BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 873/2018

Date of Institution ...

05.07.2018

Date of Decision

11.01.2022

Shakeel Ashraf, Ex-Junior Clerk Session Court Abbottabad.

(Appellant)

VERSUS

Administrative Offices, Peshawar High Court through Registrar High Court Peshawar and one another. ... (Respondents)

Aslam Khan Khattak, Advocate

. For Appellant

Asif Masood Ali Shah, Deputy District Attorney

For respondents

AHMAD SULTAN TAREEN ATIQ-UR-REHMAN WAZIR

CHAIRMAN

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Junior Clerk in the Court of District & Session Judge Abbottabad, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 26-08-2009, against which the appellant filed service appeal No. 1374/2010 in this tribunal, which was decided vide judgment dated 24-10-2017 with direction to the respondents to conduct de-novo inquiry. As a result of de-novo proceedings, the appellant was awarded with major punishment of reduction to lower stage in time scale, against which the appellant filed departmental appeal, which was not responded, hence the instant service appeal with prayers that the impugned order dated 10-02-

2018 may be set aside and the appellant may be re-instated with all back benefits.

- 02. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence from duty, but was re-instated by judgment dated 24-10-2017 of this tribunal and de-novo proceedings were ordered to be completed within 90 days, but the de-novo proceedings were not concluded within the statutory period, hence an irregularity was committed by the respondents and the respondents has passed the impugned order dated 10-02-2018 much after three months, which is violation of judgment of this tribunal and now the appellant is entitled for re-instatement in service with all back benefits; that reduction to lower stage in time scale is major penalty by the authorized officer, which however was duty of the authority and to this effect, the impugned order is illegal and is liable to be set aside on this score alone; that reduction in the lower grade i.e. naib Qasid is beyond his cadre as the appellant was directly appointed as junior clerk; that no duration has been specified while imposing the penalty on the appellant which has rendered the impugned order dated 10-02-2018 as illegal.
- 03. Learned Deputy District Attorney for the respondents has contended that the instant appeal is liable to be dismissed on the ground that the appellant is an irresponsible employee, who had earlier been awarded major penalty on the charges of absence; that the appellant challenged such dismissal in the service tribunal and this tribunal vide judgment dated 24-10-2017 ordered for de-novo inquiry; that during the course of de-novo proceedings, the appellant did not appear before the inquiry officer till conclusion of the inquiry, hence he has been awarded major punishment of reduction to lower stage in time scale; that the appellant has got no cause of action to file the instant appeal as during inquiry proceedings, the appellant completely failed to justify his absence before the inquiry officer, therefore, he was rightly penalized; that the appellant was granted

before the medical board but he did not appear before the medical board; that as per law, the appellant was required to apply for extension in leave as well as appear before the medical board, but he failed to do so and resultantly after observing all the codal formalities, he was dismissed from service; that de-novo inquiry was conducted as per law and rule and well in time and the appellant was served with proper notices but the appellant did not appear before the board on the fixed date, thereafter fresh notices were served upon him but again he did not appear before the inquiry officer, hence the inquiry officer submitted its report on 20-01-2018 and in light of findings of the report, the appellant was awarded with major punishment of reduction to lower stage in time scale.

04. We have heard learned counsel for the parties and have perused the record.

- 05. Perusal of record would reveal that the appellant is a psyche patient, hence was referred to standing medical board, but he did not appear before the standing medical board. The appellant was granted leave on medical grounds, but after expiry of such leave, the appellant neither resumed his duty nor requested for extension of leave. However, the said proceedings did not culminate into its logical end and the penalty of dismissal was awarded only on the ground of absence from duty. Dismissal of the appellant, however was set aside by this tribunal vide judgment dated 24-10-2017 and respondents were directed to conduct de-novo inquiry with specific direction to refer the appellant to standing medical board. The respondents conducted de-novo inquiry but neither the appellant appeared before the inquiry officer, nor the standing medical board constituted for the purpose, hence the appellant was again awarded with major punishment of reduction to lower stage in time scale.
- 06. We have noticed that the major penalty of reduction to lower stage in time scale was awarded without specification of time, which was not in

accordance with law. Secondly, the appellant was directly recruited as junior clerk and his reduction to the lower stage in time scale lacks clarification as to which would be the lower stage in time scale when the appellant was appointed as junior clerk.

07. In view of the foregoing discussion, the impugned order is set aside and the case is remanded to the respondents to conduct proper inquiry keeping in view the lacunas left in the de-novo proceedings strictly in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 11.01.2022

> (AHMAD SULTAN TAREEN) CHAIRMAN

(ATIQ-UR-REHMAN WAZIR) MEMBER (E) ORDER 11.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the impugned order is set aside and the case is remanded to the respondents to conduct proper inquiry keeping in view the lacunas left in the de-novo proceedings strictly in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 11.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR) MEMBER (E) 06.01.2022 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Arguments heard. To come up for order before the D.B on 10.01.2022.

(Atiq-Ur-Rehman Wazir) Member (E) Chairman

10.01.2022 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Order could not be announced due to paucity of time. To come up for order before the D.B on 11.01.2022.

(Atiq-Ur-Rehman Wazir)

Member (E)

Chairman

O1.04.2021 Due to non availability of the concerned D.B, the case is adjourned to 02.07.2021 for the same.

Read

02.07.2021 Mr. Aslam Khan Khattak, Advocate, for the appellant present.

Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Vide order sheet dated 03.09.2020 as well as 13.10.2020, learned counsel for the appellant was directed to contact the appellant to personally appear before the Tribunal. On query today, learned counsel for the appellant stated that he will contact the appellant for his personal appearance before the Tribunal on the next date. Adjourned. To come up for personal appearance of the appellant as well as arguments before the D.B on 07.10.2021.

(ATIQ UR REHMAN WAZIR) MEMBER (EXECUTIVE) (SALAH-UD-DIN)
MEMBER (JUDICIAL)

07.10.2021

Counsel for the appellant and Mr. Javaidullah, Asstt. AG for the respondents present.

Former seeks adjournment in order to further prepare the brief. Request is accorded. To come up for arguments on 06.01,2022 before the D.B.

(Mian Muhammad)
Member(Executive)

Chairman

13.10.2020

Mr. Aslam Khan Khattak, Advocate for appellant is present. Mr. Usman Ghani, District Attorney for the respondents is also present.

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Learned counsel for appellant was directed as per previous order sheet to make contact with his client directing him to appear before the Tribunal however, on query as to whether he has made any contact with his client his response in this regard was in negative. He is again directed to make contact with appellant directing him to appear before the Tribunal on 07.12.2020 before D.B.

(Atiq-ur-Rehman Wazir) Member (Executive)

(Muhammad Jamal Khan) Member (Judicial)

07.12.2020

Junior to counsel for the appellant present. Addl: AG

for respondents present.

Since the Members of the Peshawar High Court, Peshawar as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for the appellant s not available today. Adjourned to 04.0 2.2021 on which date file to come up for arguments

before D.B/

(Mian Muhammad) Member (E) (M. Jamal Khan) Member(J)

04.02.2021

Learned counsel for the appellant present. Mr. KAbirullah Khattak learned Additional Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment. Request is allowed. To come up for arguments on 01.04.2021 before D.B.

(ATIQ-UR-REHMAN WAZIR)

MEMBER (E)

(MUHAMMAD JAMAL KHAN)
MEMBER(J)

9-4 .2020 Due to COVID19, the case is adjourned to 13/7/2020 for the same as before.

Reader

13.07.2020

Due to COVID-19, the case is adjourned to 03.09.2020 for the same.

03.09.2020

Learned counsel for the appellant is present. Mr. Usman Ghani, District Attorney for the respondents is also present.

Arguments on appeal heard. We deem it appropriate to direct the learned counsel for appellant to ensure appearance/availability of the appellant in this Tribunal, therefore, learned counsel for appellant is directed to contact his client to appear before the Tribunal on 13.10.2020. File to come up for further proceedings before D.B.

(Mian Muhammad) Member (Executive) (Muhammad Jamal Khan) Member (Judicial) 11.03.2020

Counsel for the petitioner present. Mr. Muhammad Jan, DDA alongwith Mr. Bashir Ahmad, Supdt for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 29.04.2020 before D.B.

Member

Membér

13.11.2019

Counsel for the appellant present. Mr. Ayub Amin, Advocate on behalf of respondent No. 1 Mr. Ziaullah, Deputy District Attorney alongwith Mr. Shabir, Superintendent on behalf of respondent No. 2 present. Representative of respondent No. 2 furnished fresh removal order dated 31.10.2019 of the appellant which is placed on record. One copy has also been handed over to the learned counsel for the appellant by the learned Deputy District Attorney Mr. Ziaullah today. Learned counsel for the appellant requested for adjournment to examine the same. Case to come up for further proceeding on 07.01.2020 before D.B.

(Ahmad Hassan) Member (M. Amin Khan Kundi) Member

07.01.2020

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Adjournment requested. Adjourn: To come up for arguments on 11.03.2020 before D.B. Appellant and representative of respondent No.2 be put to notice for the date fixed.

Member

Member

19.08.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Shabir Ahmed Superintendent for the respondents present. Learned counsel for the respondent no. 1 present. The appellant is not present in person despite direction issue to him in the previous order sheet to personally appear in the court. Learned counsel for the appellant is again directed to inform the appellant to appear in person on the next date. Adjourned. To come up for arguments on 08.10.2019 before D.B.

(Hussain Shah) Member

(M. Amin Khan Kundi) Member

08.10.2019

Learned council for the appellant present. Mr. Riaz Khan Paindakheil learned listant Advocate General present. Learned counsel for the appellant seeks adjournment to produce the appellant in compliance of out theet dated 27.06.2019. Adjourn. To come up for further process. S/arguments on 13.11.2019 before D.B.

Member

Member

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shabir Ahmad, Superintendent for the respondents present. Written reply on behalf of respondents submitted. Adjourned to 14.05.2019 for rejoinder and arguments before D.B.

(Muhammad Amin Khan Kundi) Member

14.05.2019

Counsel for the appellant, Addl: AG alongwith Mr. Shabir Ahmad, Supdt and counsel for respondents no. 1 present. Rejoinder on behalf of the appellant submitted which is placed on file. Arguments could not be heard due to complete breakdown of electricity. Adjourned to 27.06.2019 for arguments before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)

Member

27.06.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith M/S Shabir Ahmed Superintendent representative of the respondent no.1 and Adnan Shah Assistant representative of the respondent no.2 present. Junior counsel for the respondent no.1 present and requested for adjournment. Learned counsel for the appellant is directed to ensure presence of the appellant on the next date of hearing. Adjourned. Case to come up for arguments on 19.08.2019 before D.B.

(Hussain Shah) Member (M. Ahmad Hassan)

Member

28.12.2018

Learned counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department with direction to furnish written reply. Adjourn. To come up for written reply/comments on 30.01.2019 before S.B.

Member

31.01.2019

Counsel for the appellant present. Mr. Ayub Amin, Advocate on behalf of respondent No. 1 and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shabir Ahmad, Superintendent for respondent No. 2 present and requested for adjournment for filing of written reply. Adjourned. To come up for written reply /comments on 15.02.2019 before S.B.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

15.02.2019

Learned counsel for the appellant present. Shabir Ahmad Assistant representative of the respondent No.2 Junior to counsel for respondent No.1 present and seek adjournment to furnish written reply/comments. Adjourn. To come up for written reply/comments on 08.03.2019 before S.B.

Member

13.09.2018

Appellant Shakeel Ashraf in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. The learned AAG requested for adjournment. Granted. Case to come up for written reply/comments on 01.10.2018 before S.B.

Chairmai

01.10.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 12.11.2018 before S.B.

(Muhammad Amin Khan Kundi) Member

12.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 28.12.2018. Written reply not received. Representative of the respondents not present.

Reader

Form- A FORM OF ORDER SHEET

Court of		
Case No	873 /2018	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	. 2	3
1-	10/07/2018	The appeal of Mr. Shakeel Ashraf resubmitted today by Mr. Aslam Khan Khattak Advocate may be entered in the Institution
		Register and put up to the Worthy Chairman for proper order please.
	11-7-2018	REGISTRAR PROPERTY This case is entrusted to S. Bench for preliminary hearing to
2-		be put up there on $01-8-20/8$.
		CHAIRMAN
	1.08.2018	Mr. Aslam Khan Khattak, Advocate counsel for the appellant present and heard in limine.
		Contends the major penalty has been imposed by the authorize officer whereas he was not competent to pass such order and secondly that no period has been mentioned while awarding major penalty to the appellant.
Appella Securit	nt Deposited & Process Fee	Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.09.2018 before S.B.
		Chairman

The appeal of Mr. Shakeel Ashraf Ex-Junior Clerk Session Court Abbottabad received today i.e. on 05.07.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexures-A & C of the appeal are illegible which may be replaced by legible/better one.

No. 1350 /S.T,

Dt. 06/07/2018.

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Aslam Khan Khattak Adv. Pesh.

Re-submitted after Completion Please.

aghi
10/7/2018

Registerar.

BEFORE THE KHYBER PAKHTUNKHWÅ SERVICE TRIBUNAL PESHAWAR

Affeal mo. 873/2018

Versus

Administrative offices, Peshawar High Court through Registrar High Court Peshawar Etc

.....Respondents

INDEX

S#	Description of Documents	Annexures	Page Nos
1	Memo of appeal with affidavit	_	1-6
2 .	Impugned order dated 10/02/2018	Α	7
3	30 days Medical Leave	В	8
4	Order dated 26/08/2009	С	9-10
5	Judgment dated 24/10/2017	D	11-14
6	Departmental appeal dated 09/03/2018	E	15-17
7	Order No. 2347/ST dated 31/10/2017	F	18
8	Wakalat Nama		

Slug Appellant/Petitioner

Through

Aslam Khan Khattak Advocate, Peshawar.

Dated: <u>5</u>-07-2018

HE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeel No-873/18

Versus

Administrative offices, Peshawar High Court through Registrar High Court Peshawar.

2. District Session Judge, Abbotabad.

Khyber Pakhtukhwa Service Tribunal

Diary No. 1123

05-7-2018

.....Respondents

APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED ORDER DATED 10-02-2018
VIDE ANNEXURE 'A' WHEREBY THE
APPELLANT HAS BEEN REDUCED TO
LOWER STAGE IN A TIME SCALE.

<u>PRAYER</u>,

ON ACCEPTANCE OF THE APPEAL, THE IMPUGNED ORDER DATED 10/02/2018 AT ANNEXURE 'A' MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN SERVICE WITH ALL BACK BENEFITS.

rledto-day

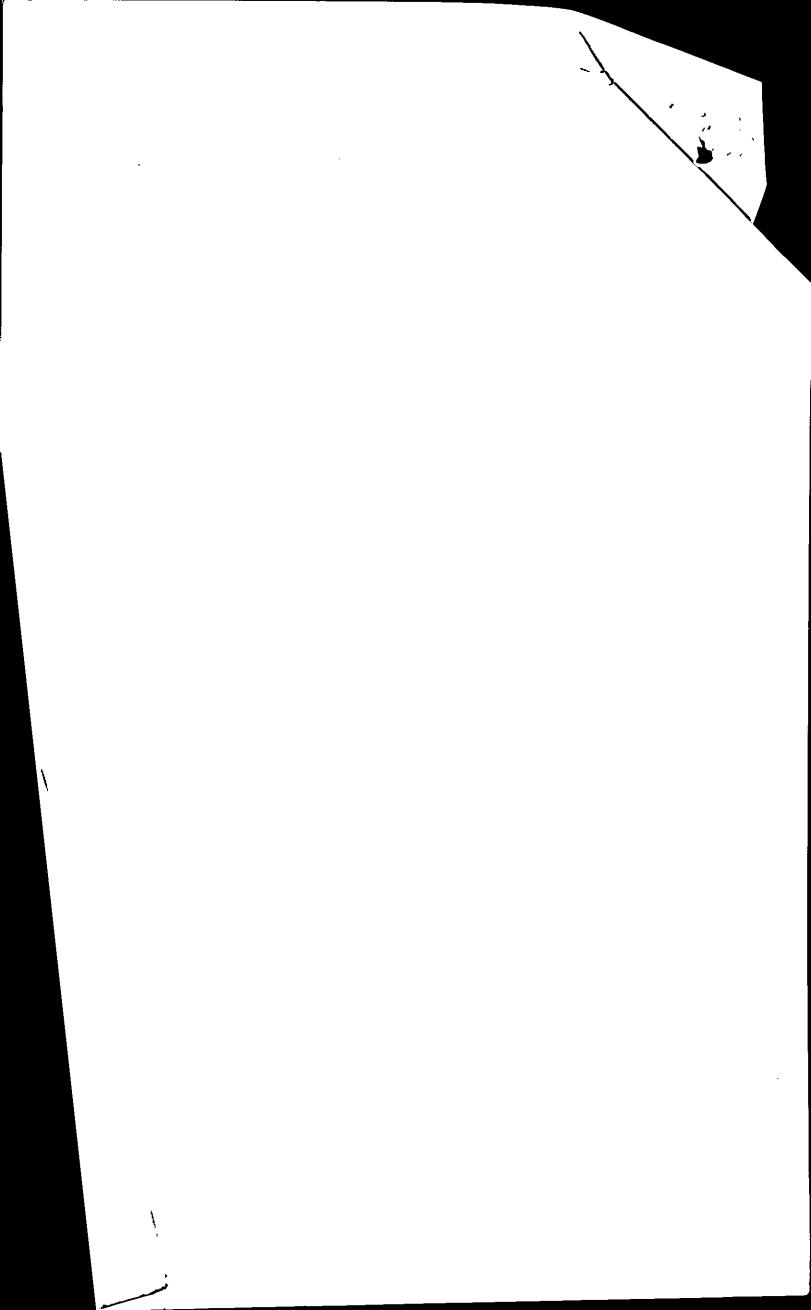
Registratu 5/7/18

Respectfully Sheweth:-

Brief facts leading to the instant appeal are as under:-

Re-submitted to -day

Registrar 10/2/18 1. That the appellant fell ill during 2009 which badly has effected his health and thereafter respondent No.2 has sanctioned him 30 days medical leave from 18-03-2009 to 17-04-2009 vide annexure 'B'



- 2. That the appellant during his one month medical leave did not recover and so he was unable to report his arrival for duty.
- 3. That the respondent No.2 though was duty bound to extend his medical leave but instead of doing so, he dismissed the appellant from service vide order 26/08/2009 at annexure 'C'.
- 4. That the appellant against his dismissal order has filed service appeal dated 10/07/2010 before this Hon'ble Tribunal which was accepted vide judgment dated 24/10/2017 at annexure 'D'.
- 5. That the authority was directed to proceed a fresh against the appellant under Khyber Pakhtunkhwa Government Servant (E&D) Rules 1973 in light of observance and to conclude the denovo enquiry within a period of 3 months.
- 6. That the enquiry was conducted but was not being completed within the specified period and the impugned order dated 10/02/2018 at annexure 'A' has been passed by respondent No.2 and the

appellant has been awarded major penalty of reduction to lower stage in a time scale.

7. That the appellant has filed his departmental appeal dated 09/03/2018 vide annexure 'E' and 90 days have been passed and no reply has been received so far and hence this appeal inter-alia on the following grounds:-

GROUNDS:

A. That the appellant was dismissed from service due to his absence of 18 days from duty due to his illness. His appeal has been accepted and the authority has been directed to proceed a fresh Khyber under against the appellant Pakhtunkhwa Government Servants (E&D) Rules 1973 and to conclude the enquiry within a period of 3 months from the date of receipt of judgment. The judgment dated 24/10/2017 vide order No. 2347/ST dated 31/10/2017 has been sent to Respondent No.2 at annexure 'E' which might has been received on 2nd or 3rd November 2017 and thereafter, the Respondent No.2 has passed the impugned order dated 10/02/2018 much after 3

months which is in violation of the judgment dated 24/10/2017 and now the appellant is entitled for reinstatement in service with all back benefits.

- B. That the reduction to lower stage in time scale is major penalty which has been imposed upon the appellant by the authorized officer which was the duty of the authority. To this effect the impugned order dated 10/02/2018 at annexure 'A' is illegal and is liable to be set aside on this score alone. Moreover, the reduction in lower grade i.e, Naib Qasid is beyond his cadre as the appellant was directly appointed as Junior Clerk.
- C. That no duration has been specified while imposing the penalty on the appellant which has rendered illegal the impugned order 10/02/2018 while reducing the appellant to a lower stage.
- D. That the denovo enquiry has not been concluded within 3 months which is in violation of the judgment dated 24/10/2017 of this Honourable Tribunal. So the impugned order dated 10/02/2018 is illegal and is not sustainable under the law and is liable to be set aside.

- E. That the impugned order dated 10/02/2018 at annexure 'A' is illegal, malafide, without jurisdiction and without lawful authority and is liable to be set aside.
- F. That the appellant seeks leave of this Hon'ble

 Tribunal to rely on additional grounds at the time
 of arguments.

It is, therefore, prayed that on acceptance of appeal, the impugned order dated 10/02/2018 at annexure 'A' may be set aside and the appellant may be reinstated in service with all back benefits to meet the ends of justice.

Dated: 5/07/2018

Appellant

Through

Aslam Khan Khattak Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Shakeel Ashraf, Ex- Junior Clerk Session Court
Abbotabad

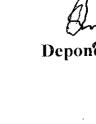
Versus

Administrative offices, Peshawar High Court through
Registrar High Court Peshawar Etc

Respondents

Affidavit

I, Shakeel Ashraf, Ex- Junior Clerk Session Court Abbotabad, do hereby solemnly affirm and state on oath that the departmental appeal has never been returned to me with direction to approach the proper forum. My above statement is true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.



Better Copy

Accused/ official submitted an application for earned leave with effect from 18/03/2009 to 17/04/2009 (Flag "A"). The same was received in the office on 06/04/2009. My predecessor in office accepted the application, however, directed the accused/official to appear before Standing Medical Board for his medical examination. (Flag "B"). Despite direction by the authority, accused/official failed to appear before SMB and also intentionally absented himself from duty from 05/06/2009 to 23/06/2009. In consequence thereof, he was served with Show Cause Notice on 10/07/2009. (Flag "C") however, he failed to submit reply to the Show Cause Notice Resultantly, he was dismissed from service vide order dated 26/08/2009 (Flag "D").

Feeling aggrieved, accused/ official preferred a departmental appeal which was rejected vide order dated 10/06/2016. Later on, accused/ official said appeal was accepted vide judgment dated 24/10/2017. (Flag "E") whereby, the authority (District Judge) was directed to proceed afresh against the accused/official under KP Government Servants (E&D) Rules 1973. Accordingly, learned Senior Civil Judge Abbottabad was appointed as Authorized Officer, who appointed Mr. Ishfaq Ahmed, Civil Judge — IV Abbottabad as Inquiry Officer (Flag "F"). Learned inquiry officer conducted fresh inquiry and on conclusion thereof, submitted the report to Authorized Officer (Flag "G").

As per report of inquiry officer, the accused/official was served with the notice who once appeared on 11/01/2018 and thereafter did not appear till conclusion of inquiry. The authorized officer, while agreeing with the findings of inquiry officer, awarded penalty of reduction to a lower stage in a time-scale, as envisaged under section 4(b) (i) of Government Servants (Efficiency and Discipline) Rules, 1973. (Flag "H").

Allester, ash

Undersigned being competent authority agree with the view/recommendation of authorized officer. Office shall do the needful accordingly. This file consigned.

Announced 10/02/2018

SOFIA WAQAR KHATTAK
District Judge Abbottabad/
Competent Authority

JUDGE, ABBOTTABAD DISTRICT & SESSIONS

30 days melical leave w.e.f 18.03.200 to 17.04.2009 on medical ground is hereby sanctioned favour of Mr. Shakeel Ashraf Junior Clerk/Moharrir attached to the Court of Civil Judge-II, Abbottabad oject to entitlement.

Had he not gone on leave, he would continue in the above post.

2/4 Dated Abbo tabad the 1014/00

Copy forwarded to the :-Senion. Clvik Judge, Abbottabad. District Account Officer, Abbottabad

Civil Judge-II, Abbottabad.

Official concerned.

Office Cory.

District

Better Copy



OFFICE	OF	THE	DIST	TRICT	&	SESSIONS	JUDGE	, ABBOTTABAD

No:	-	Dated Abbottabad the	/2000

OFFICE ORDER

WHEREAS Mr. Shareef Ashraf, Junior Clerk, remained absent from duty unauthorizedly from 05.06.2009 to 23.06.2009:

AND WHEREAS his explanation was called for vide this office No. 1104-I/4 on 10/06/2009 which was received by him on 23/06/2009 but no reply was offered by him till date;

AND WHEREAS he was also informed on 23/06/2009 to appear before standing Medical Board fixed for 25/06/2009 to assess his psychological suitability for service in this Department but he did not obey the said order:

AND WHEREAS he is again absent unauthorizedly from 24/06/2009 till date without any intimation to this office:

AND WHEREAS his unauthorized absence is a misconduct within the meaning of Govt of NWFP (Efficiency and Discipline) Rules 1973.

AND WHEREAS a notice was issued to the said official vide this office order No. 1310-2/4 dated 10th July, 2009 asking him to show cause his to why the major penalty of dismissal from service shall not be imposed upon him;

AND WHEREAS the said official has failed to respond to the said notice till date despite service;

AND WHEREAS the said official has opted to remain absent unauthorizedly till date;

Attesta as

NOW THEREFORE Mr. Shakeel Ashraf Junior Clerk is dismissed from service with immediate effect.

(ABDUL MATIN)
District & Sessions Judge,
Abbottabad/ Authority

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CASE FIR do. 18 DATED "1907.2018,

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OFFICETOR THE DISTRICT & SESSIONS JUDGE, ABBOTTABAD

No.

Dated Abbottabad the

/ 20.i)

OFFICE ORDER

WHEREAS Mr. Shakeel Ashraf, Junior Clerk; remained absent from duraunauthorizedly from 05.06.2009 to 23.06 (2009):

AND WHEREAS his explanation was called for vide this office No. 1104-144 on 10/06/2009 which was received by him on 23 06/2009 but no reply was offered by him till date; 6-25

AND WHEREAS he was also informed on 23 06/2019 to appear before standion Medical Board fixed for 25/06/2009 to awares his asychological suitability for service in this Department but he did not obey the said order;

AND IVIEREAS he is again absent us notherizedly from 24/06/2009 till date without any intimation to this office:

...AND. WITEREAS his anauthorized absence is a misconduct within the meaning of Govt of NWFP (Efficiency and Discipline) Rules 1973;

AND WHEREAS a notice was issued to the said official vide this office order No. 1310-2/4 dated 10th July, 2009 asking him to show cause his to why the major penalty of dismissal from service shall not be imposed upon him;

AND WHEREAS the said official has failed to respon! to the said notice till date despite service;

AND WHEREAS the said official has opted to remain absent unauthorizedly till date;

NOW THEREFORE Mr. Shakeel Ashrai Justor Clerk is dismissed from service with immediate officet.

(ABDUL MATTN)
District & Sessions Judge,
Abbottabad / Authority

Examine Milution

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Better Copy

No. <u>1305-10</u> /4

Dated Abbottabad the 26/8/2009

Copy forwarded to:-

- 1. The Worthy Registrar, Peshawar High Court, Peshawar.
- 2. The Senior Civil Judge, Abbottabad.
- 3. The District Accounts Officer, Abbottabad.
- 4. The Nazir of this court.
- 5. Clerk of Court of Senior Civil Judge, Abbottabad.
- 6. The official concerned.
- 7. Office copy.

(ABDUL MATIN)
District & Sessions Judge,
Abbottabad / Authority.

attested as?



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL

Appeal No. 1374/2010

Date of Institution ... 12.07.2010

Date of Decision ... 24.10.2017

Production Killing Service

Shakeel Ashraf son of Raja Muhammad Ashraf, R/O Abbasi Street near Small Industrial Estate, Mandiyan, Abbottabad. ... (Appellant)

<u>VERSUS</u>

1. The Administrative Officer, Peshawar High Court, Peshawar through Registrar, Peshawar High Court, Peshawar and another. (Respondents)

MR. ASLAM KHAN KHATTAK, ... For appellant

MR.KABEERULLAH KHATTAK.

... For respondents.

MR. NIAZ MUHAMMAD KHAN. ... CHAIRMAN MR. GUL ZEB KHAN. ... MEMBER

JUDGMENT

NIAZ MUHIAMMAD KHAN, CHAIRMAN.- Arguments of the

 β^{**} -learned counsel for the parties heard and record perused.

FACTS

Authority, against which he filed departmental appeal on 29.09.2009. The said departmental appeal was rejected on 10.06.2010 and the appellant thereafter filed the present service appeal on 12.07.2010.

EX MYAER

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS.

The learned counsel for the appellant argued that in the year, 2009, the appellant proceeded on leave for 15 days on medical grounds and thereafter he could not join his duty. That the Competent Authority himself assumed the role of Authorized Officer under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 and issued show cause notice and then dismissed the appellant. That no charge sheet etc. was issued to the appellant nor any enquiry was conducted. That no Authorized Officer was appointed and no personal hearing was afforded to the appellant. That in the alternative the whole proceedings were illegal as the proceedings were conducted under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the year, 2009 when the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue. He pressed into service some judgments of the Superior Courts reported as 2008-PLC(C.S) 1055, 2003-SEPLC (C.S) 395 and 1996-SCMR-630 in support of his contention that nonappointment of the Authorized Officer is an illegality. He further relied upon another judgment reported as NLR 1991-TD-271. in support of his contention that major punishment could not be granted in case of absence.

departmental appeal was time barred and the present service appeal is also time barred and the appellant was required to have filed the present service appeal within 120 days after filing of the departmental appeal. The learned Addl. A.G also argued that the present service appeal is time barred for 3 days on the ground that it was filed after 32 days of the rejection of the departmental appeal. He further argued that the appellant was a Psyche case and despite directions by the Competent Authority, he did not appear before the Psychiatric. That show cause notice was issued to the appellant by the Authority which is available on file. That the

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Authority has rightly imposed the penalty of dismissal from service upon the

CONCLUSION.

- The applicability of the Khyber Pakhtunkhwa Government Servants (E&D)
 Rules, 1973 is to be decided first. The employees of the Courts subordinate to the High Court do not fall within the definition of "person in Government service" as per definition given in Section-2(e) of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which means that the appellant being employee of the subordinate court to the High Court is not a person in Government service for the purpose of the said Ordinance. Therefore, the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 are applicable to the present case.
 - 6. Coming to limitation, the present appeal was dated as 10.07.2010 and freecived in the office as 12.07.2010 as 11th July 2010 was Sunday. The departmental appeal is also not time barred as limitation starts from the date of communication. The appellant was dismissed due to absence and he was not communicated the order on the same day. The appellate authority has also not ruled about limitation of departmental authority.
 - 7. Under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the case of willful absence three options were available for proceedings departmentally. The one was Rule 8-A under which the proceedings could be initiated and can be taken to its logical end by the Authorized Officer and not by the Authority. The second was the regular enquiry under Rule 5 of the said rules and this regular enquiry was also to be conducted by the Authorized Officer and not by the Authority. The third was dispensing with the regular enquiry under sub rule 2 of Rule 5 of the said rules and it was also to be made by the Authorized Officer and

Attested

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not by the Authority. But in the case in hand, the whole proceedings were undertaken by the Authority and the Authority did not proceed under any of the above mentioned three options. Neither he proceeded under Rule 8-A nor he conducted the regular enquiry nor he dispensed with the conduct of the enquiry. The whole proceedings are therefore *coram-non-judice* and are void.

- 8." The comments of the District & Sessions Judge. Abbottabad to the present appeal suggests that the appellant was a case of psyche and was referred to Standing Medical Board but not appeared before the said Board. But the said proceedings were not culminated into its logical end and the penalty of dismissai was awarded only on the ground of absence from duty.
 - 9. Consequently, this appeal is accepted and the Authority is directed to proceed afresh against the appellant under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the light of observations made above and to conclude the enquiry within a period of 3 months from the date of receipt of this judgment. In case the Authority comes to the conclusion that the appellant should be proceeded on medical grounds, then he should be referred to the Standing Medical Board within further period of 3 months and could proceed accordingly. In case time schedule is not honored, the appellant shall be reinstated in service. The issue of back benefits of the appellant shall be subject to the final outcome of denovo proceedings. Parties are left to bear their own costs. Life be consigned to the record room.

The record room.

Amounced SD/- Niag Muhammad Klain,

Chairman

Chairman

SD/- Chairman

Member

Member

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Τo,

The District and Session Judge Abbottabad

Subject:

Departmental appeal against the impugned order dated 10-02-2018 whereby I have been reduced to lower stage.

Prayer:

On acceptance of departmental appeal, the impugned order dated 10-02-2018 may be set aside and I may be reinstated on my original post of junior clerk with back benefits.

Respectfully Sheweth!

Brief facts of the instant departmental appeal are as under:

- 1. That I was inducted in service as junior clerk in session court Abbottabad in the year 2003.
- 2. That I performed my duties throughout my whole service with clean record and to the entire satisfaction of my superiors.
- 3. That I fell ill during March 2009 and the Honorable District & Session Judge Abbottabad has granted me 30 days medical leave from 18-03-2009 to 17-04-2009. But I did not recover and I was entitled for further extension of medical leave but instead of doing so, he has dismissed me from service vide order dated 26-08-2009 with immediate effect.
- 4. That thereafter, I had filed service appeal dated 10-07-2010 before the Khyber Pakhtunkhwa services Tribunal Peshawar which was accepted on 24-10-2017 after 7 years 3 months and 14 days. (Copy of the judgment dated 24-10-2017 is at annexure 'A')

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- 5. The authority has been directed to proceed afresh against me under Khyber Pakhtunkhwa Government servant (E&D) Rules 1973 in light of observation and to conclude the denovo enquiry within a period of 3 months.
- 6. That the enquiry was concluded and the impugned order dated 10-02-2018 has been issued to which I pray that the same is illegal and may be set aside in view of following grounds and I may be reinstated in service with all back benefits:-

Grounds

- A. That I was dismissed from service on account of my absence from duty from 05-06-2009 to 23-06-2009 which was only 18 days which was never intentional, but I was sick and I was unable to perform duty and my dismissal from service was harsh one. Now my appeal has been accepted after 7 years 3 month and 14 days. The authorized officer in capacity of authority has imposed upon me the instant reduction to lower stage vide impugned order dated 10-02-2018 which is also a major penalty and the power of authorized officer is limited to awarding of minor penalty. So the impugned order dated 10-02-2018 is liable to be set aside on this score alone.
- Altstel
- B.That instant appeal has been decided on 24-10-2017 and the authority was directed to complete the denovo enquiry within a period of 3 months failing which the appellant would regain his position before the impugned order dated 28-08-2009. The whole process has been completed on 10-02-2018 within 109 days which is beyond 3 months and now I am entitle to regain my

(17)

position before the 28-08-2009 i.e reinstatement on junior clerk post.

- C. That for mere 18 days absence from duty due to illness was never intentional but was due to illness and penalty of dismissal from service was imposed upon me was very harsh one and now the authorized officer has converted it to reduction of lower stage which is also very harsh and is a major penalty to which he was also not authorized, the same is liable to be set aside to meet the ends of justice.
- D.That my appeal has now been accepted and I do not deserve for imposition of the instant penalty i.e. reduction to lower stage which is also a major penalty and which is not sustainable under any law in view of acceptance of my appeal.
- E. That even otherwise legally speaking under section 24A of General Clauses act, any authority may review, alter or modify its own order. So the order dated 10-02-2018 may be set aside. I may be reinstated in service will all back benefits.

It is, therefore, prayed that on acceptance of this departmental appeal, the impugned order dated 10-02-2018 may be set aside and I may be reinstated in service with all back benefits.

Yours Obediently

Shakeel Ashraf, Ex

Junior clerk

Session Court Abbottabad

Dated: 4_.03.2018

Annexure (18)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2347 /ST

Dated 31 / 10 / 2017

Tc

The District & Sessions Judge, Government of Khyber Pakhtunkhwa, Abbottabad.

Pestran

Subject: -

JUDGMENT IN APPEAL NO. 1374/2010, MR. SHAKEL ASHRAF.

I am directed to forward herewith a certified copy of Judgement dated .24.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Certification of the copy

Khara Scavic Tounal,

Peshawar

Attested

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. Acqui, Judicial Complex (OLD), KHYBER ROAD, PESHAWAR.

No.	
·	Appeal No of 20
•	Appeal No
dala :	Respondent the Collins of Respondent the
Harris	Respondent No. 1 Colors Colors
Notice to: —	Ditt-Sessions Judge, Albotheful.
Province Servethe above case	EAS an appeal/petition under the provision of the North-West Frontier vice Tribunal Act, 1974, has been presented/registered for consideration, in e by the petitioner in this Court and notice has been ordered to issue. You are ned that the said appeal/petition is fixed for hearing before the Tribunal
*onappellant/pet the case may Advocate, dul this Court at alongwith an default of yo	itioner you are at 8.00 A.M. If you wish to urge anything against the stoner you are at liberty to do so on the date fixed, or any other day to which be postponed either in person or by authorised representative or by any ly supported by your power of Attorney. You are, therefore, required to file in least seven days before the date of hearing 4 copies of written statement by other documents upon which you rely. Please also take notice that in our appearance on the date fixed and in the manner aforementioned, the on will be heard and decided in your absence.
given to you address. If yo address giver	of any alteration in the date fixed for hearing of this appeal/petition will be by registered post. You should inform the Registrar of any change in your a fail to furnish such address your address contained in this notice which the in the appeal/petition will be deemed to be your correct address, and further to this address by registered post will be deemed sufficient for the purpose of etition.
Copy o	of appeal is attached. Copy of appeal has already been sent to you vide this
office Notice	Nodated
	under my hand and the seal of this Court, at Peshawar this
Day of	
	20
·	
-	Registrar,

1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.

Peshawar.

2. Always quote Case No. While making any correspondence.

Note:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.873/2018

Shakeel Ashraf......Appellant

Versus

The Registrar PHC & another.....Respondents

INDEX

S.#	Description of Documents	Date	Annexure	Pages
1.	Misc: Application with Affidavit			1-3
2.	Commencement of Enquiry	02.12.2017	Reply/1	
3.	Notices and Order Sheets	07.12.2017 11.12.2017 20.12.2017 08.01.2018	Reply/2	,
4.	Fresh Notices and Order Sheets		Reply/3	
5.	Enquiry Report	18.01.2018	Reply/4	
6.	Order	20.01.2018	Reply/5	

Respondent No.1 (Registrar, PHC)

Through

Khaled Rahman

Advocate,

Supreme Court of Pakislan

4-B, Haroon Mansion Khyber Bazar, Peshawar Off: Tel: 091-2592458 Cell # 0345-9337312

Dated: <u>08</u>/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.873 /2018

Shakeel AshrafAppellant	
Versus	
The Registrar PHC & anotherRespondents	

REPLY ON BEHALF OF RESPONDENT No.1 (REGISTRAR PHC).

Respectfully Sheweth,

Preliminary objections.

- 1. That the instant appeal is liable to be dismissed on the ground that appellant is a irresponsible employee who had earlier been awarded major penalty by the Respondent on absence without any prior sanction of the respondent which was challenged before this Hon'ble Tribunal and remitted the appeal for denovo enquiry. Thereafter, he was issued Notices but despite proper service he did not appear before the Enquiry Officer till conclusion of the enquiry, hence he has been awarded again major punishment of reduction to lower stage in a time-scale.
- II. That the appellant has got no cause of action to file the instant appeal because during enquiry proceedings appellant has completely failed to justify his absence before the Enquiry Officer hence, rightly been imposed upon major penalty.
- III. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright dismissal.
- IV. That the appellant is estopped by his own conduct to file the instant appeal because he did not appear before the inquiry officer during proceedings against him.

Reply to Facts:

- 1&2. Need no reply. However, it is narrated that 30 days medical leave had been sanctioned in favour of the appellant due to his illness but subject to the condition that he would appear before the Medical Board but he did not appear.
- 3&4. Incorrect hence denied. Appellant was required under the law to apply for extension of leave as well as appear before the Medical Board which he failed to do so, and resultantly after observing all the codal formalities he was dismissed form service, however, the appeal was remitted to the department for denovo enquiry.
- 5&6. Misconceived. It is explained that the assertions of the appellant are fictitious. Proper enquiry was conducted against the appellant in due time as per the directions of this Hon'ble Tribunal on 02.12.2017 (Annex:-Reply/1) and he was issued notices by the inquiry officer vide Order Sheets (Annex:-Reply/2) but appellant did not appear before the fixed date. Thereafter, fresh Notices were issued to him but again he did not appear before the inquiry officer vide order notice and Order Sheets (Annex:-Reply/3) despite proper service accused/official failed to do so before the Enquiry Officer till conclusion of the inquiry. Eventually vide Enquiry Report dated 18.01.2018 (Annex:-Reply/4) with the observation "that accused/official had not appeared before the Enquiry Officer therefore, in circumstances it could safely be held that the official under enquiry had nothing to say in his defense," therefore, appellant completely failed to justify his absence before the enquiry officer hence, Enquiry Report was submitted before the authorized officer on 20.01.2018 (Annex:-Reply/5) thereby awarded him penalty of reduction to lower stage in a time-scale under the relevant law. It is significant to add here that the service appeal of the appellant was accepted by this Hon'ble Tribunal on technical ground with direction to conduct a fresh enquiry. Moreover, appellant has confronted that he had not applied for his extension of medical leave.
- 7. Incorrect hence vehemently denied. Already explained in the preliminary objections. It is significant to add here that though appellant was sanctioned 30 days medical leave but subject to the condition to appear before the Standing Medical Board on 25.06.2009 to assess his psychological

suitability for service but he did not obey the said order and he again absented himself from 24.06.2009 till his dismissal from service on 26.08.2009.

GROUNDS:

- A&B. It is completely delusional. As already explained in the preceding paras that appellant without proper sanction of the Respondents remained absent from duty. Moreover, appellant was dealt with in accordance with the directions of the Hon'ble Tribunal and issued him Notices but despite proper service he failed to appear before the Enquiry Officer on the date fixed. Thus, keeping in view all relevant facts of the case, the competent authority in light of the findings of the Enquiry Officer and agreeing with the recommendations of the authorized officer awarded him major penalty. Rest of the para is misconceived hence not admitted.
- C. Incorrect. As per Section 7 of this Hon'ble Tribunal Act, 1974, this Hon'ble Tribunal has ample powers to vary or modify the order of the authority. Hence, appellant was required to join the enquiry proceedings.
- D-F. Not correct hence also not admitted. Already explained in the preceding paras.

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Through

Respondent No.1 (Registrar, PHC)

•

Khaled Rahoman,

Supreme Court of Pakistan

Dated: 0 & /03/2019

Verification

Verified as per instructions of my client, that the contents of this Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Counsel

Order- 01 02.12.2017

> The undersigned has been appointed as authorized officer in the instant inquiry. undersigned has already been transferred from Abbottabad District, the inquiry is returned to Hon'ble District & Sessions Judge, Abbottabad for further appropriate order in this regard. Inquiry file be sent to the office of Hon'ble District & Sessions Judge, Abbottabad forthwith.

> > Mudassar Shah Termizi) . Senior Civil Judge (Admin), Abbottabad

Inquiry file received from the Senior Civil Judge (Administration). Abbottabad returned by him on his transfer. Therefore, Mr. Nisar Muliammad Khan, Senior Civil Judge, Abbottabad is appointed as Authorized Officer to proceed against accused/ official under ibid rulès.,

> District & Bessions Judge Abbottabad

11-12-2017 Indum Received from the Learned Distoict & Sassion Judge, Abbottobod. It be registered. Notice to the Supportendent DASJAtel and official For 20-12-2017

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IN THE COURT OF SENIOR CIVIL JUDGE, ABBOTTABAD.

Inquiry of Shakeel Ashraf

O-----05 08.01.2018

Shakeel Ashraf, Ex-Junior Clerk not present. Mr Attas Amin, English Clerk office of Superintendent Sessions Court, Abbottabad along with record present.

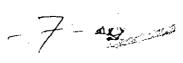
Vide officer order dated 21.11.2017 of learned District & Sessions Judge, Abbottabad, Mr Muddassar Shah Termizi, the then Senior Civil Judge (Administration), Abbottabad was appointed as authorized officer with the direction to proceed against the accused-official under Government Servants (Efficiency & Discipline) Rules, 1973.

Following the transfer of Mr Muddassar Shah Termizi, the then Senior Civil Judge (Administration) from Abbottabad to district Hangu, the undersigned was appointed as Authorized Officer with the direction to proceed against accused/official under the ibid rules vide order dated 07:12.2017/ of the learned District & Sessions Judge, Abbottabad.

As the undersigned has been appointed as authorized officer to proceed against accused/official under Government Servants (Efficiency and Discipline) Rules, 1973, Mr Ashfaq Ahmad, Civil Judge-IV, Abbottabad is appointed as inquiry officer with the direction, to proceed against the accused/official under the ibid provision of law. He is required to complete the inquiry within 10 days from today. Inquiry file be sent to the court concerned forthwith.

(NISAR MÜHAMMAD KHAN) Senior Civil Judge/Authorized officer, Abbottabad

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Order---- 01 09/01/2018

> (Ishfaq Ahmad) Civil Judge-IV Abbottabad.

Abbottabad.

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Order--- 06 18/01/2018



Brief facts of the instant inquiry are that Shakeel Ashraf Junior Clerk remained absent from duty on unauthorizedly from 05.06.2009 to 23.06.2009. An explanation was called from him vide office order No. 1104-1/4 on 10.06.2009 who received the same, however failed to submit his reply. On 23.06.2009 he was also directed to appear before the Medical Board on 25.06.2009, but he failed to appear before the same also.

Vide office order No. 1310-2/4 10th July 2009 show cause notice was issued to him but he failed to respond the same thus major penalty was imposed upon him and he was dismissed from service, on 26.08.2009 by the competent authority. The applicant/official also filed a departmental appeal on 29.09.2009 which was rejected vide order dated 10.06.2016. Not contended with the same the said official preferred, service appeal bearing No. 1374/2010 before the worthy Khyber Pakhtunkhwa Service Tribunal Peshawar, who accepted the same and ordered denovo proceedings. Worthy District & Sessions Judge/Authority, vide office order bearing No. 2224-2226/2/52 & 2/4 dated 21.11.20 N appointed Mr. Muddasar Shah Tramizi Senior Civil Judge, as authorized officer, after his transfer from District Abbottabad to District Hangu, it was transferred to Nisar Muhammad Khan Senior Civil Judge, Abbottabad who appointed the undersigned as inquiry officer. The official was served with notice, who on 11.01.2018 appeared, however he again disappeared.

7/4/8

In circumstances it can be safely held that the official under inquiry has nothing to say in his defense, hence instant

eport be forwarded to the learned Senior Civil Judge/Authorized officer.

Abbottabad.

IN THE COURT OF SENIOR CIVIL JUDGE, ABBOTTABAD

Inquiry of Shakeel Ashraf

O-----01 20.01.2018

Inquiry file in respect of Shakeel Ashraf, Ex-Moharrir received back with the findings of inquiry officer. In the present inquiry, the undersigned was appointed as authorized officer vide order dated 07.121.2017 of learned District & Sessions Judge, Abbottabad. On receipt of inquiry, Mr Ashfaq Ahmad, Civil Judge-IV, Abbottabad was appointed inquiry officer with the direction to proceed against accused/official under Government Servants (Efficiency and Discipline) Rules, 1973.

Inquiry report of learned Civil Judge-IV, Abbottabad/inquiry officer received. According to findings of inquiry officer the official was served with the notice who once on 11.01.2018 appeared the inquiry officer, however, again disappeared, therefore, it was held by the inquiry officer that official under inquiry has nothing to say in his defence.

In the circumstances, I being authorized officer while agreeing with the finding/report of inquiry officer found the ex-junior clerk Shakeel Ashraf found of misconduct as envisaged section—3 (b) of Government Servants (Efficiency and Discipline) Rules, 1973 and he is awarded penalty of reduction to a lower stage in a time-scale, as envisaged under section 4 (b) (i) of Government Servants (Efficiency and Discipline).

The inquiry file is sent to learned District & Sessions Judge,
Abbottabad for further appropriate order.

(NISAR MUNAMMAD KHAN)
Senior Civil Judge/Authorized Officer,
Abbottabad



Accused/official submitted an application for earned leave with effect from 18/03/2009 to 17/04/2009 (Flag "A"). The same was received in the office on 06/04/2009. My predecessor in office accepted the application, however, directed the accused/official to appear before Standing Medical Board for his medical examination. (Flag "B"). Despite direction by the authority, accused/official failed to appear before SMB and also intentionally absented himself from duty from 05/06/2009 to 23/06/2009. In consequence thereof, he was served with Show Cause Notice on 10/07/2009, (Flag "C") however, he failed to submit reply to the Show Cause Notice. Resultantly, he was dismissed from service vide order dated 26/08/2009 (Flag "D").

Feeling aggrieved, accused/official preferred a departmental appeal which was rejected vide order dated 10/06/2016 Later on, accused/official filed appeal before worthy Khyber Pakhtunkhwa, Service Tribunal. The said appeal was accepted vide judgment dated 24/10/2017, (Flag "E") whereby, the authority (District Judge) was directed to proceed afresh against the accused/official under KP Government Servants (E&D) Rules, 1973. Accordingly, learned Senior Civil Judge Abbottabad was appointed as Authorized Officer, who appointed Mr. Ishfaq Ahmad, Civil Judge-IV Abbottabad as Inquiry Officer. (Flag "F") Learned inquiry officer conducted fresh inquiry and on conclusion thereof, submitted the report to Authorized Officer (Flag "G")

As per report of inquiry officer, the accused/official was served with the notice who once appeared on 11/01/2018 and thereafter did not appear till conclusion of inquiry. The authorized officer, while agreeing with the findings of inquiry officer, awarded penalty of reduction to a lower stage in a time-scale, as envisaged under section 4(b)(i) of Government Servants (Efficiency and Discipline) Rules, 1973. (Flag "H")

Undersigned being competent authority agree with the view/recommendation of authorized officer Office shall do the needful accordingly. This file be consigned.

Announced 10/02/2018

SOFIA WAQAR KHATTAK
District Judge Abbottabad/
Competent Authority

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 873/2018

Shakeel Ashraf, Ex Junior Clerk, Session Court, Abbottabad.

VERSUS

Administrative Officer, Peshawar High Court through Registrar High Court Peshawar & Others

APPELLANT'S REJOINDER.

FACTS:

- 1. Incorrect. That it has been proved on record that the appellant was sick and was unable to perform the duty.
- 2. Incorrect. That the appellant's absence from the duty was due to his illness which fact was in the knowledge of respondent No.2, so he has illegally been punished by dismissing him from service.
- 3. Incorrect. That the appellant's dismissal from service is illegal because leave on medical grounds cannot be refused under the law.
- 4. Needs no Comments.
- 5. Incorrect. That the appellant has illegally been awarded major penalty of dismissal from service.

6. Incorrect. That the decision on appellant's departmental appeal has not been announced in open court as contended by respondent No.2.

GROUNDS:

A to C: Incorrect. Grounds A to C of appeal are correct and its replies are incorrect.

D. Incorrect. That the order dated 16/10/2018 passed by this Hon'ble Tribunal would clearly show that the respondents failed to comply with the directions of this Hon'ble Tribunal in 24/10/2017 iudgment dated within stimulated period. Therefore, the impugned order was illegal and not sustainable. Resultantly the impugned order has been set aside and the judgment of this Hon'ble Tribunal 24/10/2017 may be implemented forthwith and the appellant may be reinstated in service on his Junior Clerk Post with all back benefits in accordance with the directions contained in abovementioned judgment. Now as per order dated 16/10/2018, the respondents are bound to reinstate the appellant as his junior clerk post as soon as possible. (Copy is attached as Annexure "A").

E. Incorrect. Ground E of appeal is correct and its reply is incorrect.

F. Incorrect. That the appellant has regularly been attending the Court but Respondent No.2 is not willing to reinstate him on his original junior clerk post.

It is, therefore, prayed that on acceptance of appeal and rejoinder, the impugned order dated 10/02/2018 may be set aside and the appellant may be reinstated in service on his Junior Clerk post with all back benefits without any further delay.

Appellant

Through

Aslam Khan Khattak Advocate, Peshawar.

Dated: <u>6</u>/05/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 873/2018

Shakeel Ashraf, Ex Junior Clerk

VERSUS

Administrative Officer, Peshawar High Court through Registrar High Court Peshawar & Others

AFFIDAVIT

I, Shakeel Ashraf, Ex Junior Clerk, Session Court, Abbottabad, do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

NOTARY PUBLIC OURT PESHAN

DEPONENT

Annesuve A

Execution Petition No. 97/2018 Shakeel Ashrab us Goot

16.10.2018

Learned counsel for the petitioner present. Mr. Shabir Ahmad, Assistant for respondents no.2 alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Main thrust of the arguments of learned counsel for the appellant was that de-novo enquiry was not conducted within the time span specified in the judgment of this Tribunal dated 24.10.2017. Against the deadline of 90 days fixed by this Tribunal, the respondents took 94 days to finalize the disciplinary proceedings, thus it lost legal backing, so the appellant was entitled to be reinstated in service with all back benefits.

On the other hand, learned Addl: AG readout the contents of implementation report submitted by the respondents. They had conceded that de-novo enquiry was concluded in 92 days. However, when learned Addl: AG was confronted on the point that no justification was given for delay caused was available in the said report but he failed to offer any plausible explanation.

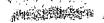
From the preceding paras, it has been established that directions of this Tribunal were not complied with in letter in spirit by the respondents, nor were able to justify intentional and deliberate delay in winding up the said case. This Tribunal has given rulings on the same point in a number of Execution Petitions. Attention is also drawn to order sheet dated 29.03.2019 passed in execution petition no 67/2017 titled "Sved Shahinshah-vs-Government" involving identical/similar question.

Reliance is also placed on 2017 PLC(C.S) note 20 and 2007 PLC (CS) 959. When law requires a thing to be done in a particular manner, it must be done in a particular manner, otherwise the same would be nullity in the eyes of law.

Furthermore, the august Supreme Court of Pakistan in its judgment in PLD 2012(SC)923 held that:-

Khyber Paking Residents

---Court order, implementation of---Contempt through disobedience of court order ("disobedience contempt") by executive and its functionaries---Effect---Responsibility for



implementation (of court's orders) had been made obligatory on other organs of the State, primarily the executive-When a functionary refused to discharge its constitutional duty, the court was empowered to punish it for contempt.



As the respondents failed to comply with the directions of this Tribunal within the stipulated period, hence, impugned order wis illegal and not sustainable. Resultantly, impugned order is set aside and the judgment of this Tribunal dated 24.10.2)17 would be implemented and the appellant stands reinstated in service in accordance with the directions contained in the said judgment. Case to come up for further proceedings on 08.11.2018 before S.B.

Certified to be ture copy

(Ahmad Hassan) Member

Khyber Pakhtunkhwa Strvice Tribunal Peshawar

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