

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1194 /2024.

Faridoon Khan

-----Appellant

Versus

Govt of Khyber Pakhtunkhwa &

-----Respondents

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Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No.1194/2024.

Faridoon Khan

-----Appellant

AFFIDAVIT

I Dr, Syed Muhammad Idrees S/O Syed Bakhat Badshah District Health Officer, Peshawar, do hereby solemnly affirm and declare on oath that content of the instant necessary documents are true and correct to the best of my knowledge & belief and nothing has been concealed from this honorable Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense has been struck off/cost.

DEPONENT

Syed Muhammad Idrees
District Health Officer,
Office of DHO Peshawar
CNIC No.17102-1152032-1



②

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1194/2024.

Faridoon Khan -----Appellant

Versus

- 1: The Provincial of KPK through District Health Officer G.T Road Peshawar
- 2: District Health Officer, Peshawar.

-----Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 01 to 02.

Respectfully Sheweth,
Preliminary Objections:-

Khyber Pakhtunkhwa
Service Tribunal
No. 17272
Dated 28-10-24

1. The appellant has neither cause of action nor locus standi to file the instant appeal.
2. The appellant has not come to the Tribunal with clean hands.
3. The appeal is bad for mis joinder and non joinder of the necessary and proper parties.
4. That the instant appeal is barred by law and limitation.

On facts;

Para No.1 Correct to the extent that the appellant was appointed as Chowkidar (BPS-3), but the fact is that the appellant was inadvertently appointed under Retired Son's Quota in the District Health Office Peshawar and as his father was the employee of Population Welfare Department (Federal employee) and got retirement from Population Welfare Department & so not entitled for lieu in Retired Son's Quota in District Health Office Peshawar.

Para No.2 Pertaining to record.

Para No.3 Incorrect, Soon after appointment under Retired Son's Quota, during the final scrutiny of the documents it was found that the father of the appellant was the employee of the Population Welfare Department and got retirement from Population Welfare Department (Annexure-A) and so the appellant is not entitled for appointment under Retired Son's Quota in the District Health Department. So the appellant was informed from his status and the appellant admitted his fault and resultantly submitted his resignation to the Department which is duly witnessed by 04 Persons and the resignation letter was accepted by the Competent Authority (Annexure-B).

Para No.4. Already explained in above para No 3.

Para No.5 The Respondent Department have implemented Honorable Services Tribunal order in letter & spirit and conducted the enquiry within the stipulated time. (Annexure- C).


Para No.6 Pertains to record.

Reply on Grounds:-

- A. Incorrect, the facts have been explained in details in the above Paras.
- B. Incorrect, everything in crystal clear and the appellant was given full opportunity and all the witnesses have been cross examined and the said enquiry report has been submitted by the respondent Department in Honorable Service Tribunal court vide institution No. 12999 dated 27/05/2024 .
- C. Incorrect, all the facts have been explained in the preceding paras. .
- D. Incorrect, all the facts have been explained.
- E. No. comments.

Moreover the Honourble Supreme Court of Pakistan Judgment regarding appointment under Deceased Son's Quota / Medical Board out Quota , Retired Son's Quota as attached as (Annexure-D).

In view of the above, it is humbly prayed that the instant appeal being devoid of merit, may graciously be dismissed with cost.


Respondent No. 1 to 02.
District Health Officer
Peshawar

Syed Muhammad Iqbal

(4) A
Annexure

**PENSION PAYMENT ORDER
PENSIONER'S PORTION**

Name of pensioner Younis Khan
(Designation and Grade) Ex Chowkidar B-2
His/Her Father's name Qalandar Khan
Husband's
Permanent address showing village of Pishitakhan & Paj
Village, Tehsil Distt Peshawar
Identity Card No. -
Date of birth 02-5-1937
Date of Appt: 24-4-1976
Date of Retirement 01-5-1997
Length of Qualifying Service 21 years
Class of Pension Superannuation
Monthly average emoluments Rs 2275-00
No. and Date of sanction of pension or letter No Enis. off
Report dt 12/03/2007

and Date of the other Audit and Account office authorising the Pension/Gratuity/commutation

Old P.P.O. No. if any CP/34/9543-N

Gross pension Rs 1095-15

1/4th surrendered portion Rs -

Commuted portion Rs 547-57

Net pension payable monthly Rs 547-58

Debitable to Govt Central

(Classification)

Major Function	000	General Admn.
Minor Function	020	Fiscal Admn.
Detailed Function	028	Superannuation and Pension
Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowances and Pension.
Detailed Object	661	Superannuation retiring and Compensatory Pension

District Health
Officer Peshawar

[Handwritten Signature]

Office of the ACMR Sr. Pensioner
No. CP/SH/13449-N the 19

UNTIL FURTHER NOTICE, and on the expiration of every month please pay to Yousuf Khan the sum of Rupees Five hundred & forty (Rs. 547-58) (less income tax) being the amount of PENSION.

as ex. co-owner of population welfare Dist
Upon the production of this order and a receipt in the usual form. The payment should commence from 1-12-2000

Nature	Diff	Payable
① Pension	73-50	1-5-1987 to 30-11-1999
② As Mr. exercised the option admissible under the Pension Rules 1977 a lump-sum/gratuity of Rs.	36-75	1-7-1999 to 1-7-2003
③ Rupees pension of Rs	5-51	1-7-2003 to 1-7-2004
④ The gratuity is also payable	17-36	1-7-2004 to 1-7-2005
⑤	10-70	1-7-2005 to 1-7-2006

Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowance and Pension
Detailed Object	663	Gratuity value of Pension

Monthly Pension increases

CP/SH/13449-N No. 273-78
CP/SH/13449-N No. 41-06
CP/SH/13449-N No. 129-36
CP/SH/13449-N No. 79-34
CP/SH/13449-N No. 107-11
CP/SH/13449-N No. 170-73

He is also entitled to a temporary increase of Wef 1-12-2006 or until further orders under usual conditions. A sum of Rs. 107-11 on account of commuted value of pension is also payable. The commuted value is debit to the head.

Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowance and Pension
Detailed Object	663	Commuted value of pension

(Signature) [Signature]
 (Designation) ACMR Sr. Pensioner
 To The Treasury Officer/D.A.O. Manager National Bank of Pakistan, Saddar Road Branch, Peshawar Cantt.

6

NOTE (1). No Pension shall be liable to seizure, attachment or requestration by process of any court in Pakistan at the instance of a creditor for any demand against the pensioner (section II), Act XXIII of 1871).

NOTE (2). Payment under this order is to be made only to the pensioner in person, with the following exceptions:-

(a) To person specially exempted by Government.

(b) To purdah observing ladies and to person unable to appear on account of illness or bodily infirmity.

(Payment in both cases (a) and (b) is made on production of a Life Certificate signed by a responsible officer of Government or other well known and trustworthy person).

(c) To any person sending a Life Certificate, signed by some person exercising the powers of a Magistrate of any class under the criminal procedure code or by any Registrar or Sub-Registrar under the Registration Act, or by any pensioned Officer who before retirement exercise the powers of a Magistrate or any Gazetted Officer of Government or by a Munsiff or by any person holdig a Government title.

(d) In all cases referred to in clauses (a), (b) and (c), the Disbursing Officer must, at least once a year, require proof, independent of that furnished by the Life Certificate of the continued existence of the pensioner.

NOTE (3). On the death of the pensioner this order should be immediately returned by his/her family to the Treasury Office District Account office/ National Bank of Pakistan with a report of the date of his death.

PM 1357
1/3/57

Record of lump-sum payments on account of Gratuity and Commutation.

Nature of Payment	Vr. No. and Date	Amount
20/7/57		
1/12/57 - 31/3/57		59.20
42/1355		133.30
Admin		
18/7/57		
2/10/57		
1/5/57		
2/8/57		
1/3/57		
		377.50

District Magistrate
Office
Muzh
Muzh
Muzh

Handwritten scribbles and a rectangular stamp containing the numbers 031112000 and 6357.

District Health Officer, Ashwar

Handwritten text in Urdu: "میں نے اس کے بارے میں جاننا چاہتا تھا"

17301-0581608-1

Handwritten text in Urdu, including the name "M. S. Khan" and a signature. The text appears to be a letter or report.

Handwritten text: "تاریخ"

Handwritten text: "میں نے اس کے بارے میں جاننا چاہتا تھا"

Amour - B

8



Annexure - B



**OFFICE OF THE DISTRICT HEALTH OFFICER
PESHAWAR**

Phone No. 091-9225387

OFFICE ORDER

Resignation tendered by Mr. Faridoon Khan S/O Younas Khan newly appointed as Chowkidar BPS-03 is hereby accepted from the date of appointment.

Sd/xxxxxxx
District Health Officer
Peshawar.

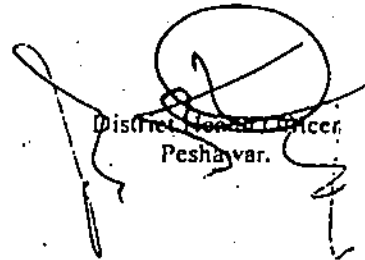
No. 18578-82 /DHO

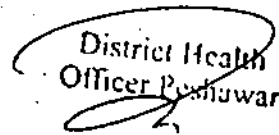
dated Pesh: 03/11/2022

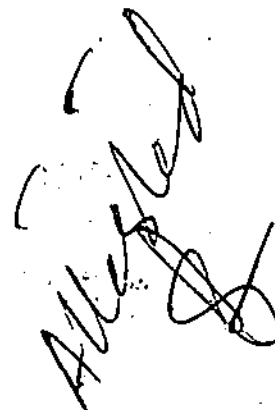
Copy is forwarded to the:

1. Accountant General Khyber Pakhtunkhwa.
2. Director General Health Services Khyber Pakhtunkhwa.
3. Deputy District Health Officer Metropolitan Peshawar.
4. Accounts Section DHO Office Peshawar.
5. Official Concerned.

For information and necessary action.


District Health Officer
Peshawar.


District Health
Officer Peshawar





**THE DISTRICT HEALTH OFFICER
PESHAWAR**

Phone No. 091-9225387

Fax No. 091-9225467

No. 8240 /DHO (Pesh) dated 15/05/2024

(97)

Annexure - E

To

The District Health Officer,
Peshawar.

Subject:- Inquiry Report regarding Mr Faridoon Khan S/O Younas Khan
District Peshawar).

Sir,

Reference your letter No 5957-59/DHO, dated Peshawar 09-04-2024, I
(Dr. Faroz Shah, DDHO Shah Alam & Mathara circle) has been appointed as the
Chairman of the enquiry in the above mentioned case.

PROCEEDINGS:-

- The enquiry committee called upon Mr Faridoon Khan S/O Younas Khan for personal hearing vide letter No. 5956/DHO/Pesh date 09-04-2024 (*Annexure-A*)
- Mr Faridoon Khan recorded his statement to the enquiry committee as well as submitted his written reply to the enquiry committee (*Annexure-B*). Similarly it is added here that Mr Faridoon Khan accept the fact that his father was the employee of the Population Welfare Department (Federal Department) and his father was working here as Chowkidar Since 20-25 years (*Annexure-C*).
- Furthermore it is important to mention here that the enquiry committee also called upon Mst Hashmat Bibi, Mr Israr and Mr Parviz Akhtar for recording their statements whose signatures /thumb impressions are present on the resignation letter of Mr Faridoon Khan.
- Mr Parviz Akhtar submitted his written reply to the enquiry Chairman (*Annexure-D*).
- Mr Muhammad Israr also submitted his written statement (*Annexure-E*).
- Mst Hashmat Bibi also submitted her written statement to the enquiry committee (*Annexure-F*).

FINDINGS:-

Mr Faridoon Khan has submitted an application for the post of Class-IV in the District Health Office Peshawar in lieu of Retired Son's Quota which has been received by the Establishment Section of this office & his name was included in the Retired Son's Quota list and selected consequently. Later on for the purpose of pay when he was asked to produce the retirement documents of father, he didn't produce the same. Mr Faridoon has admitted the fact that his father was the employee of Federal Government (i.e) Population Welfare Department & was working as a Chowkidar in Health Department.

Mst Hashmat

(5) (16)

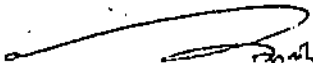
Furthermore Mr Faridooon Khan father got retirement from Population Welfare Department not Health Department (*Annexure-C*). It is important to mention here that the signature on the resignation letter of Mr Faridooon Khan is the same as the signature is present on his Medical Board Certificate (*Annexure-G*). Similarly the thumbs impression of Mst Hashmat Bibi is present on the resignation letter of Mr Faridooon Khan, as she accept the fact that it is her thumb impression.

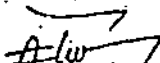
Similarly the statements of Mr Parviz Akhtar & Muhammad Israr are also self explanatory (*Annexure-D&E*).

RECOMMENDATIONS:-

1. Looking at the findings and going through all the relevant record and the statements by Mr Faridooon Khan, Mst Hashmat Bibi, Muhammad Israr, Mr Parviz Akhtar and cross examining all the members including Mr Faridooon Khan, this committee came to the conclusion that Mr Faridooon Khan S/O Younas Khan was appointed inadvertently under Retired Son's Quota because of wrong and incomplete information submitted by Mr Faridooon Khan.
2. Decision may be issued by the Competent Authority to the Sub-Offices (i-e) Dairy section, Establishment section, Account section that in future no application should be received without proper documentation. The documentation must include CNIC, Domicile, father /mother retirement documents, qualification documents etc etc.
3. As the resignation letter is considered, all the signatures & thumbs impression are self explanatory and the same signature of Mr Faridooon Khan is present on his medical Board Certificate during the time of selection in police Services Hospital, which can't be denied and after his resignation the same was accepted by the Competent Authority and the account section is directed to do the remaining payment to Mr Faridooon Khan for his duty if any on their part. In view of above, it is stated that the resignation letter has been submitted by Mr Faridooon Khan and so Mr Faridooon Khan is not entitled to claim for job under retired Son's Quota.

1. 
Dr. Farooz Shah
DDHO Shah Alam & Mathra Circle, Peshawar.

2. 
Dr. Mubarak Zeb Khan
DDHO Litigation /Development
District Health Office, Peshawar.

3. 
Mr Abdullah (Co-opted Member)
District Health Office, Peshawar.

Allesed

**OFFICE OF THE DISTRICT HEALTH
PESHAWAR**
Phone No. 091-9225387

Annexure

11

ER

No. 5956 /DHO/Pesh Dated: 09/04/2024

To

The Faridoon Khan S/O Younas Khan
Pishtakhara Payan District Peshawar.

Subject: Personal Hearing

Memo.

You Mr. Faridoon Khan S/O Younas Khan are directed to attend this office (District Health Office) at 15-04-2024 in person at 11:00AM sharply for personal hearing to record your statement before the inquiry committee in light of order No.13651 /DHO/Pesh, dated 21-07-2023.

District Health Officer,
Peshawar

Copy forwarded to the :

- > PA Director General Health Services, Khyber Pakhtunkhwa Peshawar.
- > DDHO Shah Alam & Mathra Circle Peshawar.
- > Coordinator (DHIS), DHO, Office Peshawar.
- > Inquiry Officer concerned.

Attendant
30
Accepted

Allegro
Handwritten signature

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Handwritten text in Urdu script, possibly a date or reference.

1764
15/10/1989

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Handwritten text in Urdu script, possibly a signature.

Handwritten text in Urdu script, possibly a name.

Handwritten text in Urdu script, possibly a signature.

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Assesed
3/11/24

Moskaly

0346-5972100

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15/4/2024

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(H)

Approved

(S)

Office of the ACMR Sd. Basmawar
No. CP/11/13449-N 19

UNTIL FURTHER NOTICE, and on the expiration of every month please pay to Yousuf Khan the sum of Rupees Five hundred forty (Rs. 547-58) (less income tax) being the amount of PENSION.

as ex. crowdfund of population welfare upon the production of this order and a receipt in the usual form. The payment should commence from 1-12-2006

- Nature Diff. P.M. Payable
- ① Pension No. 73-50 1-5-1997 to 30-11-2002
 - ② Pension No. 33-33 admissible under the Pension Rules 1977 a lump-sum/gratuity of Rs. 1-12-2002 to 1-7-2003
 - ③ Pension No. 5-51 pension of Rs. 1-7-2003 to 1-7-2004
 - ④ Pension No. 1-36 also payable 1-7-2004 to 1-7-2005
 - ⑤ Pension No. 10-70 1-7-2005 to 1-7-2006
 - ⑥ Pension No. 14-48 1-7-2006 to 1-7-2006
 - ⑦ Pension No. 16-23-73 1-7-2006 to 1-7-2006

The gratuity is debitable to the head:

Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowance
Detailed Object	663	Gratuity value of Pension

Monthly Pension Rs. 547-58

8925/16-273-78
8951/16-41-06
8945/16-129-36
898/16-79-34
8910/16-107-11
89315/16-176-73

He is also entitled to a temporary increase of Rupees 1-12-2006 or until further orders under usual conditions. A sum of Rupees 107-11 by account of commuted value of pension is also payable. The commuted value is debitable to the head.

Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowance and Pension
Detailed Object	663	Commuted value of pension

(Signature) [Signature]
 (Designation) Asst. Secy. Accounts Genl. Public Revenue
165 Office Pakistan
 To The Treasury Officer/D.A.O.
 Manager National Bank of Pakistan.
Saddar Road Branch
Rawalpindi Cantt.

Alleged

(M)

Annexure-2

6

NOTE (1). No Pension shall be liable to seizure, attachment or requisition by process of any court in Pakistan at the instance of a creditor for any demand against the pensioner (section 11), Act XXIII of 1871).

NOTE (2). Payment under this order is to be made only to the pensioner in person, with the following exceptions:-

- (a) To person specially exempted by Government.
- (b) To purdah observing ladies and to person unable to appear on account of illness or bodily infirmity.
(Payment in both cases (a) and (b) is made on production of a Life Certificate signed by a responsible officer of Government or other well known and trustworthy person).
- (c) To any person sending a Life Certificate, signed by some person exercising the powers of a Magistrate of any class under the criminal procedure code or by any Registrar or Sub-Registrar under the Registration Act, or by any pensioned Officer who before retirement exercise the powers of a Magistrate or any Gazetted Officer of Government or by a Munsiff or by any person holding a Government title.
- (d) In all cases referred to in clauses (a), (b) and (c), the Disbursing Officer must, at least once a year, require proof, independent of that furnished by the Life Certificate of the continued existence of the pensioner.

NOTE (3). On the death of the pensioner this order should be immediately returned by his/her family to the Treasury Office District Account office/ National Bank of Pakistan with a report of the date of his death.

10

Alleged

11/12/57
11/3/57

Record of lump-sum payments on account of Gratuity and Commutation.

Nature of Payment	Vr. No. and Date	Amount
20/1/57		
1/12/57	51/3/57	59.20
4/1/57		133.30
Admin		
1/1/57	18/7/57	
2/1/57		
1/5/57		
2/8/57		
1/5/57		
	5/11/57	

District Officer
Shahwar

15

Handwritten signature and initials at the top of the page.

Office Assoc.
Pete the Johnson
Kevin Miller PhD

Date: 9/3/2024

I would like to inform you good day
that Mr. Jordan the James Wilson was
appointed and after some time, she in my
presence authorized his resign from service.
The reason is what so ever he knows better
Thanks

Subject: Empty

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Handwritten signature and scribbles in the top right corner.

Handwritten word or short phrase in the middle of the page.

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Handwritten signature or name at the bottom left.

Handwritten word or short phrase at the bottom center.

Wach
17/11/2024

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Handwritten text in the upper middle section, including a date '17/11/2024'.

Main body of handwritten text, consisting of several lines of cursive script.

17/11/2024
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Handwritten signature or name.

(18)

(18)

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MEDICAL CERTIFICATE

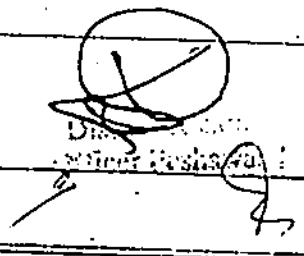
(15)

(19)

Amman

Name of official Faizidur Khan
 Caste or race Khatibi
 Father's name Munir Khan
 Residence Pishdakhada Pagan Peshawar
 Date of birth 01-01-1982
 Exact height by measurement 5-3
 Personal mark of identification NIL
 Signature of the official Faizidur Khan
 Signature of head of office _____

Seal of office



I do hereby certify that I have examined Mr. Faizidur Khan a candidate for employment in the Office of the Health and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except NIL

I do not consider this as disqualification for employment in the office of the As above
 His age according to his own statement 40 year and by appearance about 40 year Early

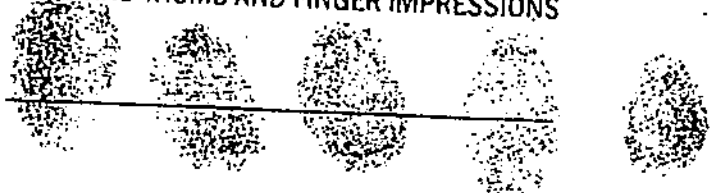


District Health Officer, Peshawar

MEDICAL SUPERINTENDENT,
 CIVIL HOSPITAL - Medical Superintendent
 Police/Services Hospital
 Peshawar

[Signature]
 14/10/22

LEFT HAND THUMB AND FINGER IMPRESSIONS



[Large handwritten signature]

(11)

Annexure-5

Annexure-5

PENSION PAYMENT ORDER
PENSIONER'S PORTION

Name of pensioner Younis Khan
 (Designation and Grade) Ex Chowkidar B-2
 His/Her Father's name Qalandar Khan
 Husband's
 Permanent address showing village po. Pishitakhan Paj
 Village, Tehsil. u. Distt. Peshawar
 Identity Card No. -
 Date of birth 02-5-1937
 Date of Appointment 24-4-1976
 Date of Retirement 01-5-1997
 Length of Qualifying Service 21 years
 Class of Pension Superannuation
 Monthly average emoluments Rs 2235-00
 No. and Date of sanction of pension or letter No Emis. 1976
Report dt 12/03/2007

and Date of the other Audit and Account office authorising the Pension/Gratuity/commutation

Old P.P.O. No. if any CP/SH/9543-N

Gross pension Rs 1095-15

With surrendered portion Rs -

Commuted portion Rs 547-57

Net pension payable monthly Rs 547-58

Debitable to Govt Central

(Classification)

Major Function	000	General Admn.
Minor Function	020	Fiscal Admn.
Detailed Function	028	Superannuation and Pension
Major Object	600	Transfer Payments
Minor Object	660	Superannuation Allowances and Pension.
Detailed Object	661	Superannuation retiring and Compensatory Pension

District Health Officer Peshawar

Handwritten signatures and scribbles at the top of the page.

District Health Officer
(Circular stamp with a signature inside)

10. Signature and designation of the Head of the Office or other Arresting Officer.

9. Signature of Government Servant.

Thumb

Middle Finger

Fore Finger

Little Finger

Ring Finger

8. Left hand thumb and finger impression of Non-fazal Officer.

7. Personal marks for identification.

B. Exact height by measurement.

6. Date of birth by Christian era as marks in ear for identification.

Father's name and residence.

Name

Height

Residence

21

22

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Civil Petition No.3390 of 2021

(On appeal against the order dated 13.04.2021 of the Peshawar High Court, Peshawar passed in W.P. No. 4609-P of 2020)

General Post Office, Islamabad & others ...Petitioners

Versus

Muhammad Jalal ...Respondent

For the petitioners: Malik Javed Iqbal Wains, Addl.A.G.P.
Assisted by Miss Maryam Rasheed, AHC
Mr. Gulistaj Ahmed Kiani, Senior Postmaster

For the Respondent: Nemo

On Court Notice: Mr. Khalid Ishaq, Advocate General, Punjab assisted by
Barrister Muhammad Mumtaz Ali, Addl.A.G., Pb
Mr. Saifullah, Addl.A.G., Sindh
Mr. Shah Faisal Ilyas, Addl.A.G., KPK
Mr. Muhammad Ayaz Swati, Addl.A.G., Balochistan

Date of Hearing: 26.09.2024

JUDGMENT

Naeem Akhtar Afghan, J. The respondent (herein) filed a Writ Petition in the Peshawar High Court for issuing directions to the petitioners (herein) to consider him for appointment against the quota reserved for the children of class-IV employees who retired on medical grounds. The respondent relied upon the Office Memorandum ('OM') dated 13 April 2005¹ of the Establishment Division, Government of Pakistan ('**the Establishment Division**') whereby the following paras were added to the Establishment division's OM dated 21 March 2000² which provided guidelines for contract appointments for a period of two years to civil posts under the Federal Government:

The condition of open advertisement may also be relaxed by the Prime Minister for the purpose of appointment on contract basis of widow/widower of one child of a deceased civil servant who dies during service and wife/husband or one child of a serving civil servant who becomes 'permanently disabled during service' and

¹ OM No.4/1/2005-CP.1 dated 13 April 2005

² OM No.8/10/2000-CP.1 dated 21 March 2000

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he/she takes retirement from service provided that such special dispensation may be allowed only for appointment to posts in BS-10 and below.

Provided further that the widow/widower or a child of a civil servant who dies during service and wife/husband or a child of a serving civil servant who becomes 'permanently disabled during service' and he/she takes retirement from service will have to apply for contract appointment within one year after the death of a civil servant or retirement of a permanently disabled civil servant. In case of a minor child of a civil servant, the one year period will start from the date he/she attains the age of 18 years.'

2. The Writ Petition was contested by the petitioners on the ground that the father of the respondent on 7 August 1996 availed of his retirement as Postman (BPS-4) on medical grounds, therefore, the OM dated 13 April 2005 cannot be applied retrospectively to appoint the respondent, who was the son of a retired civil servant.
3. The Writ Petition was disposed of by a Division Bench of the Peshawar High Court *vide* impugned order dated 13 April 2021 by issuing directions to the petitioners to appoint the respondent on contract basis in terms of OM dated 13 April 2005 (wrongly mentioned as notification in the impugned order) in accordance with the policy, notwithstanding that the OM dated 13 April 2005 could not be applied retrospectively to appoint the respondent as his father had retired from service on 7 August 1996, when at that time there was no policy for appointment of a child of a civil servant who dies during service or becomes permanently disabled during service and on this ground takes retirement from service.
4. The notice of this case issued to the respondent was received by his cousin who stated that the respondent has shifted abroad, but he did not disclose his address. Learned Additional Attorney-General ('AAG') stated that the respondent was not appointed by the petitioners as directed by the impugned order because he had shifted abroad.
5. During the hearing of this matter the following questions arose, which were noted in our order of 4 January 2024 as under:
 - (1) Whether the policy conforms with Article 25 and 27 of the Constitution of Islamic Republic of Pakistan insofar as it creates separate categories of persons who are to be given preference in employment; and
 - (2) Whether the Prime Minister of Pakistan has the power to relax rules and/or to issue the Policy.'
6. To ascertain as to whether the policy accords with the Constitution of the Islamic Republic of Pakistan 1973 ('the Constitution') notices

were issued to the learned Attorney-General for Pakistan as well as to the learned Advocate-Generals of the Provinces under Order XXVII-A of the Code of Civil Procedure, 1908 ('CPC').

7. Sub-section (1) of section 25 of the Civil Servants Act, 1973 ('**the Civil Servants Act**') empowers the President of Pakistan ('**the President**') or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Civil Servants Act. The President authorized the Prime Minister of Pakistan ('**PM**') vide SRO No.S.R.O.120(1/98) dated 27 February 1998 to make necessary rules. There are similar provisions in the provincial laws. Sub-section (1) of section 23 of the Punjab Civil Servants Act, 1974 ('**the Punjab Civil Servants Act**') empowers the Governor of Punjab or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Punjab Civil Servants Act. Sub-section (1) of section 26 of the Sindh Civil Servants Act, 1973 ('**the Sindh Civil Servants Act**') empowers the Government of Sindh or any person authorized by it in this behalf, to make necessary rules for carrying out the purposes of the Sindh Civil Servants Act. Sub-rule (1) of rule 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 ('**the Khyber Pakhtunkhwa Civil Servants Act**') empowers the Governor of the Province or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Khyber Pakhtunkhwa Civil Servants Act. The Governor had authorized the Chief Minister ('**CM**') Khyber Pakhtunkhwa to make necessary rules. Sub-rule (1) of Section 25 of the Balochistan Civil Servants Act, 1974 ('**the Balochistan Civil Servants Act**') empowers the Government of Balochistan or any person authorized by it in this behalf, to make necessary rules for carrying out the purposes of the Balochistan Civil Servants Act.

8. The rules for carrying out the purposes of the relevant Civil Servants Acts have to be respectively made by the PM, the Governor of Punjab, the Government of Sindh, the CM Khyber Pakhtunkhwa and the Government of Balochistan. However, the laws and the rules made thereunder must conform with Article 25 of the Constitution, which guarantees equality of citizens and their entitlement to equal protection of law, and with Article 27 of the Constitution, which safeguards against discrimination in the service of Pakistan.

9. The Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 does not provide for nor envisages what OM dated 13 August 2001³ issued by the Establishment Division had sought to do, that is, the appointment, without open advertisement, of a widow or one child of a civil servant of the Federal Government who dies during service, to a post in BPS-5 and on lower grade on contract basis. Through OM dated 5 January 2002⁴ issued by the Establishment Division, the same benefit was extended up to those in BPS-10. Thereafter, *vide* OM dated 13 April 2005⁵ issued by the Establishment Division the widow/widower/child of a civil servant who dies during service or who becomes permanently disabled during service and takes retirement from service, were made entitled for appointment on contract basis to any position up to BPS-10 without the same being advertised.

10. The Establishment Division introduced the Prime Minister's Assistance Package (**'the Package'**) *vide* OM dated 13 June 2006⁶ for the families of Federal Government employees who die in service grants for different grades which covered pensionary benefits, accommodation, free education, free health, allotment of plot, house building advance and employment to the posts in BPS-1 to 15 for two years on contract without the post being advertised. The Package was amended *vide* OM dated 20 October 2014⁷ and additional benefits were granted with effect from 15 June 2013 to the families of Government employees who die in service including employment of widow/widower/one son or daughter to the posts in BPS-1 to 15 on regular basis without advertising the post provided the applicant fulfils the criteria of the said post.

11. The Package was further amended *vide* OM dated 22 October 2014⁸ with effect from 15 June 2013 and included the retention of official accommodation by the family of a Government employee who dies in service or payment of rent for five years or till the age of superannuation, whichever is later. The Package was again revised by the Establishment Division *vide* OM dated 4 December 2015⁹ with effect from 9 February 2015 with the grant of a three hundred percent increase in lump sum grant in the package earlier issued in 2006 and provided for other benefits, including employment to posts in BPS-1 to 15 on two years contract without the post being advertised. The Package was again revised

³ OM No. F.No.8/10/2000-CP.1 dated 13 August 2001

⁴ OM No. F.No.8/10/2000-CP.1 dated 5 January 2002

⁵ OM No.4/1/2005-CP. 1 dated 13 April 2005

⁶ OM No. 7/40/2005-E.2 dated 13 June 2006

⁷ OM No. 8/10/2013-E.2 dated 20 October 2014

⁸ OM No. 8/10/2013-E.2 dated 22 October 2014

⁹ OM No. 8/10/2013-E.2(Pt) dated 4 December 2015

by the Establishment Division vide OM dated 23 December 2022¹⁰ with effect from 4 December 2015 whereby the provision of contract employment under the Package of 2015 was replaced with regular appointments with immediate effect and the services of all the contract employees appointed under the Package of 2006 and the Package of 2015, who were contractual employees were regularized with immediate effect.

12. The learned AAG conceded that appointments of a widow/widower/child of a civil servant who dies in service and those who become permanently disabled during service and takes retirement from service, either on contract or on regular basis, in different grades and without open advertisement was in violation of Articles 25 and 27 of the Constitution.

13. Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 existed in the Province to provide Government job to the widow/wife/child of a civil servant in BPS-1 to 11 who dies in service or is declared invalidated/incapacitated for further service; it is reproduced hereinbelow:

'17.A. Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service or is declared invalidated/incapacitated for further service, one of his unemployed children or his widow/wife may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child or the widow/wife may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above;

Provided further that one child or widow/wife of a Government servant who dies while in service or is declared invalidated/incapacitated for further service shall be provided a job against posts in BS-1 to 5 and the posts of Junior Clerks (BS-7) in the department in which the deceased Government servant was working, without observance of formalities prescribed under the rules/procedure. Provided such child or the widow/wife is otherwise eligible for the post.

Provided further that only one child or widow or wife of an employee who dies during service or is declared invalidated or incapacitated for further service, if otherwise eligible for the post, shall be appointed to a post in BS-1 to BS-11 in the department where the Government servant was serving at the time of the death or the declaration, without observance of the procedural requirements prescribed for such appointment.'

14. Learned Advocate-General, Punjab informed that the policy for appointing one child/wife/widow in BPS-1 to BPS-11 (including the post of Patwari and Junior Clerk) of a civil servant who dies in service or is declared invalidated/incapacitated for further service in pursuance of the provisos to the above rule 17-A was discontinued with effect from 21 November 2023 *vide* notification dated 7 December 2023. Thereafter, *vide* notification dated 26 July 2024 rule 17-A was omitted. He further stated that the Government of Punjab has approved a Financial Assistance Package with effect from 22 February 2017 for the families of the civil servants who die while in service, with different rates of compensation for different pay scales and the rate of compensation has been revised from time to time. The Financial Assistance Package in the Province of Punjab does not contain any provision to provide a Government job, either on contract or regular basis, in any grade, to a child/wife/widow of a civil servant who dies in service or is declared invalidated/incapacitated for further service.

15. Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provided Government jobs in BPS-1 to 11 to a child/spouse of a civil servant who dies in service or is declared invalidated/incapacitated for further service; it is reproduced hereinbelow:

Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, [spouse] (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the [Basic Pay Scale 1 to 11] in the Department where such civil servant was working:

Provided that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for:

Provided further that the cut of date shall be within two years of the death of the officer or official.

[Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules.]

While conceding that the above rule is discriminatory and violates Articles 25 and 27 of the Constitution, learned Additional Advocate-General, Sindh stated that the above rule has not been omitted by the Government of Sindh.

16. Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 provided for the appointment of one child or spouse to a post in BPS 1 to 10 of a civil servant who dies in service or is rendered incapacitated/invalidated permanently during service; it is reproduced hereinbelow:

'Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:

Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows/wives of the deceased civil servant, preference shall be given to the elder widow/wife.

Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he /she shall ordinarily be appointed to the post carrying higher pay scale.'

While conceding that the above rule is discriminatory and violates Articles 25 and 27 of the Constitution, the learned Additional Advocate General of the Province stated that the same has not been omitted as yet.

17. Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 provided for the appointment of a child or spouse of a civil servant in BPS-1 to 15 who dies in service without observing the condition of open advertisement; it is reproduced hereinbelow:

'Notwithstanding anything contained in any rule to the contrary, whenever a Civil Servant dies while in service, his/her spouse or a child may be employed by the appointing authority against a post in BPS-1 to 15 in the department in which deceased Government Servant was working, without observing the condition of open advertisement;

Provided that -

(a) the spouse or child as the case may be, shall possess the qualification prescribed for the post; and

(b) If the child of the deceased Government Servant is under age, his name shall be included in the

waiting list from the date of death of his/her Father or Mother. However he/shall be considered for appointment after he/she attains the age prescribed for the post.'

Rule 12-A of the above Rules of 2009 provided for the appointment, without open advertisement, one child in BPS-1 and BPS-2 of a civil servant who, while serving in BPS-1 and 2; retires on superannuation or due to invalidation; it is reproduced hereinbelow:

'Notwithstanding anything contained in any rule to the contrary, whenever a Government Servant in BPS-1 and BPS-2 retired on superannuation or due to invalidation, one of his/her children may be employed by the appointing authority against a post in BPS-1 and BPS-2 in the Department in which the retired Government Servant was working, without observing the condition of open advertisement;

Provided that -

- (a) the child possesses the qualification prescribed for the post; and
- (b) If the child of the retired Government Servant is under-age at the time of retirement, his name shall be included in the waiting list from the date of retirement/invalidation of his/her Father or Mother. However he/shall be considered for appointment after he/she attains the age prescribed for the post.'

The learned Additional Advocate-General, Balochistan informed that *vide* notification dated 9 May 2023 rule 12-A had been omitted but that rule 12 still exists. He further stated that in the case of *PWD Employees Union Balochistan v. Secretary Communication and Works*¹¹ a Division Bench of the Balochistan High Court declared the said rule 12 to be discriminatory and *ultra vires* Articles 2A, 3, 4, 9, 18, 25 and 27 of the Constitution, but the judgment passed by the Balochistan High Court was held not sustainable by a three member Bench of this Court *vide* order dated 19 September 2022 passed in Civil Appeal Nos. 691 and others on the ground that the question of *vires* of rule 12 was not before the High Court and that it could not take *suo moto* notice of the same since it did not have *suo-moto* jurisdiction to take up the matters on its own accord as was held in the case of *Dr. Imran Khattak v. Ms. Sofia Waqar Khattak*¹².

18. The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes

¹¹ 2015 PLC (C.S.) 1182

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retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is *ex facie* discriminatory against the other or ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.

19. The Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice, if we may add, is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.

20. Article 4 of the Constitution embodies the concept of equality before law, equal protection of law, right of individuals to be dealt with in accordance with law and saving the citizens from arbitrary/discriminatory laws and actions. It is the duty and obligation of the public functionaries under Article 4 of the Constitution to act in accordance with law.

21. Article 5(2) of the Constitution bounds everybody to obey the command of the Constitution. Every public functionary has to act in good faith, honestly and within the precinct of its power so that the persons concerned should be treated in accordance with the law as guaranteed by Article 4 of the Constitution, which include principles of natural justice, procedural fairness and procedural propriety. While discharging official functions every effort should be made to ensure that none is prevented because of unfair and discriminatory treatment.

22. Under Article 3 of the Constitution it is obligatory for the State to ensure elimination of all forms of exploitation and the gradual fulfilment of the fundamental principles, from each according to his ability to each according to his work. To achieve the object of good governance and to fulfil the obligation under Article 3 of the Constitution, transparency and

merit in appointments in the service of Pakistan that includes government jobs must be adopted.

23. The appointment of a widow/widower, wife/husband or child of a civil servant in different grades on contract or regular basis, without open advertisement, competition and merit is also violative of Article 18 of the Constitution which provides that subject to such qualification, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Appointments obstructing ordinary qualified citizens to compete for entering into the profession of the service of Pakistan in accordance with their ability and eligibility also violate this fundamental right, and if such appointments are made they negate equality of opportunity, competition, merit and also defeat the object of good governance.

24. Good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily. This objective can be achieved by following the Constitution and the rules of justness, fairness and openness as enshrined in the above referred Articles of the Constitution.

25. Any law, policy or rule which is manifestly inconsistent with the Constitutional commands, retrogressive in nature and discriminatory *inter se* the citizens is subject to judicial review. In the case of *Government of Khyber Pakhtunkhwa through Secretary Agriculture v. Tahir Mushtaq and others*¹³, while dismissing the claim of the son of a retired civil servant of the Agriculture Department of Khyber Pakhtunkhwa who sought appointment in BPS-5 on the basis of employee's son quota policy, it was held by a four member Bench of this Court that:

'The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship. The stated instructions undermine transparency and good governance, therefore, the government of Khyber Pakhtunkhwa will be advised to withdraw all such instructions/notifications.'

For the above reasons, while granting leave, Civil Petition No. 3390 of 2021 is converted into an appeal and is allowed. The impugned order

dated 13 April 2021 passed by the Peshawar High Court in favour of the respondent is set aside. Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and *ultra vires* Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial authorities are directed to withdraw the same. However, it is clarified that the instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities.

Chief Justice

Judge

Judge

Announced in the open court on 18 October 2024

ISLAMABAD
26 September 2024
Approved for reporting
Atif/Zohaib Afzal



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**OFFICE OF THE DISTRICT HEALTH OFFICER
PESHAWAR**

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AUTHORITY LETTER

Dr, Mubarak Zeb Khan S/O Mr, Alam Zeb Khan Litigation Officer (BPS-19) ,Office of DHO Peshawar, NIC No: 17101-6493994-5 is authorized to submit parawise comments reply in the case Service Appeal NO.1194/2024 titled Faridoon Khan Vs Govt of KP in Service Appeal Khyber Pakhtunkhwa Peshawar .

Dr. Syed Muhammad Idrees
District Health Officer,
Peshawar