

02/08/24

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 582/2024

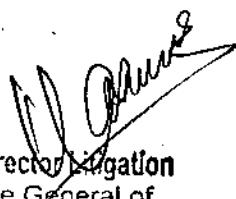
NIHAR ALI APPELLANT

VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA &
OTHERS.....RESPONDENTS**

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Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

SERVICE APPEAL NO.582/2024

Mr. Nihar Ali, Assistant BS-16, Directorate of Industries and Commerce, Khyber Pakhtunkhwa, Peshawar (Appellant)

Versus

Khyber Pakhtunkhwa
Service Tribunal

1. Secretary, Establishment Department
2. Secretary, Industries, Commerce & Technical Education.
3. Director, industries, Commerce & Technical Education.....(Respondents)

Diary No. 14545
Dated 26/7/24

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO 01 TO 03

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no locus standi.
2. That the Hon'ble Peshawar High Court has already assumed jurisdiction in this matter as the appellant had filed a Writ Petition No. 3050-P/2022 wherein the Hon'ble Court had disposed of the petition with directions to Respondents to decide the departmental appeal/representation of the appellant within a fortnight positively after affording opportunity of hearing to the appellant. The same order has been duly implemented under the provisions of the Surplus Pool Policy, 2001 by issuing a Speaking Order to the appellant (**Annex-I**).
3. That the appellant has not come to this Hon'ble Court with clean hands.
4. That the appellant has concealed material facts and has tried to mislead this Hon'ble Court.

ON FACTS:

1. Pertains to record.
2. **Pertains to record, no comments**
3. **Correct**, the appellant, along with other colleagues, was placed in the surplus pool of Establishment Department in the wake of the Section-4 of the FATA Development Authority (Repeal) Act, 2020, for the purpose of salary and further adjustment as per policy in vogue (**Annex-II**).
4. **Correct**, the Establishment Department had maintained the said principle of seniority in the notification for placement of these employees in the Surplus Pool (**Annex-II**).
5. **Incorrect**, the appellant has concealed facts and has attempted to mislead the honorable court as the said request of the Industries Department had been placed on **03-01-2020** which is Seven (07) months before placement of the appellant in the Surplus Pool dated **05-08-2020 (Annex-II)**. This process is actually normal modus operandi on part of the provincial departments under the "Austerity Measures" of the Provincial Government to obtain NOC from the Surplus Pool before starting to fill up their vacant positions and at that stage, it had nothing relevant to the adjustment of the appellant as he was not even placed in the Surplus Pool by that time.
6. **Incorrect**, the appellant has once again tried to mislead the honorable Court. The referred adjustment is a Cross Cadre adjustment which is not a first priority of the Adjustment Committee for any surplus employee. Hence, the appellant and other senior Assistants were of the wish to be adjusted against their same cadre at that time due to uncertain career prospects involved in cross cadre adjustment while the respondent no.04 was willingly adjusted on the referred post. Any ensual benefits of the said cross cadre adjustment of the Respondent No. 04 as IDO (BPS-16) reaped up by the employee concerned is merely by chance and there is no mala fide involved.

- 7. **Incorrect**, the appellant was adjusted in the same cadre in which he was working in the Fata Development Authority (FDA) strictly in accordance with Surplus Pool Policy by keeping in view his seniority position and the available vacancies, which is the first priority of the Adjustment Committee for any surplus employee. The said same cadre adjustment from the surplus pool has not only preserved his former position that he carried in the erstwhile FDA but has also accrued him additional rights of the Civil Servants which he did not enjoyed in the erstwhile FDA.
- 8. **Incorrect**, Surplus employees are adjusted by the Adjustment Committee on corresponding civil vacant positions falling to initial quota under Para 5(c) of the provincial Surplus Pool Policy, 2001 preferably on their same cadres. The appellant has also been adjusted in the same cadre in which he was working in the FATA Development Authority (FDA) by keeping in view his seniority position and the available vacancies, which is the first priority of the Adjustment Committee for any surplus employee. The said same cadre adjustment from the surplus pool has not only preserved his former position that he carried in the erstwhile FDA but has also accrued him additional rights of the Civil Servants which he did not enjoyed in the erstwhile FDA.
- 9. **Incorrect**, an appeal against any order of the Government should be filed within thirty days of the communication of such order under Section-22 of the Civil Servants Act, 1973 and Rule-3 of the Government Servants (Appeal) Rules, 1986, while in the instant case the appeal had been filed after 08 months and 08 days after the adjustment order of the appellant and Respondent No.04 on 16-06-2021.
- 10. **Incorrect**, the Establishment Department had advised the administrative department in the matter and the administrative department has issued a Speaking Order to the appellant on 02-10-2023.
- 11. **Incorrect**, a Speaking Order has been issued 02-10-2023.
- 12. **Incorrect**, a Speaking Order has been issued 02-10-2023.
- 13. **Incorrect**, on directions of the honourable Peshawar High Court in the WP No.3050-P/2022, application of the appellant was examined by the Establishment Department thoroughly and it was decided that there is no provision of readjustment in the surplus pool policy, 2001. Moreover, the official has already been adjusted against the same cadre in which he worked in the FDA and also the appeal was badly time barred. The same was conveyed to the Industries Department and on the basis of these points; his departmental appeal was regretted on 02-10-2023 through a Speaking Order.
- 14. **No Comments.**

ON GROUNDS

- A. **Incorrect.** The adjustment order of the appellant is strictly in accordance with law and policy of the Provincial Government governing the subject.
- B. **Incorrect**, as stated above.
- C. **Incorrect**, based on the misunderstanding of the referred articles of the Constitution by the Appellant.
- D. **Incorrect**, the appellant has concealed facts and has attempted to mislead the honorable Court as the said requisition of the Industries Department had been placed on **03-01-2020** which is Seven (07) months before placement of the appellant in the Surplus Pool dated **05-08-2020 (Annex-II)**. This process is actually normal modus operandi on part of the provincial departments under the "Austerity Measures" of the Provincial Government to obtain NOC from the Surplus Pool before starting to fill up their vacant positions and at that stage, it had nothing relevant to the adjustment of the appellant as he was not even placed in the Surplus Pool by that time.
- E. **Incorrect**, the adjustment order of the appellant is strictly in accordance with law and policy of the Provincial Government governing the subject, and readjustment of the already adjusted surplus employees against the principle of "expeditious adjustment" of the policy *ibid*.

- F. **Incorrect hence denied**, the adjustment order of the appellant is strictly in accordance with law and policy of the Provincial Government governing the subject, and the Adjustment Committee has adjusted the appellant in the same cadre in which he was working in the Fata Development Authority (FDA) by keeping in view his seniority position and the available vacancies, which is the first priority of the Adjustment Committee for any surplus employee. The said same cadre adjustment from the surplus pool has not only preserved his former position that he carried in the erstwhile FDA but has also accrued him additional rights of the Civil Servants which he did not enjoyed in the erstwhile FDA. Any ensual benefits of a certain cross cadre adjustment reaped up by the employee concerned is merely by chance and there is no mala fide involved.
- G. **Incorrect**, the appellant has once again tried to mislead the honorable Court. The referred adjustment is a Cross Cadre adjustment which is not a first priority of the Adjustment Committee for any surplus employee. Hence, the appellant and other senior Assistants were of the wish to be adjusted against their same cadre at that time due to uncertain career prospects involved in cross cadre adjustment while the Respondent No.04 was willingly adjusted on the referred post. Any ensual benefits of the said cross cadre adjustment of the respondent no. 04 as IDO (BPS-16) reaped up by the employee concerned is merely by chance and there is no mala fide involved.
- H. **Incorrect**, the appellant was adjusted in the same cadre in which he was working in the Fata Development Authority (FDA) strictly in accordance with Surplus Pool Policy by keeping in view his seniority position and the available vacancies, which is the first priority of the Adjustment Committee for any surplus employee. The said same cadre adjustment from the surplus pool has not only preserved his former position that he carried in the erstwhile FDA but has also accrued him additional rights of the Civil Servants which he did not enjoyed in the erstwhile FDA.
- I. The Respondents seek leave to raise additional grounds at the time of arguments.

In view of the above submissions, being devoid of merit and as already disposed of by the Hon'ble Peshawar High court, Peshawar, vide judgment dated 22-02-2023 in WP No. 3050-P/2022, this Hon'ble Tribunal is most humbly prayed to dismiss the instant appeal with cost and any other remedy as the Hon'ble Tribunal deems fit may graciously be allowed to the respondents.

Respondent No. 01
 (MUHAMMAD ZUBAIR KHAN)
 Secretary, Establishment Department,
 Through
 (KALEEMULLAH/BALOCH)
 Special Secretary (Establishment)
 SECRETARY ESTABLISHMENT
 Establishment & Administration
 Department.

Respondent No. 02
 (AMER AFAQ)
 Secretary to
 Government of Khyber Pakhtunkhwa,
 Industries, Commerce & Technical
 Education, Department
 Secretary to
 Govt. of Khyber Pakhtunkhwa,
 Industries, Commerce &
 Technical Education Deptt.

Respondent No. 03
 (REHAN GUL KHATTAK)
 Director Industries and Commerce,
 Khyber Pakhtunkhwa, Peshawar.

23/7/24

DIRECTOR
 Directorate General of
 Industries & Commerce
 Khyber Pakhtunkhwa, Peshawar

Annex-I

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GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT.

Dated Peshawar, the 2nd October, 2023

SPEAKING ORDER

No. SO(Lit)/IND/2-335/DIC/2023/3243-45. WHEREAS the Hon'ble Peshawar High Court Peshawar vide its judgment dated. 01.08.2023 in COC No. 354-P/2023 in Writ Petition No. 3050-P/2022 directed that;

"The instant contempt of Court petition is disposed of with direction to the respondent to decide the departmental appeal/representation of the petitioner within a fortnight positively after affording opportunity of hearing to the petitioner".

2. **AND WHEREAS** the petitioner Mr. Nihar Ali, was working against the post of Assistant in Ex-FDA and rendered surplus after dissolution of Ex-FDA and his services were placed at the disposal of Secretary Industries, Commerce & Technical Education Department for further adjustment in the Directorate General of Industries and Commerce against the vacant post of Assistant (BPS-16) in accordance with surplus pool policy, the petitioner was appointed / adjusted against the post of Assistant (BPS-16) and assumed the charge as Assistant (BPS-16) in the Directorate General, Industries & Commerce.

3. **AND WHEREAS** after appointment the petitioner submitted departmental appeal for posting as Industrial Development Officer (BPS-16) which was forwarded to Establishment Department for view/ comments.

4. **AND WHEREAS** Establishment Department opined that the surplus pool policy has no provision for readjustment of an employee once adjusted as per law and policy until he is again rendered surplus due to abolition of post, etc.

5. **AND WHEREAS** an opportunity of personal hearing was afforded to the petitioner on 06.09.2023 in light of court orders referred to in above para.

6. **NOW THEREFORE**, Industries, Commerce & Technical Education Department regrets the appeal / representation of the petitioner as there is no provision in the surplus pool policy for readjustment of an employee once adjusted as per law and policy.

SECRETARY to
Govt. of Khyber Pakhtunkhwa
Industries, Commerce & Technical Education
Department, Peshawar

Encls No. SO(Lit)/IND/2-335/2023/

Dated 2nd October, 2023

Copy forwarded for information the:-

- Director General, Directorate General Industries & Commerce, Khyber Pakhtunkhwa.
- PS to Secretary Industries, Commerce & Technical Education Department.
- PS to Secretary Establishment Department with reference to their letter No. SO-III(E&AD)1-3/2021/FDA dated 21/10/2021.

ATTESTED.

Section Officer (Lit)
Industries Department

02/10/2023

Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar



Amra - II

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

Dated Peshawar, the August 05th, 2020

(6)

NOTIFICATION

No. SO(O&M)/E&AD/3-18/2020: In terms of Section-4 of the "The Federally Administered Tribal Areas Development Authority Regulation (Repeal) Ordinance, 2020", the Competent Authority is pleased to declare the following 94 employees of defunct FATA Development Authority as "Surplus" and place them in the Surplus Pool of Establishment Department for their further adjustment/placement as per policy in vogue w.e.f. 20.04.2020:-

S.No.	Name	Designation	BPS
1.	Arshad Khan Afridi	Manager (IT)	18
2.	Muhammad Jamil Khan	ACO SWA	17
3.	Muhammad Tariq Khan	ACO Mohmand	17
4.	Abdul Ghaffar	ACO Bajaur	17
5.	Niaz Bahadar	ACO Kurran	17
6.	M. Haris Shah	ACO Orakzai	17
7.	Tufail Khan Khalil	ACO Khyber	17
8.	Muhammad Hamayun Khan	ACO NWA	17
9.	Mr. Muhammad Saud	AM (M&E)	17
10.	Nihar Ali	Assistant	16
11.	Shahid	Assistant	16
12.	Mazhar Ali Shah	Assistant	16
13.	Farman Ali Afridi	Assistant	16
14.	Mrs. Sadia Jehangir	Assistant	16
15.	Muhammad Akif Khan	Assistant	16
16.	Usman Tariq	Assistant	16
17.	Faheem Ullah	Assistant	16
18.	Luqman Hakeem	Assistant	16
19.	Shakeel Ahmad	Assistant	16
20.	Zaheer ud Din	Assistant	16
21.	Altaf ur Rehman	Computer Operator	16
22.	Nasrullah Khan	Computer Operator	16
23.	Zahidullah	Computer Operator	16
24.	Feroz Shah	Computer Operator	16
25.	Fawad Hussain Khan	Computer Operator	16
26.	Fakhr-e-Alam	Computer Operator	16
27.	Sajid Nabi	Computer Operator	16
28.	Ahmed Ghani	Computer Operator	16
29.	Muhammad Ajmal	Computer Operator	16

Wazir
**Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar**

30.	Nadia Salahuddin	Computer Operator	16
31.	Syed Adnan Ali Shah	Computer Operator	16
32.	Habib ur Rehman	Computer Operator	16
33.	Inamullah Kundi	Computer Operator	16
34.	Muhammad Fawad	Computer Operator	16
35.	Shahzade Saqib Zaman	Computer Operator	16
36.	Sajid Ali	Computer Operator	16
37.	Rahib Shah	Computer Operator	16
38.	Abdul Jabbar	Computer Operator	16
39.	Syed Shah Said	Computer Operator	16
40.	Baidar Bakht	Computer Operator	16
41.	Shakir Ullah	Computer Operator	16
42.	Shahid Jamal	Computer Operator	16
43.	Muhammad Aftab Khan	Driver	5
44.	Shah Hussain	Driver	5
45.	Muhammad Tahir	Driver	5
46.	Haider Raza	Driver	5
47.	Noor Khan	Driver	5
48.	Muhammad Junaid Khan	Driver	5
49.	Sami Ullah	Driver	5
50.	Kachkol Khan	Driver	5
51.	Imran Ullah	Driver	5
52.	Ali Gul	Driver	5
53.	Abdul Sami	Driver	5
54.	Manzoor ur Rehman	Driver	5
55.	Shabir Jan	Driver	5
56.	Hidayat Ullah	Driver	5
57.	Saleh Khan	Driver	5
58.	Munir Khan	Driver	5
59.	Bilal Khan	Driver	5
60.	Abdul Wahid	Driver	5
61.	Ihsan Ullah Jan	Driver	5
62.	Syed Qasim	Driver	5
63.	Raza Gul	Driver	5
64.	Pir Ullah	Driver	5
65.	Inamullah	Naib Qasid	2
66.	Ikram Ullah	Naib Qasid	2
67.	Sharbat Ali	Naib Qasid	2
68.	Abdur Rehman	Naib Qasid	2

Handwritten Signature
Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

69.	Khan Bacha	Naib Qasid	2
70.	Yasir khan	Naib Qasid	2
71.	Shah Baz Masih	Sanitary Worker	2
72.	Naeem Shah	Naib Qasid	2
73.	S. Aftab Shah	Naib Qasid	2
74.	Shukrullah	Naib Qasid	2
75.	Adeel Ahmad	Naib Qasid	2
76.	Akhtar Zeb	Naib Qasid	2
77.	Saifur Rehman	Naib Qasid	2
78.	Muhammad Asad	Naib Qasid	2
79.	S.Musanat Shah	Naib Qasid	2
80.	Altaf Masih	Sanitary Worker	2
81.	Muhammad Yaseen	Naib Qasid	2
82.	Din Muhammad	Naib Qasid	2
83.	Arshad Ali	Naib Qasid	2
84.	Tauqeer Ahmad	Naib Qasid	2
85.	Amjad Hussain	Naib Qasid	2
86.	Muqadar Khan	Naib Qasid	2
87.	Liaqat Ali	Chowkidar	2
88.	Rehmat ullah	Naib Qasid	2
89.	Zabit Gul	Naib Qasid	2
90.	Hazrat Noor	Naib Qasid	2
91.	Ubaid Ullah	Naib Qasid	2
92.	Intikhab Hussain	Naib Qasid	2
93.	Hazrat Umar	Naib Qasid	2
94.	Liaqat Ali	Naib Qasid	1

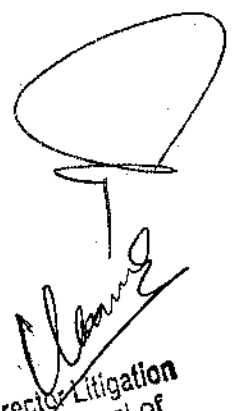
2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment) Establishment Department has been declared as focal person to properly monitor the whole process of adjustment/ absorption of the surplus pool staff.

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

**CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA**

Encls: No. & Date Even
Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries, Khyber Pakhtunkhwa.
6. The Accountant General, Khyber Pakhtunkhwa.



**Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar**

- 7. Chief Executive defunct FATA Development Authority with the request to ensure provision of Last Pay Certificates (LPCs) of the above mentioned surplus staff/employees to Establishment & Administration Department.
- 8. Director General Information & Public Relations, Khyber Pakhtunkhwa.
- 9. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 10. All Deputy Commissioners in Khyber Pakhtunkhwa.
- 11. PS to Chief Secretary, Khyber Pakhtunkhwa.
- 12. Deputy Secretary (Establishment), Establishment Department.
- 13. Deputy Secretary (Admin). Establishment & Administration Department.
- 14. PS to Secretary Establishment Department.
- 15. PS to Special Secretary (Regulation). Establishment Department.
- 16. PS to Special Secretary (Establishment), Establishment Department.
- 17. Section Officer (E-III) Establishment Department with the request to take up case for creation of corresponding 94 regular posts for the above mentioned surplus staff/employees in the surplus pool of Establishment department for drawl of salaries w.e.f. 20.04.2020 onward till further adjustment/posting.
- 18. Section Officer (Budget & Development), Establishment & Administration Department for necessary action regarding preparation and submission of Budget Estimates for the purpose of salaries of above mentioned 94 surplus staff/employees of defunct FATA-DA for the period from 20.04.2020 onward to Finance Department.
- 19. All Section Officers in Establishment Department.
- 20. PA to Secretary defunct FATA Development Authority (FDA).

[Signature]
 Assistant Director Litigation
 Directorate General of
 Industries & Commerce
 Khyber Pakhtunkhwa, Peshawar

[Signature]
 (FAZLI WADOOD)
 SECTION OFFICER (O&M)

05/08/2020

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

SERVICE APPEAL NO. 582/2024

NIHAR ALI APPELLANT

VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA &
OTHERS.....RESPONDENTS**

AFFIDAVIT

I, **Rehan Gul Khattak** Director (BPS-19), of Industries & Commerce, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the accompanying **comments/ reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this Appeal the answering respondent have neither been placed Ex-Parte nor their defense has been struck off/cost.

Rehan Gul Khattak
DEPONENT *23/7/24*
Rehan Gul Khattak
CNIC: 14202-1344103-9
CELL: 0346-8298525

DIRECTOR
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

ATTESTED
IRFAN ULLAH
Commissioner
Advocate High Court
26-7-24



**DIRECTORATE GENERAL OF INDUSTRIES AND COMMERCE KHYBER
PAKHTUNKHWA, PESHAWAR.**
Government Printing Press Building, Shami Road, Peshawar. (091) 9210234

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AUTHORITY LETTER.

Mr. Muhammad Mansoor, Assistant Director Litigation (BPS-17), H/Qtrs Office Peshawar is hereby authorized to defend Secretary Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa, Peshawar (Respondent No.02) and Director Industries and Commerce, Khyber Pakhtunkhwa, Peshawar (Respondent No.03) in the Service Tribunal, Khyber Pakhtunkhwa, Peshawar and to submit any documents on behalf of the aforementioned respondents whenever required by the Honourable Court in Service Appeal No.582/2024 in the case titled as:

NIHAR ALI

VERSUS

GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS.

Respondent No. 02

Amer Afaq,

Secretary Industries, Commerce & Tech:

Education Department, Khyber Pakhtunkhwa,
Peshawar.

Secretary to
Govt. of Khyber Pakhtunkhwa,
Industries, Commerce &
Technical Education Deptt.

Respondent No. 03

Rehan Gul Khattak,

Director Industries and Commerce,
Khyber Pakhtunkhwa, Peshawar.

DIRECTOR
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

23/7/24