

¹[Khyber Pakhtunkhwa] **SUBORDINATE JUDICIARY SERVICE TRIBUNAL
RULES,1992.**

No. SOR-III (S&GAD) 1-79/73, dated 04-07-1992.---In exercise of the powers conferred by section 9 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991 (Khyber Pakhtunkhwa Act No. VIII of 1991), the Governor of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

1. **Short title and commencement** :-(1) These rules may be called the ²[Khyber Pakhtunkhwa] Province Subordinate Judiciary Service Tribunal Rules,1992.
(2) They shall come into force at once.
2. **Definition**:-In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-
 - (a) "Act" means the ³[Khyber Pakhtunkhwa] Subordinate Judiciary Service Tribunal Act, 1991 (⁴[Khyber Pakhtunkhwa] Act No. VIII of 1991);
 - (b) "Chairman" means the Chairman of the Tribunal.
 - (c) "Member" means a member of the Tribunal.
 - (d) "Registrar" means the Registrar of the Tribunal, and includes any other person authorised by the Tribunal to perform the duties and functions of the Registrar under these rules; and
 - (e) "Tribunal" means the Tribunal established under section 3 of the Act and includes a Bench constituted under section 4 thereof.
3. **Working hours**:-The Tribunal shall observe such hours of sittings as it may determine.
4. **Holidays** :-The Tribunal shall observe such holidays as are notified by Government, and such local holidays as are observed by the Peshawar High Court, Peshawar.
5. **Sitting of Tribunal**:-The Tribunal shall hold its sitting at Peshawar.
6. **Procedure to prefer Appeal**:-(1) An appeal to the Tribunal may be sent by Registered post or presented to the Registrar personally or through an advocate, during working hours.

¹ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

³ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011.

- (2) Every memorandum of appeal shall-
- (a) be legibly, correctly and concisely written or printed;
 - (b) be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be separate allegation;
 - (c) containing the full name, official designation and place of posting of each party;
 - (d) clearly set out the relief claimed;
 - (e) be accompanied by-
 - (i) a copy of the seniority list or other order of the competent authority fixing seniority, or in other cases, copy of the impugned order; against which the appeal is directed;
 - (ii) copies of rules, orders and other documents on which the appellant proposed to rely in support of his claim;
 - (f) be signed by the appellant;
 - (g) be accompanied by four spare copies of the memorandum of appeal and as many other copies thereof, complete in all respects, signed by the appellant and accompanied by the document referred to in clause(e), as there are respondents;

Provided that where the Tribunal is satisfied that it is not possible for an appellant to produce any document referred to in clause (e), it may waive the provision of the said clause.

Note: For the purposes of sub- clause(i) of clause(e), the appointing authority or any other authority to whom the powers to make decision regarding seniority of a member of the Subordinate Judiciary have been delegated shall prepare and notify in the official Gazette a list of seniority of the members of the subordinate Judiciary under its administrative control and the list so prepared shall be maintained upto date and shall be revised at least once a year preferably in the month of January.

(3) Every memorandum of appeal shall be presented to the Registrar in the covers and be accompanied by a typed or printed index of papers failing which the appeal may not be entertained.

(4) In every memorandum of appeal, the competent authority whose order is challenged shall be shown as Respondent No.1 and every civil servant who may be affected by the relief claimed, shall also be shown as respondent;

Provided that if the competent authority whose order is challenged is the Chief Justice or a Judge of the Peshawar High Court through the Registrar, Peshawar High Court shall be shown as Respondent No.1.

(5) Where an appeal is presented after the period of limitation prescribed in the Act, it shall be accompanied by a petition supported by an affidavit setting forth the cause of delay.

7. **Scrutiny of appeals:-** The Registrar shall scrutinize every memorandum of appeal received by post, or presented to him and shall-

- (a) if it is in order and drawn up in accordance with the foregoing provisions, cause it to be registered in the Register of Appeals to be maintained by the Tribunal;
- (b) if it is not drawn up in the manner herein before prescribed, return it to the appellant or his advocate for amendment, within a time to be specified in an order to be recorded by him on the memorandum of appeal, pointing out the deficiency;
- (c) where the memorandum of appeal is not drawn up in the manner herein before prescribed and the appellant or his advocate fails to amend the same within the period specified by the Registrar, the Tribunal may pass such order as it may deem fit.

8. **Admission of the time barred appeals:-** Any appeal may be admitted after expiry of the period of limitation prescribed therefor when the appellant satisfies the Tribunal that he had sufficient cause for not preferring the appeal within such period and the decision of the Tribunal as to the sufficiency of cause shall be final.

9. **Fixation of date of hearing:-** (1) The Tribunal may, after fixing a day for hearing the appellant, and hearing him or where he is represented by an advocate, hearing the advocate, dismiss the appeal in limine.

(2) If the appeal is not dismissed in limine, notices of admission of appeal and of the day fixed for its hearing, issued under the signature of the Registrar or any other official authorised by him in this behalf, shall, subject to the provisions of Rule 10, be served on the appellant and the respondents, or on their advocates if they are so represented, and on such other persons as the Tribunal may deem proper.

(3) Except as otherwise directed by the Tribunal, for reasons to be recorded in writing, the cases shall be fixed for hearing on their own turn, according to the dates of their admission.

10. **Deposit of Security etc:-** (1) If the appeal is admitted, the appellant shall deposit with the Registrar:-

- (a) cash security for costs in the sum of Rs.100.00 (rupees one hundred only); and
- (b) such cost of service of notices on the respondents as may be determined by the Registrar, including the cost of publication, if it is desirable to serve the notices by publication in the newspapers.

(2) If within 10 days of the admission of appeal, the appellant does not deposit the security and the cost of service of notices, the appeal may be dismissed.

11. **Service of Notices:-**(1) A notice under sub-rule(2) of Rule 9 may be served by registered post or in any other manner as the Tribunal may direct.

(2) The notices to the respondents shall be accompanied by a copy of the memorandum of appeal and all the documents appended therewith.

(3) The Tribunal may, where the number of respondents is large or where otherwise the Tribunal considers it appropriate or desirable to do so, direct that in addition to sending a copy of the notice to the respondents by registered post, the notice shall be published in one or more daily newspapers having circulation in the areas where the respondents ordinarily reside or are serving.

(4) Service of notice in accordance with the provisions of this Rule shall be as effectual as if it had been made on the respondents personally, and it shall not be necessary to prove that a party has actually received the notice.

12. **Submission of objections by respondents:-**(1) A respondent on whom a notice of appeal has been served under the provisions of Rule 11 shall send his written reply by registered post(Acknowledgement Due) to the Registrar, or deliver the same to the Registrar personally or through an advocate, not late than seven days before the date specified in the notice for the hearing of the appeal.

(2) The reply shall be correctly and concisely written, type written or printed, shall be signed by the respondent and shall be accompanied by a copy of every seniority list, or order or other documents on which the respondent wishes to rely in support of his case.

(3) The written reply shall be accompanied by 4 spare copies thereof, complete in all respects and containing copies of the lists, order and documents referred to in sub-rule(2), for use of the Tribunal.

13. **Determination of questions:-**(1) Questions arising for determination by the Tribunal shall be decided ordinarily upon affidavits and documents proved by affidavits, the Tribunal may direct that such questions as it may consider necessary be decided on such other evidence and in such manner as it may deem fit.

(2) The party affected by an affidavit may be permitted by the Tribunal to cross-examine the deponent with reference to the statements in the affidavit.

14. **Summoning of Witnesses:-**(1) A list of witnesses shall be presented to the Tribunal, and application for summoning witnesses before the Tribunal shall be made, within 10 days after the service of notice of appeal under Rule 11 which shall state whether they are required to give evidence or to produce any documents, shall give, where a witness is required to give evidence, a brief resume of the evidence he is expected to give, and where a witness is required to produce a document, give a brief description of the document so as to identify it.

(2) If the Tribunal is of the opinion that the evidence of any witness specified in the list of witnesses given under sub-rule(1) will be of material assistance in the disposal of an appeal before it, it shall direct him to be summoned on a date to be fixed by the Tribunal, and direct that the daily allowance and traveling charges of such witness, at the rates admissible to witnesses appearing in the High Court, should be deposited by the person calling him, within the period to be specified by the Tribunal.

(3) If a person applying for the summoning of a witness fails to deposit the requisite costs of the witness, within the period specified by the Tribunal under sub-rule(2), or within any extension thereof that may be granted by the Tribunal, the application for summoning of witnesses, so far as it relates to such witness, shall be deemed to have been rejected.

(4) If the Tribunal is of the opinion that the evidence of any witness is necessary for the disposal of an appeal before it, it may direct that the witness be summoned.

(5) Where a Tribunal summons a witness under the provisions of sub- rule(4)-

(a) if such witness is a Government servant, his traveling and daily allowance, if any, shall be borne by Government; and

(b) if such person is a private person, his traveling and daily allowance shall be borne by the appellant.

(6) Process for service on witnesses of high rank shall be sent in the form of a letter.

(7) Except in urgent cases or as otherwise ordered by the Tribunal, a summon requiring a public officer to give evidence or to produce a document shall be served through the Head of his office.

15. **Evidence of witnesses:-**(1) The evidence of witnesses examined by the Tribunal shall be taken down under the superintendence of the Tribunal, ordinarily in the form of a narrative and shall form part of the record.

(2) The Tribunal may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

16. **What may be urged by an appellant:-**The appellant shall not, except by the leave of the Tribunal, urge, or be heard in support of any ground of objections not set forth in the memorandum of appeal, but the Tribunal, in deciding, the appeal shall not be confined to the

grounds of objections set-forth in the memorandum of appeal or taken by leave of the Tribunal under these rules:

Provided that the Tribunal shall not rest its decisions on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the appeal on that ground.

17. **Notice Board:-**(1) A cause list shall be prepared under the orders of the Registrar, which shall be affixed on the notice board of the court room of the Tribunal.

(2) Except as otherwise directed by the Tribunal, cases to be set down in the cause list shall be in the order of the date of admission.

18. **Hearing of Appeal:-**(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant or his advocate shall be heard in the support of the appeal.

(2) The Tribunal shall then, if it does not dismiss the appeal at once hear the respondent or his advocate against the appeal and in such case, the appellant shall be entitled to reply.

19. **Consequence of Non-appearance of the Appellant or Respondent:-** (1) Where on the day fixed for the hearing of an appeal or any other day to which the hearing may be adjourned the appellant or his counsel, if any, does not appear when the appeal is called for hearing, the Tribunal may make an order that the appeal stands dismissed.

(2) Where the appellant or his counsel, if any, appears and the respondent or his counsel, if any, does not appear, the appeal shall be heard ex-parte.

(3) Where an appeal is dismissed under sub-rule(1) or an ex-parte order made under sub-rule(2), the Tribunal may for sufficient cause on an application made within 15 days restore the appeal or as the case may be set aside the ex-parte order on such terms as to costs or otherwise as it thinks fit.

Provided that no order of restoration of an appeal dismissed in default or setting aside the ex-parte order shall be made unless notice of the application has been served on the opposite party.

20. **Adding Respondent:-** When it appears to the Tribunal at the hearing that any person who has not been made a respondent in the appeal is interested in the result of the appeal, the Tribunal may adjourn the hearing to a further day to be fixed by the Tribunal and direct that such person be made respondent.

21. **Pronouncement of Order:-**The Tribunal shall pronounce order in open court, either at once on the conclusion of arguments or on some future date of which notice shall be given to the parties or their advocates.

22. **Order regarding costs, etc:-**(1) The Tribunal may make such order as to the costs of proceedings before it as it deems fit.

(2) Any cost awarded by a Tribunal which cannot be paid out of the cash security deposited by the appellant under Rule 10, if not paid by the appellant within one month of the order awarding the costs, shall, on the certificate of the Tribunal, be recoverable from the appellant as arrears of land revenue.

23. **No entertainment of appeal in certain cases:-**The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a court or a Tribunal of competent jurisdiction.

24. **Appellant precluded from bringing another appeal in certain cases:-**Where an appeal has been withdrawn by the appellant and is in consequence dismissed by the Tribunal, the appellant shall, unless otherwise directed by the Tribunal, be precluded from bringing another appeal in respect of the same cause of action.

25. **Administrative functions of the Tribunal to vest in the Chairman:-**The administrative functions of the Tribunal except the appointment of staff shall be performed by the Chairman on behalf of the Tribunal.

26. **Constitution of Benches:-**Where the amount of work so justifies the Chairman may, for the purpose of admission of appeals, constitute one or more benches, each bench consisting of two members to be nominated by the Chairman.

27. **Additional powers of the Tribunal:-**Nothing in these rules shall be deemed to limit or otherwise affect the powers of a Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

28. **Furnishing of copy of final adjudication order by the Tribunal to the competent authority.** A copy of every order of final adjudication on an appeal shall be furnished by the Registrar, free of cost, to the competent authority concerned which shall forthwith give effect to it.

29. **Inspection of Records:-**The provisions contained in the High Court Rules and Orders as applicable to the Peshawar High Court, in regard to copies of inspection of record, shall mutatis mutandis and to the extent practicable apply to proceedings before a Tribunal.