 2.


(Nadeem Aslam Chaudhry)
Chief Secretary
Govt. of Khyber Pakhtunkhwa
(Respondent No. 1)


(ABID MAJEED)
Addl. Chief Secy Home & T.A's Deptt
Govt. of Khyber Pakhtunkhwa
(Respondent No. 2)



"A" -4-

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/1110 dated: 08.03.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint Mr. Adnan Khan S/o Wali Khan against the vacant post of Key Punch Operator UPS-12 (13320-960-42120) in FATA Tribunal at Peshawar under rule 10-sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of DPS-12 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt. to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to:

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

Section Officer (Litigation-III)
Home & TA's Department

REGISTRAR
FATA TRIBUNAL



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

"F"

Dated Peshawar 17th January, 2022

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ORDER

HD/FATA Tribunal/VB&A/55/2022/298-67 WHEREAS, Mr. Adnan Khan, Key Punch Operator (BPS-16) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. AND WHEREAS, the Department gave opportunity of personal hearing to Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal as required under the rules 7(d) Government Servant (Efficiency & Disciplinary) Rules, 2011, AND WHEREAS, Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal was not able to produce any favorable record.

3. NOW, THEREFORE, the Competent Authority has been pleased to impose major penalty of "Removal from Service" on Mr. Adnan Khan, Key Punch Operator (BPS-16), Ex-FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-01-2022.

-Sd-

Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General Govt. of Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. Additional Secretary (Judicial) Home & TA's Deptt: Khyber Pakhtunkhwa.
7. PSO to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Chief Minister Khyber Pakhtunkhwa.
9. Account Section Home & TAs Department (NMAs).
10. Official concerned.

Section Officer (Litigation-III)
Home & TAs Department

Section Officer (B & A)

-16-

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

- 2. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
 - 3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
-(Respondents)

Service Appeal No.781/2022

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

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

Versus

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


Service Appeal No.782/2022

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

Mr. Aduan Khan, Ex-KPO (BPS-16); Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
Appellant

Versus

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


 Section Officer (Litigation-III)
 Home & TA's Department

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

Present:

Noor Muhammad Khattak,
Advocate.....

For the appellants
in Service Appeal

No.774/2022,
775/2022, 776/2022,
777/2022, 778/2022,
779/2022, 780/2022,
781/2022, 782/2022,
783/2022, 784/2022,
802/2022,

Imran Khan,
Advocate.....

For the appellants
in Service appeal

No.811/2022,
812/2022, 813/2022,
814/2022, 815/2022,
816/2022, 817/2022,
818/2022

Muhammad Riaz Khan Paindakhel,
Assistant Advocate General.....

For respondents.

APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDERS DATED
17.01.2022; WHEREBY MAJOR PENALTY OF
REMOVAL FROM SERVICE HAS BEEN IMPOSED ON
THE APPELLANT AND AGAINST THE IMPUGNED
INACTION OF THE RESPONDENTS BY NOT
DECIDING THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUARY PERIOD OF
NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Through this single
judgment all the above appeals are going to be decided as all are similar
in nature and almost with the same contentions.

[Signature]
[Signature]
Section Officer (Litigation-III)
Home & TA's Department

Service Appeal No. J742621 titled "Fazal Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 01.01.2023 by Division Bench comprising: Justice Arshad Khan, Chairman, and Ms. Razina Rehman, Member, Justice, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. The appellants were appointed against different posts in the erstwhile FATA Tribunal and after merger of the Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa, the employees of the FATA Tribunal including the appellants were transferred to the Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department and they were posted against different posts vide Notification No. E&A (HD)2-5/2021 dated 17.06.2021. Vide different covering letters all issued on 25.10.2021, the appellants were served with show cause notices by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, containing the following stereotyped allegations:

"That consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in EX-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled"

It was thus found by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, that the appellants had been guilty of "Misconduct" as specified in rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule(1)(vi) "appointed in violation of law and rules".

It is pertinent to mention here that the inquiry was dispensed with by the Secretary.

The appellants filed their respective replies and vide impugned orders, the Secretary to the Government of Khyber Pakhtunkhwa, Home

[Handwritten Signature]
Section Officer (Litigation-II)
Home & TA's Department

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Service Appeal No.774/2022 titled "Fazal Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 01.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mr. Racine Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

Attest
Section Officer (Liaison-III)
Home & P's Department

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Service Appeal, No. 174/2022 titled "Reshad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Chief Secretariat, Peshawar and others", decided on 01.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

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

that the enquiry committee termed all the said appointments illegal and without lawful authority and recommended to cancel/withdraw.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned orders.

6. It is undisputed that the appellants were appointed by the Ex-FATA Tribunal and they had been performing duties until their removal from service. The allegations against them are that the recruitment process was unlawful and the appointment orders were issued without lawful authority. Not a single document was produced by the respondents in support of these allegations before the Tribunal. All the appellants were the candidates in the process of selection initiated in response to the advertisement in two Urdu dailies "AAJ Peshawar" and "AAYEEN Peshawar". It is worth mentioning that all the appellants had duly applied for the posts. The appointment orders show that each appointment had been made on the recommendation of the Departmental Selection Committee (DSC). The respondents though alleged that the DSC was unlawful but have not explained as to how that was so? The posts advertised were within the competence of the Registrar under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules,

[Handwritten Signature]
Section Officer (Litigation III)
Home & TA's Department

Service Appeal No. 734/2021 titled "Essad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretaries, Peshawar and others", decided on 01.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Sajid Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

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Section Officer (Litigation-III)
Home & PA's Department

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Service Appeal No.774/2021 titled "Wazir Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 01.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman and Mr. Razzaq Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

7. Nothing has been said or explained in the replies of the respondents or during the arguments regarding the alleged violation of law and rules in the appointments of the appellants. It is also to be observed that if at all there was any illegality, irregularity or wrongdoing found in the appointments of the appellants, which have nowhere been explained nor, as aforesaid, any document produced in that regard, the appointment orders of the appellants have not been cancelled rather the appellants were removed from service.

8. The Registrar (Sajjad-ur-Rehman), of the EX-FATA Tribunal, who had made the appointments of the appellants as competent authority under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules, 2015, was removed from service on the basis of the said enquiry. He filed Service Appeal No.2770/2021 before this Tribunal, which was partially accepted on 01.02.2022 and the major penalty of removal from service awarded to him was converted into minor penalty of stoppage of increment for one year. We deem appropriate to reproduce paragraphs 5, 6 & 7 of the said judgment.

"5. Record reveals that the appellants while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUNTS AND AUDIT RULES, 2015, where appointment authority for making appointments in Ex-FATA Tribunal from BPS-1 to

Section Officer (Legal Services-II)
Home & TA's Department

Service Appeal No. 774/2022 titled "Rizkiul Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.11.2022 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Atiqur Rehman, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

"6. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointment authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval for the competent authority has vanished away and it can be safely inferred that neither ACS FATA, nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointment authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegation does not hold ground.

"7. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and

Section Officer (Litigation-II)
Home & TA's Department

Service Appeal No.774/2022 titled "Rizaid Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretaries, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Rizwan Rehman, Member, Judicial, Khyber Pakhtunkhwa Services Tribunal, Peshawar.

vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60."

In the judgment it was found that there were some irregularities in the appointments made by the Registrar, that were not so grave rather lack of proper care and vigilance was there which might not be willful to make the same as a case of grave negligence inviting severe punishment. It is nowhere alleged by the respondents in the show cause notices, impugned orders or even in the replies that the appellants were either not qualified or were ineligible for the post against which they had been appointed. There might be irregularities in the process, though not brought on surface by the respondents in any shape, yet for the said alleged irregularities, the appellants could not be made to suffer. Reliance is placed on 1996 SCMR 413 titled "Secretary to Government of NWFP Zakat/Social Welfare Department Peshawar and another versus Sadullah Khan", wherein the august Supreme Court of Pakistan held as under:

"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described "purely temporary basis". The petitioners have now turned around and terminated his services due to irregularity and violation of rule 10(2) ibid. The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate

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Section Officer (Litigation-II)
Home & TA's Department

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Service Appeal No. 774/2023 titled "Reedad Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Justice Arshad, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

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

Section Officer (Liaison-1)
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Service Appeal No. 77/7027 filed "Husaid Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

12. On numerous occasions this Court has held that for the irregularities committed by the department itself qua the appointments of the candidate, the appointees cannot be condemned subsequently with the change of Heads of the Department or at other level. Government is an institution in perpetuity and its orders cannot be reversed simply because the Heads have changed. Such act of the departmental authority is all the more unjustified when the candidate is otherwise fully eligible and qualified to hold the job. *Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education, Secondary, N.-W.F.P. Peshawar and others 2007 PLC (C.S.) 179.*

13. It is well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where a full opportunity of defence is to be provided to the delinquent officer. Efficiency and Discipline Rules, 1973 clearly stipulate that in case of charge of misconduct, a full-fledged inquiry is to be conducted. This Court in the case of *Pakistan International Airlines Corporation through Managing Director, PIAC Head Office, Karachi Airport, Karachi v. Ms. Shaista Naheed 2004 SCMR 316* has held that "in case of award of major penalty, a full-fledged inquiry is to be conducted in terms of Rule 5 of E&D Rules, 1973 and an opportunity of defence and personal hearing is to be provided". Specific reference is made to latest decisions of this Court in cases of *Secretary, Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar* and another *PLD 2008 SC 392* and *Fazal Ahmad Naseem Gondal v. Registrar, Lahore High Court 2008 SCMR 114*.

14. In the facts and circumstances, we find that in this case, neither petitioner was found to be lacking in qualification, experience or in any ineligibility in any manner, nor any fault has been attributed to petitioner, therefore, he cannot be reverted from the post of Director (B-19). Act of sending summary by the Establishment Secretary to the Prime Minister was not in accordance with Rule 6(2) of the Civil Servants (Appointment,

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Section Officer (Litigation-III)
Home & TA's Department

Service Appeal No. 774/2023 titled "Khalid Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Chief Secretaries, Peshawar and others", decided on 03.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Razia Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

Promotion and Transfer) Rules, 1973 as the Establishment Secretary was himself the appointing authority. The departmental authorities at the time of appointment of the petitioner as Director (B-19) did not commit any irregularity or illegality as has been affirmed by the Establishment Secretary in the summary to the Prime Minister. The power vested in the competent authority should have been exercised by the competent authority itself, fairly and justly. Decision has to be made in the public interest based on policy. It must be exercised by the proper authority and not by some agent or delegatee. It must be exercised without restraint as the public interest may, from time to time require. It must not be fettered or hampered by contracts or other bargains or by self-imposed rules of thumb. So a distinction must be made between following a consistent policy and blindly applying some rigid rule. Secondly discretion must not be abused. In the case of Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 this Court observed that "we need not stress here that a tamed and subservient bureaucracy can neither be helpful to government nor it is expected to inspire public confidence in administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait of a bureaucrat. It hardly need to be mention that a Government servant is expected to comply only those orders/directions of superior which are legal and within his competence".

10. In a recent judgment in the case titled "Inspector General of Police, Quetta and another versus Rida Muhammad and others" reported as 2022 SCMR 1583, the honourable Court observed that:

"11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or

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Section Officer (Litigation-II)
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Service Appeal No. 774/2022 titled "Reshma Khawar-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 03.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mr. Azim Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-I for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have

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Section Officer (Judicial III)
Home & I/S Department

Service Appeal No.774/2022 titled "Revised Khan vs The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Services, Peshawar and others", decided on 01.03.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Ms. Rozina Rehman, Member, Judicial-Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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

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

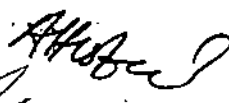
12. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of March, 2023.



KALIM ARSHAD KHAN
Chairman



ROZINA REHMAN
Member (Judicial)


Senior Officer (Litigation-III)
P & A's Department

(TO BE SUBSTITUTED WITH EVEN NUMBER AND DATE)



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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

091-9214104

091-9210201

Dated Peshawar the May 15, 2023

ORDER

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

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

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

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

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

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

Ends: No. & Date over

Home Secretary

Copy to:-

- 1- Accountant General, Khyber Pakhtunkhwa
- 2- Secretary Finance Department, Khyber Pakhtunkhwa
- 3- Secretary Law Department, Khyber Pakhtunkhwa
- 4- Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
- 5- PS to Home Secretary, Home Department
- 6- Officials concerned
- 7- Personal files

Section Officer (General)

CS CamScanner

Section Officer (Litigation-III)
Home & T's Department