

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1258/2024

Syed Zahir Ali Shah

VERSUS

Govt: of Khyber Pakhtunkhwa & Others

I N D E X

S.No.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
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3.	Khyber Pakhtunkhwa Project Implementation Policy-2022 (page-19)	I	04-05
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DEPONENT

Through


SECTION OFFICER (LIT-II)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1258/2024

Syed Zahir Ali Shah (PPS BS-19), the then Project Director, Khyber Pakhtunkhwa Rural Investment & Institutional Support Project (KP-RI&ISP), P&D Department, presently working as Chief Planning Officer, Tourism & Youth Affairs Department.

..... APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa, Additional Chief Secretary, P&D Department.
2. The Secretary to Govt of Khyber Pakhtunkhwa, Planning & Development Department.
3. Mr. Shahid Ali, the then Additional Secretary (Admin), P&D Department.

..... RESPONDENTS

PRELIMINARY OBJECTIONS

- 1- That the appeal is not maintainable in its present form.
- 2- That the appellant has got no locus standi and cause of action to file the instant appeal.
- 3- That the appellant did not come to the Tribunal with clean hands.
- 4- That the appeal is not maintainable due to mis-Joinder and non-Joinder of necessary and proper parties.
- 5- That the appellant concealed the material fact from the Honorable Tribunal.
- 6- That the appellant is estopped by his own conduct to file the present appeal.
- 7- That the appeal is barred in law and limitation.

JOINT PARA-WISE COMMENTS OF RESPONDENTS (1 to 3).

RESPECTFULLY SHEWETH:

BRIEF FACTS:

- 1) Pertains to record, hence needs no comments.
- 2) Pertains to record, hence needs no comments.
- 3) Pertains to record, hence needs no comments.
- 4) Pertains to record, hence needs no comments.
- 5) Incorrect. The performance of the appellant was not satisfactory as communicated by World Bank Implementation Support Mission during his visit, therefore, as per provision of PIP, 2022 (Annex-I), the appellant was transferred from the post of Project Director, KP-RI&ISP.
- 6) Pertains to record, hence needs no comments.
- 7) Pertains to record, hence needs no comments.
- 8) Pertains to record, hence needs no comments.
- 9) Pertains to record, hence needs no comments.
- 10) Incorrect. As explained in para-5 above.
- 11) Pertains to record, hence needs no comments.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17904

Dated 13-11-24

- 12) Correct to extent that the appellant submitted a departmental appeal which was processed, regretted and conveyed to him vide letter, dated 06.08.2024 (Annex-II) which is quite clear and in accordance with the policy.
- 13) Incorrect. As explained in para-12 above.
- 14) The appellant was treated as per rules/law/policy and his departmental appeal was regretted being not covered under the rule/policy, therefore, he has no valid grounds/justification to approach the Hon'ble Tribunal.


GR O U N D S:

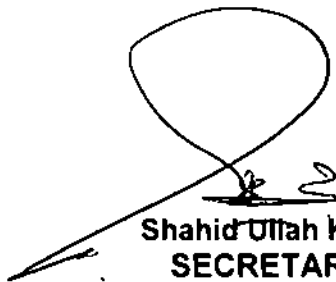
- a. Incorrect. As explained in preceding paras, all actions taken against the appellant were in accordance with rules/policy.
- b. Incorrect. As explained in preceding paras.
- c. Incorrect. The transfer of appellant officer was made in accordance with the provision of the Project Implementation Policy, 2022 (Annex-III).
- d. Incorrect. There is no violation of any standard practice or rule as he was transferred in accordance with the policy ibid.
- e. Incorrect. As explained in preceding paras of Facts and Grounds.
- f. Incorrect. Due to his unsatisfactory performance reported by World Bank Implementation Support Mission, activities of the project were suffering, therefore, his transfer was considered in the best interest of the project.
- g. Incorrect. As explained in preceding paras.
- h. Incorrect. Each and every case has its own merits and requires to be decided in accordance with rules/laws/policies.
- i. Incorrect. Action taken against the appellant was exercised in a structured, transparent, reasonableness, rational and fairness.
- j. Incorrect. No fundamental constitutional rights of the appellant were violated.


PRAYER:

Keeping in view of the above reasonable & just grounds, it is very humbly prayed that the Service Appeal may graciously be dismissed with cost on the appellant.

Shahid Ali (Transferred)


Adnan Fareed
ADDITIONAL SECRETARY (ADMIN)
 Govt: of Khyber Pakhtunkhwa,
 P&D Department
 (Respondent No. 3)


Shahid Ullah Khan
SECRETARY
 Govt: of Khyber Pakhtunkhwa,
 P&D Department.
 (Respondent No. 2)


Ikram Ullah Khan
ADDITIONAL CHIEF SECRETARY
 Khyber Pakhtunkhwa.
 (Respondent No. 1).

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Syed Zahir Ali Shah

.....APPELLANT

VERSUS

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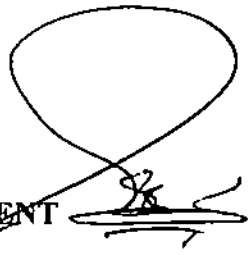
.....RESPONDENTS

AFFIDAVIT

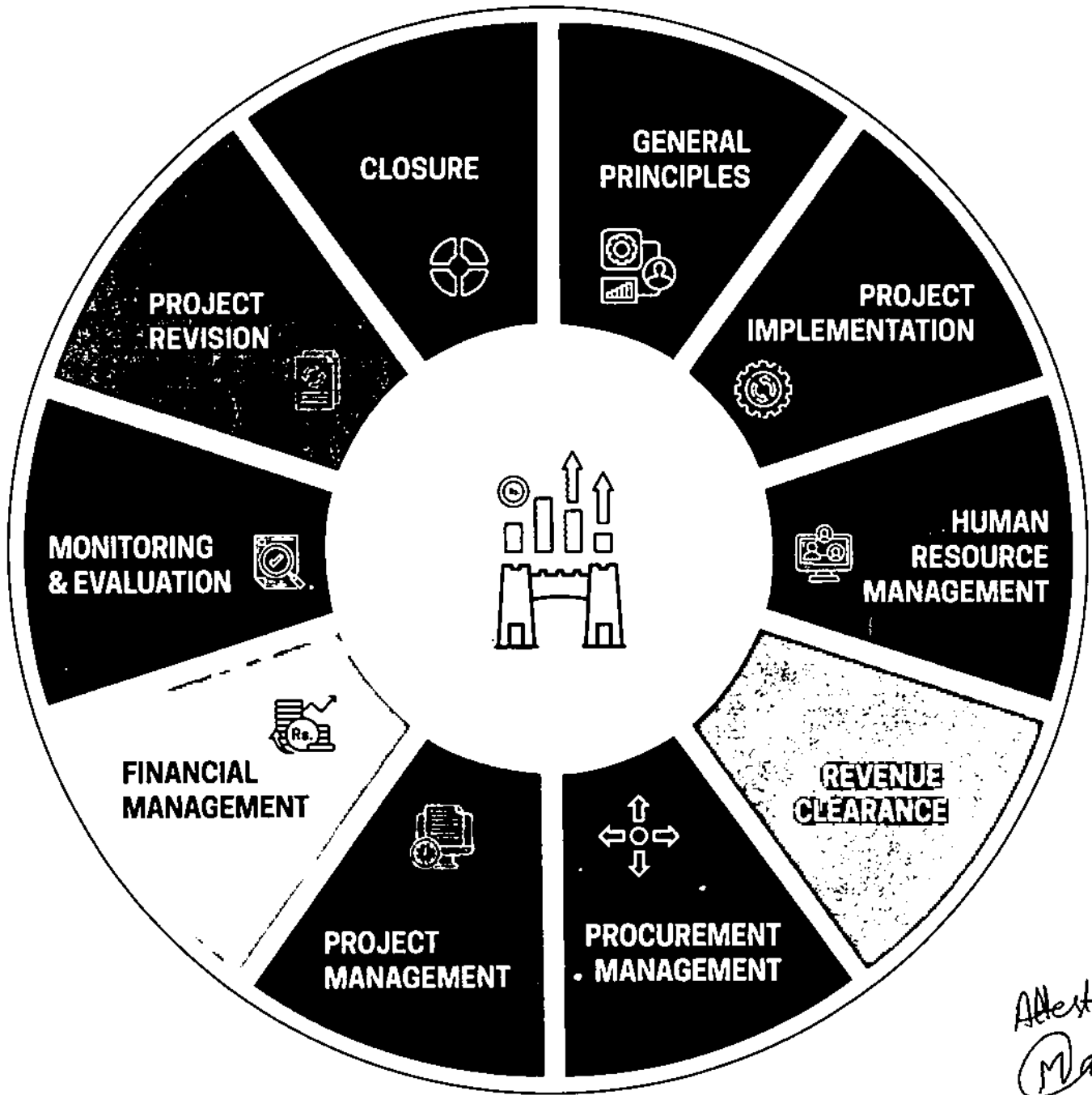
I, Shahid Ullah Khan Secretary, Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal, intentionally.

It is further stated on oath that in this appeal, the answering respondent have neither been placed ex-parte nor their defence has been struck-off/cost.

ATTESTED
Syed M.ammad

DEPONENT 

CNIC No. _____
Cell No. _____



*Attested
Mansh.*

KHYBER PAKHTUNKHWA PROJECT IMPLEMENTATION POLICY 2022

- (xvi) Civil Servants can apply for the project posts by following the procedure given in Para-5 hereof. In case of selection, the Civil Servants will be entitled to draw salary at market rates, as provided in PC-I.
- (xvii) Project Director and staff will be appointed for a period of three years or project term whichever is less. The Government will discourage frequent transfer of Project Director, officers and staff of the project during execution. However, during execution of the project, transfer of Project Director if warranted will be notified to the P & D Department. In case of poor performance, contracts of PD or project staff can be terminated at any time.
- (xviii) No extension will be allowed to project staff including Project Director. For cases of extreme importance, extension beyond three years or for revised extended period of the project, shall be allowed after approval from the next higher authority.
- (xix) Documents to report proceedings of the selection process, including list of shortlisted candidates, waiting list and final list of selected candidates shall be published on the website of concerned Administrative Department as proactive disclosure of information.
- (xx) The entire process from advertisement till final merit list shall be completed within 03 months including the selection of Project Director. Provided that the administrative secretary concerned, under unavoidable circumstances, can extend this period for 02 additional months, after recording the reasons for delay.
- (xxi) After joining the project post and before payment of salary, the character antecedents shall be verified through Police and academic / experience certificates shall be verified through concerned Board/University etc. In addition, a medical certificate shall be obtained by him/her from the DHQ / MTI duly signed by the Medical Superintendent / Head of MTI.
- (xxii) Pay scale of Project Director shall be BS-19 or above for projects costing Rs. 3 Billion or more. For other projects, Project Director shall not be less BS-18 in any case.
- (xxiii) Appointment on daily wages shall be allowed for project posts in BPS-03 to BPS-05 only and mode of appointment shall be specified in PC-I as well as in revenue clearance of the Finance Department for this purpose.

(4) DEPUTATION OF CIVIL SERVANTS TO PROJECT POSTS

In case the competent authority decides to fill a post by transferring a regular civil servant to project post on deputation basis, the procedure laid down herein below shall be followed:

- (i) The Administrative Department where the project has been initiated will provide a panel of at least 3 officers keeping in view the qualifications and other terms and conditions prescribed in PC-I for the P&D Department.
- (ii) The panel will be considered by the Provincial Project Selection Committee (PPSC) for selection of civil servants on deputation to project posts falling in BS-17 and above, strictly on merit keeping in view the job relevance, experience and service record. Deputation to project posts less than BS-17 shall not be allowed. The constitution of the Provincial Project Selection Committee (PPSC) shall be as under:
- | | |
|--|---------------------|
| 1. Additional Chief Secretary Khyber Pakhtunkhwa | Chairman |
| 2. Secretary Establishment Khyber Pakhtunkhwa | Member |
| 3. Secretary Finance Khyber Pakhtunkhwa | Member |
| 4. Secretary P&D Khyber Pakhtunkhwa | Member |
| 5. Secretary of concerned Department | (Ex-officio Member) |
- (iii) On receipt of requisition for deputation of a civil servant to a project post, his administrative department will decide whether the services of the civil servant concerned be lent for the project post or not. If he can be spared for deputation to project post, the Department concerned will prepare a self-contained Working Paper for consideration of

Attested
[Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

6

No: SO(E)P&D/084/1-104/97/Vol-II
Dated Peshawar, August 06, 2024:

To

Syed Zahir Ali Shah (PPS BS-19)
Chief Planning Officer, Sports & Youth Affairs Department.

Subject: REPRESENTATION AGAINST TRANSFER ORDER DATED 09TH MAY, 2024.

Dear Sir,

I am directed to refer to your application/representation dated 23.05.2024 and subsequent meeting with ACS/Secretary, P&D Department on 06.06.2024 on the subject noted above and to inform that your request was processed and regretted on the following grounds:

- i. You were entrusted with the charge of PD KP RIISP on emergency basis without lapse of 04 years' tenure after return from previous deputation i.e. DG (PCNA) for the sake to start the project activities and coordinate with donor agencies being foreign funded project. Moreover, Chapter-4 (viii) of PIP, 2022 does not allow consecutive deputations unless a period of at least 4 years has been elapsed after his/her return from last deputation.
- ii. The Implementation support mission during its visit (6th May 2024 to 10th May 2024) communicated the progress of the flagship project unsatisfactory reflected in Aid Memoir which is reflection of overall performance of Project Director KP RIISP. Therefore, you were transferred in light of PIP 2022 Chapter-4(3) xvii which states that during execution of the project, transfer of Project Director if warranted will be notified by the P&D Department. In case of poor performance, contract of PD or project staff can be terminated at any time.

Yours faithfully

(AKHLAQ AHMAD)
Section Officer (Estt)

ENDST. OF EVEN NUMBER & DATE.

Copy forwarded to the PS to Secretary, P&D Department.

Section Officer (Estt)

Attested
Mamud

(10) TERMINATION OF SERVICE ON COMPLETION OF PROJECT

- (i) A project employee shall work against that post for which s/he was recruited and shall not be transferred to any other post in the project or at any other station.
- (ii) A project employee shall also not be transferred to any other project under the same department / Government.
- (iii) If the performance of the employee is found unsatisfactory, his/her services shall be terminated on a fifteen day-notice or payment of fifteen days salary in lieu of notice. In the event such an employee is a Government Servant, he/she may be repatriated to their parent department.
- (iv) At the time of appointment, each employee shall give an undertaking to the effect that during the employment, they shall be held responsible for the losses (accruing to the project due to them and shall be held answerable therefore) and shall be bound to follow the terms and conditions mentioned in the agreement provided in this chapter.
- (v) On completion of the project, the services of the project employees shall stand terminated. However, they shall be re-appointed on a need basis, if the project term is extended.
- (vi) In case the project posts are converted into regular budgetary posts, the posts shall be filled in according to the rules prescribed for the post by the Public Service Commission or the Departmental Selection Committee, as the case may be. Ex-project employees shall have no right of adjustment against the regular posts. However, if eligible, they may also apply and compete for the posts with other candidates.

(11) PERFORMANCE MANAGEMENT & EVALUATION

- (i) Performance of Project Directors for projects having cost above Rs. 3 billion shall be evaluated by a committee in P&DD against a Performance Evaluation Matrix. The matrix shall be reviewed and updated periodically by Planning and Development Department and will essentially include all general parameters about performance of the project focusing on timely recruitment, financial and physical progress of the project as specified in PC-I, accomplishments of project objectives, to timely assess the magnitude of deviations from the original project plan.

For projects costing less than Rs. 03 billion, performance evaluation of the project directors, if any, will be carried out by the concerned Administrative Departments.
- (ii) Project Director shall devise an appraisal matrix for all the key staff having direct influence on progress of the project, based on targets and achievements. Annual performance of the report will be shared with the Administrative Department clearly mentioning deviations from targets, if any, and recommendations.
- (iii) Performance Evaluation Reports of the Government Servant shall be written by the concerned PAO during his / her appointment in the project on deputation basis and ACS P&D Department will be the 1st Countersigning Authority for the posts in BPS-19 and above or Specialized Positions under Negotiable Pay Packages.
- (iv) The Planning & Development Department shall introduce reward for "consistently good performing project teams". Selection of such projects will be based on the overall performance rating of projects first after mid-term review results and second on the completion of evaluation reports by the donors.

A Centralized Project Management Cell under the Special Secretary, P&D Department shall be established to monitor and resolve the issues of all the projects included in the ADP.

Attested
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**GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT**

AUTHORITY LETTER

Mr. Meher Muhammad, Section Officer (Litigation-II), Planning & Development Department is hereby authorized to attend the court hearing dated: 13-11-2024 in Service Tribunal, Peshawar in the case "Service Appeal No. 1258/2024 titled Syed Zahir Ali Shah VS Govt Of Khyber Pakhtunkhwa" on behalf of Secretary, P&D & Others.


**Secretary
P&D Department**