

BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

CM 12(2) CPC Petition No. 890/2024

IN

Service Appeal No. 508-P/2024

Ahmad Khan & others

..... Appellant

versus

Government of Khyber Pakhtunkhwa & others

..... Respondents

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(MUHAMMAD ARSHED KHAN)
SENIOR ADMINISTRATIVE OFFICER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

C.M No.12(2) CPC Petition No. 890 /2024
IN

Discy No. 17547

Service Appeal No.508-P/2020

Dated 04/11/24

Ahmad Khan & other

.....Petitioners

Verses

The Secretary to Government of Khyber Pakhtunkhwa
Law Department & others

.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 & 2

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:-

- I. That the Petitioners have got no cause of action/locus standi to file the instant Petition.
- II. That this Honorable Tribunal has got no jurisdiction to adjudicate upon the matter.
- III. That the Petitioners have not come to this Hon'ble Tribunal with clean hands and have deliberately concealed material facts from this Honorable Tribunal.
- IV. That the Petition is barred by law and time.
- V. That the instant Petition is bad in its present form. Hence not maintainable and liable to be dismissed with special cost throughout.

ON FACTS:-

1. Pertains to record.
2. Correct to the extent that during pendency of Service Appeal No.508/2020 Petitioners submitted an application for their impleadment.
3. Subject to proof.
4. Correct to the extent that the Petitioners contested the Service Appeal filed by the Respondent No.3 by way of filing reply wherein several legal and factual objections were raised. Later on the case was fixed for final arguments on 05/06/2024.
5. Correct to the extent that when the Service Appeal No.805/2020 was fixed for final arguments on 05/06/2024, Counsel for Petitioners submitted an

application for adjournment on the ground of sickness. The said application bearing diary No.13176 dated 05/06/2024 was entered in the register of diary and dispatch and this Hon'ble Tribunal after hearing arguments announced the Judgment on the same day i.e 05/06/2024.

6. Incorrect against facts and law, hence, denied. Petitioners are not legally competent to invoke the jurisdiction of this Hon'ble Tribunal by filing Application under section 12(2) of the Civil Procedure Code, 1908.

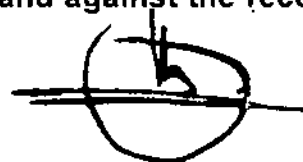
ON GROUNDS:-

- A. Incorrect against facts and law, hence, denied.
- B. Subject to proof.
- C. Correct to the extent that the Petitioners submitted an Application for adjournment, however, this Hon'ble Tribunal announced the Judgment on the same day.
- D. Incorrect against facts and law, hence, denied.
- E. Correct to the extent that the Judgment/Order has been passed in favour of Respondent No.3. *Pertinent to mention here that the Respondent No. 3 (Sher Khan) has himself given affidavit on Judicial Stamp Paper, dated 22/08/2024 (annexed as "A"), in favour of the present applicants / petitioners whereby he has categorically mentioned that he would not disturb their promotion orders as well as seniority, as by word "seniority" he meant only financial benefits and annual increments since 2014. In addition, he has also undertaken in the Implementation request (annexed as "B"), dated 24/08/2024 of the Judgment, dated 05/06/2024, that the Judgment may be implemented in light of the Service Appeal as well as undertaken, dated 08/08/2024 (Pg- C)*
- F. Needs no reply.

It is, therefore, most humbly prayed that the Application under section 12(2) of the Civil Procedure Code, 1908 filed by the Petitioners being without any substance and against the record, may graciously be dismissed with heavy cost.



Akhtar Saeed Turk
Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human Rights
Department, Peshawar
Respondent No. 1



Shah Faisal Utmankhel
Advocate General
Khyber Pakhtunkhwa
Peshawar
Respondent No. 2

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

CM 12(2) CPC Petition No. 890/2024

IN

Service Appeal No. 508-P/2020

Ahmad Khan & others

..... Appellant

versus

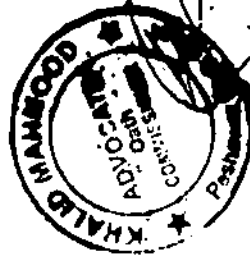
Government of Khyber Pakhtunkhwa & others

..... Respondents

AFFIDAVIT

I, Shah Faisal Utmankhel, Advocate General, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the **parawise comments** on behalf of **Respondents No. 1 & 2** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in the subject CM, the answering respondents have neither been placed ex-parte nor defence has been struck off with cost.



Deponent

CNIC No. 17301-1413534-5

Identified by



4

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR


Dated Peshawar, the 30-10-2024

Address: High Court Building, Peshawar
Tel No. 091-9213176

Exchange: 091-9213833
Fax No. 091-9210270

AUTHORITY LETTER

Mr. Muhammad Arshad Khan, Senior Administrative Officer is hereby nominated/authorized to submit para wise comments/reply in Khyber Pakhtunkhwa Services Tribunal, Peshawar on behalf of the worthy Advocate General, Khyber Pakhtunkhwa in CM 12(2) CPC Petition No. 890/2024 in Service Appeal No. 508-P/2020 tiled Ahmad Khan & others versus Government of Khyber Pakhtunkhwa & others.


(SHAH FAISAL UTMANKHEL)
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
PESHAWAR

To

The Advocate General,
Khyber Pakhtunkhwa,
Peshawar

Put up =

08/08/2024

4123
08/08/2024

Subject: SERVICE APPEAL NO.508/2021 TITLED SHER KHAN VS GOVT OF KP

Respected Sir,

It is respectfully stated that my subject service appeal has been decided on 05/06/2024 by the KP Service Tribunal in my favour for all back benefits as prayed for in the Appeal. Then my case was referred to be placed before the scrutiny committee of the Law Department KP to judge its fitness or otherwise for CPLA before the august Supreme Court of Pakistan.

In this regard I would like to inform your good self that as I am low paid Govt. Servant and have five school/college going children to shoulder their expenses. I am financially constrained due to previous litigations and thus unable to undergo expenses of further litigations before the Supreme Court of Pakistan, if my case is declared fit for CPLA. Therefore, I undertake that in case my case is treated/declared as unfit for CPLA, I assure you that I would not claim any things whatever other than annual increments/salaries of the intervening period and subsequent increase thereon along with seniority. By the word Seniority, I mean that I only claim financial benefits and annual increments since 2014 till date.

I further assure that I would not challenge the promotion orders of those who have already been promoted. I further undertake that these two promotions orders, now and in future, if I am promoted to BPS-17, shall not be challenged and agitated in any court of law by me. However, my seniority shall remain intact amongst the rest of computer operators. If any post relating to IT cadre falls vacant or created in future, I would be entitled/eligible to promotion against those vacancies as per my seniority.

It is further added that this undertaking is being effected as per my own senses. I am not forced by any one and I am in my full senses.

The statement should be on Judicial Stamp

Yours sincerely

Sher Khan,
Computer Operator
Date 9/8/24

Amir

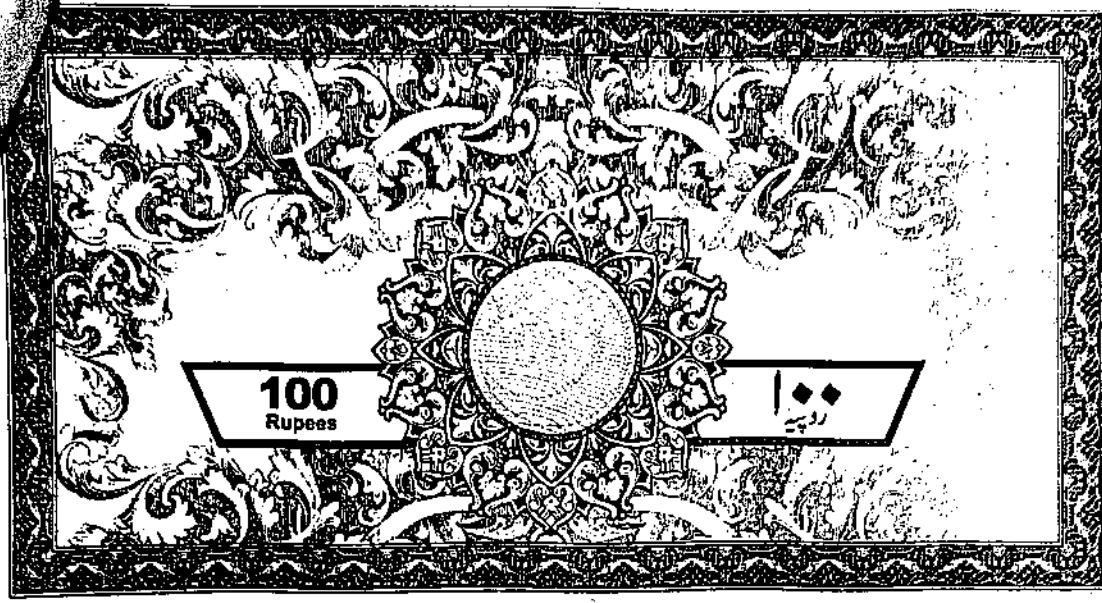
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

Page A

b

751255

100 IN WORDS ONLY IN NUMERICAL FIGURES ONLY



The Advocate General,
Khyber Pakhtunkhwa, Peshawar

1/8/24
22/8/24

Subject: SERVICE APPEAL NO.508/2021 TITLED SHER KHAN VS GOVT.

Respected Sir,

It is respectfully stated that my subject service appeal has been decided on 05/06/2024 by the KP Service Tribunal in my favour for all back benefits as prayed for in the Appeal. Then my case was referred to be placed before the scrutiny committee of the Law Department KP to judge its fitness or otherwise for CPLA before the august Supreme Court of Pakistan.

In this regard I would like to inform you your good self that as I am low paid Govt. Servant and have five school/college going students to shoulder their expenses. I have financially constrained due to previous litigations and thus unable to undergo expenses further litigations before the Supreme Court of Pakistan, if my case declared fit for CPLA. Therefore, I undertake that in case my case treated/declared as unfit for CPLA, I assured you that I would not claimed any things whatever other than annual increments/salaries of the intervening period and subsequent increased thereon along with seniority. By word Seniority, I mean that I only claim financial benefit and annual increments since 2014 till date. I further assured that I would not challenge the promotion orders of those who have already been promoted their promotion and seniority, however, if any post relating to IT cadre falls vacant or created in future, I would be entitled/eligible to promotion those vacancies.

It is further added that this undertaking is being effected as per my own senses. I am not forced by any one and I am in my full senses.

Sher Khan
22-8-24

Yours sincerely



Sher Khan
Computer Operator

Ahmed
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

Page B

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To

The Advocate General,
Khyber Pakhtunkhwa,
Peshawar

4821
24/8/2024

24/09/2024

Subject: **IMPLEMENTATION OF JUDGMENT DATED 05/06/2024 OF THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR IN SERVICE APPEAL NO.508/2021.**

Respected Sir,

I have the honour to submit that my Service Appeal No. 508/2021 for all back benefit in Khyber Pakhtunkhwa Service Tribunal has been decided on 05/06/2024. The extract of the judgment is as under:

"The order of dismissal dated 30/04/2014 has been set aside four times, once by the Supreme Court and three times by this Tribunal in its judgments. However, the respondent have exonerated the appellant in the inquiry but has not held the appellant for back benefits of the intervening period, with no supporting grounds or justification.

In view of the above situation, instant service Appeal is accepted, the impugned order is set aside and the appellant is held entitled to all back benefits. Costs shall follow the event."

In light of the judgment of learned Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 05/06/2024 in Service Appeal No.508/2021 & undertaken dated 08/08/224 the appellant may please be reinstated with all back benefits as mentioned above.

Encls: **Copy of Judgment date 05/06/2024 is annexed**

Yours obediently

Sher Khan, Computer Operator (BPS-16)
Advocate General Office, KP, Peshawar

Dated 24/08/2024

Ali Asim
Amjad
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar