




Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 823/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/05/2022	<p>The appeal of Mr. Muhammad Zakria resubmitted today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	27-5-2022	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>14-6-2022</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p> <p>Clerk of counsel for the appellant present.</p> <p>Counsel are on strike. To come up for preliminary hearing on 02.08.2022 before S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>
	14 th June, 2022	



The appeal of Mr. Muhammad Zakria son of Muhammad Naeem r/o Mohallah Sheikhan Shewa Tehsil Razzar District Swabi received today i.e. on 22.04.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- ② Annexure-A is incomplete which may be completed.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Annexures of the appeal may be attested.
- ⑤ Page nos. 8, 9, 10 and 26 of the appeal are illegible which may be replaced by legible/better one.
- 6- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 914 /S.T,

Dt. 25-4- /2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amjid Ali Advocate, Mardan.

Sir
Sis copy of Annexure A is not available on the petitioners objection removed and resubmitted after completion

Amjid Ali
Advocate
Mardan
29/4/22

Objections no. 2 & 5 are still stand. Therefore the appeal is returned again to the counsel for the appellant for completion and resubmission within 15 days.

no. 975 /S.T
dt. 29-4- /2022

Registrar

Sir,

Obj No 2 petitioners could not lay hand upon from 1st page of appeal order, may be placed before the Tribunal & sum

for dep't as appointed order
is not in dispute.

Oly No 5.

Below copies placed on record
May please be placed before
Honble Trib. &

Asst
Adv
Supreme
Ct
24/5/22

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 823 /2022

Muhammad Zakria S/O Muhammad Naeem R/O Mohallah
Sheikhan, Shewa Tehsil Razzar District Swabi
..... (Appellant)

VERSUS

Govt of KPK through Secretary Elementary and Secondary at Block
A, 3rd Floor, Building A, Civil Secretariat Peshawar and others
..... (Respondents)

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23

Appellant

Amjad Ali
ADVOCATE
SUPREME COURT

Through Amjad Ali (Mardan)
Advocate

Supreme Court of Pakistan

Dated: 20/04/2022

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ /2022

Muhammad Zakria S/O Muhammad Naeem R/O Mohallah
Sheikhan, Shewa Tehsil Razzar District Swabi

..... (Appellant) ^{Khyber Pakhtunkhwa}
_{Service Tribunal}

Distry No. 600

Dated 20/4/2022

VERSUS

1. Govt of KPK through Secretary Elementary and Secondary Education at Block A, 3rd Floor, Building A, Civil Secretariat Peshawar.
2. Director General, Elementary & Secondary Education Khyber Pukhtunkhwa Peshawar at Hashtnagri Chowk near Qila Bala Hisar Peshawar.
3. Director of Education KP, at Hashtnagri Chowk near Qila Bala Hisar Peshawar.
4. District Education Officer (female) Swabi at District Education Office female Swabi.
5. Assistant Director (Admn) Directorate Elementary & Secondary Education Khyber Pukhtunkhwa Peshawar at Hashtnagri Chowk near Qila Bala Hisar Peshawar.

..... (Respondents)

SUBJECT: APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, AGAINST THE ORDER DATED 19/02/2013 PASSED BY RESPONDENT NO 4 WHEREIN APPELLANT HAS BEEN REMOVED FROM SERVICE AND ORDER DATED 29/03/2022 PASSED BY RESPONDENT NO 5 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED WHICH ARE ILLEGAL AGAINST LAW AND FACTS AND LIABLE TO BE SET ASIDE.

Filed to-day

Registrar
20/4/2022

PRAYER IN APPEAL:

On acceptance of this service appeal, impugned removal order dated 19/02/2013 passed by respondent no 4 and impugned order dated 29/03/2022 passed by respondent no 5 whereby departmental appeal of the appellant has been rejected may please be set aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit in the circumstances of the case and not specifically asked for may also be graciously granted.

Respected Sir,

Appellant humbly submits as under:

1. That appellant was appointed as Chowkidar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi vide order dated 07/10/2006 (**Copy of the appointment order is attached as Annexure A**)
2. That appellant performed his duty to the entire satisfaction of his superiors.
3. That appellant has neither been given any explanation nor charge sheet nor show cause notice earlier.
4. That appellant has never remained absent even for a single day in the past.
5. That thus appellant was fit and best suitable with respect to performance of his duty and particularly punctuality and regular attendance.
6. That thus everything was going well and appellant was one of the best civil servant.
7. That unfortunately, one day i.e on 01/02/2012, appellant was falsely charged for the murder of Asad Ali along with Akhtar Ali and Nadeem sons of Abdul Hassan vide FIR No 123 dated 01/02/2012 Police Station Kalu Khan Swabi (**Copy of FIR is attached as Annexure B**)
8. That appellant was on duty on 01/02/2012 in School.

9. That appellant informed the School's Principal through a written application for leave, on 02/02/2012 at the hand of his father namely Naeem. **(Copy of the said application dated 02/02/2012 for extra-ordinary leave is attached as Annexure C)**
10. That unfortunately said application was not processed and not acted upon for which appellant may not be penalized.
11. That as it was a matter of high risk to appellant's life so attendance in school was beyond imagination in Pashtoon Society.
12. That the elders and locals of the village were constantly approaching legal heirs of the deceased that appellant is innocent and they have spoiled life of appellant for no good reason, however, these efforts finally bore fruit on 25/02/2016 which is visible from order of A.S.J IV Swabi dated 25/03/2016 as appellant is acquitted. **(Copy of the order/judgment dated 25/02/2016 is attached as Annexure D)**
13. That neither any notice nor letter has been served upon the appellant nor notice published in 2x daily newspaper as per requirement of law.
14. That appellant immediately after his release on bail approached the Principal of School for duty it was delayed on the pretext that your file/service record is with officers of Education Department.
15. That appellant was running from pillar to the post including officers of Education Department but invain **(Copies of application dated 12/01/2016 and 20/04/2016 for posting are attached as Annexure E)**
16. That appellant was constrained to approach the Honorable Peshawar High Court Peshawar through writ petition no. 1513-P/2018 on the ground that there is neither suspension nor dismissal of appellant wherein comments were submitted on 9th March 2018 by Education Department providing an order dated 19/02/2013 of removal of appellant **(Copy of writ/comments of Department dated 09/03/2018 and impugned removal order dated 19/02/2013 is attached as Annexure F)**

- (W)
17. That during pendency of said writ petition, instead of Director Education, DEO Female Swabi passed order dated 26/03/2018 on appeal of appellant for posting and rejected the same **(Copy of order dated 26/03/2018 as well as application for posting is attached as Annexure G)**
18. That appellant challenged said order of DEO Female Swabi through service appeal No 628/2018 on 19/04/2018, within one month wherein comments were asked and filed by Education Department **(Copy of service appeal and reply is attached as Annexure H)**
19. That the writ petition was disposed off vide order dated 14/10/2019 that his services have been regularized in the year 2008 and service appeal is pending in Service Tribunal **(Copy of order dated 14/01/2019 of PHC is attached as Annexure I)**
20. That at this juncture, appellant engaged another counsel namely Amjad Ali Advocate Supreme Court wherein Tribunal observed that neither appellate authority i.e Director Education under KP Appeal rules 1986 has decided appeal nor in the service appeal removal order has been challenged, so counsel for appellant filed application dated 18/01/2022 for withdrawal of service appeal with permission to file fresh one, after exhausting the procedural remedies as well as substantial right of Departmental appeal which is accepted vide order dated 18/01/2022 by Service Tribunal **(Copy of the application dated 18/01/2022 for withdrawal as well as order dated 18/01/2022 of Service Tribunal is attached as Annexure J)**
21. That removal order dated 19/02/2013 has not been served upon the appellant and this fact has been admitted by Service Tribunal as well by accepting application for withdrawal and underlined the same in Para 2 of application plus posting in Para No 1 of application.
22. That as per famous recent judgment of KP Subordinate Judicial Tribunal in S.A No 06/2021 titled as Kalim Arshad Khan vs Peshawar High Court Peshawar decided on 18/12/2021 held that the appeal is not time barred as it is not decided on merit **(Copy of judgment dated 18/12/2021 is attached as Annexure K)**
23. That the Honorable Tribunal relied upon reported

(5)

judgment of Honorable Supreme Court 1997 SCMR 1160-287, 2002 SCMR 1383 wherein departmental appellate authority decided appeal (**Copy of reported judgment is attached as Annexure L**)

24. That as per KP Appeal Rules 1986, the departmental appeal is within time from date of knowledge coupled with judgment of Honorable Peshawar High Court showing to decide his departmental appeal on merit and Honorable Service Tribunal, noting that departmental appeal need to be filed against removal order, plus as per Section 5 and Section 14 of the Limitation Act, time spent in wrong forums is condonable. (**Section 5 and Section 14 of Limitation Act is attached as Annexure M**)
25. That feeling aggrieved from the removal order dated 19/02/2013 passed by the respondent no 4, appellant preferred departmental appeal dated 04/02/2022 in light of the order dated 18/01/2022 of this Honorable Tribunal which was diaried in the Department (**Received Copy of the Departmental appeal dated 4/02/2022 is attached as Annexure N**)
26. That the respondent Department rejected the Departmental appeal dated 19/02/2013 vide order dated 29/03/2022 which is illegal against law and facts (**Copy of the impugned order dated 29/03/2022 passed by respondent no 5 is attached as Annexure O**)
27. That feeling aggrieved from the impugned order dated 19/02/2013 passed by respondent no 4 and impugned order dated 29/03/2022 passed by respondent no 5, appellant approaches this Honorable Tribunal on the following grounds:
- GROUNDS:**
- A. Because admittedly, appellant never remained absent in the past than instant one, thus he can't be termed as habitual absentee as per judgment of KP Service Tribunal (**Copy of judgment of Chairman of Honorable KP Service Tribunal is attached as Annexure P**)
- B. Because in the peculiar circumstances as per judgment of Honorable Tribunal upheld by Honorable Supreme Court of Pakistan can't be termed as willful as there was a serious threat to his life (**Copy of judgment of Supreme Court is attached as Annexure Q**)

- C. Because impugned order dated 19/02/2013 passed by respondent no 4 and impugned order dated 29/03/2022 passed by respondent no 5 are illegal against law and facts liable to be set aside.
- D. Because impugned order dated 29/03/2022 passed by respondent no 5 is not a speaking order and no reason has been assigned for rejecting the departmental appeal of the appellant which is illegal and against all norms of injustice.
- E. Because the respondents are bound under the law to pass a well-reasoned speaking order and mere rejection of the departmental appeal is illegal.
- F. Because neither charge sheet nor statement of allegation nor inquiry has been conducted.
- G. Because the request of appellant for leave has been conveniently ignored and not decided till date.
- H. Because leave was available at credit of appellant and had the application for leave decided in time there would be no occasion of passing of impugned order of removal.
- I. Because as per Revised Leave Rules 1981, extra-ordinary leave can be granted to appellant.
- J. Because post facto orders can also be passed by the Departments in routine for the ends of justice when facts are known to the officers, subsequently.
- K. Because it would be in the interest of Department as well as appellant to reinstate him as he is trained and experienced and ready to serve.
- L. Because removal order is back dated as EDO/DEO himself admits in Para 5 of order dated 26/03/2018 that officers were separated and record was not available and his case remained out of sight.
- M. Because since absence is neither willful nor intentional nor deliberate, so appellant can't be heavily punished.
- N. Because acquittal means exoneration from all charges including absence from criminal law as well as service law.
- O. Because اعزولو يا احسان is demand of Holy Quran.

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P. Because appellant is jobless and entitled for back benefits.

It is therefore humbly prayed that on acceptance of this service appeal, impugned removal order dated 19/02/2013 passed by respondent no 4 and impugned order dated 29/03/2022 passed by respondent no 5 whereby departmental appeal of the appellant has been rejected may please be set aside and appellant may please be reinstated in service with all back benefits. Any other relief deemed fit in the circumstances of the case and not specifically asked for may also be graciously granted.

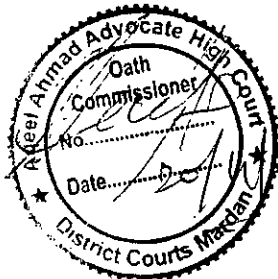
Appellant *Amjad Ali*
ADVOCATE
SUPREME COURT

Through *Amjad Ali* (Mardan)
Advocate
Supreme Court of Pakistan

Dated: 20/04/2022

AFFIDAVIT

I, Muhammad Zakria S/O Muhammad Naeem R/O Mohallah Sheikhan Shewa Tehsil Razzar District Swabi (appellant), do hereby solemnly affirm and declare that all the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Court.



23
Deponent

Amir
Amir

Q

(8) Annex-A

63	Basher Ahmad	Rahmat Shah	Sweeper	GMS, Ulla (Gadoun)	AVP
64	Sulhan Akbar	Ali Akbar	Lab Attendant	GHSS, Kabganj (Gadoun)	AVP
65	Mahmud Khan	Anwar Khan	Chowkidar	GHS, Mulak Abad (Gadoun)	AVP
66	Shamsul Anwar	Noorul Haq	Chowkidar	GHS, Jhagal Khel (K. Khan)	AVP
67	Sulhan Bibi	W/O Ali Raza	Sweeper	GGMS, Rafiq Abad	AVP
68	Yasir Khan	Sher Afzal Khan	IN/Quaid	GGMS, Rafiq Abad	AVP
69	Muhammad Izhar (Disable)	Noor Zaman	Lab Attendant	GHS, Baja	AVP

Terms & Conditions:-

1. No TA/DA is allowed.
2. Charge reports should be submitted to all concerned.
3. The appointment is purely made on Fixed/C contract basis & liable to termination at any stage/time without assigning any notice.
4. The posts are not pension able.
5. They will produce health & age certificate from the medical Superintendent DHO Hospital, Swabi.
6. They will not be handed over charge if their age is less than 18 years and above 45 years.
7. In case of resignation they will have to give one month prior notice to the Department or forfeit one month pay in lieu thereof to the Government.
8. They will be permanently domiciled of Swabi District.
9. They will have no right of transfer to any other school or post.

(SAIFUR RAHMAN)
EXECUTIVE DISTRICT OFFICER
SCHOOLS & LITERACY, SWABI

Enst. No. 5398-G/C-IV Appt. File/ED (S&L) dated Swabi the. 07.10.2006

Copy of the above is forwarded for information and inaction to the:-

1. Honorable Minister for Education Govt of NWFP, Peshawar.
2. Secretary Schools & Literacy Department Govt of NWFP, Peshawar.
3. Director Schools & Literacy NWFP, Peshawar.
4. District Nazim Swabi
5. District Coordination Officer, Swabi
6. District Accounts Officer, Swabi
7. District Officer (M&F) Local Office
8. Principals/Headmasters/Headmistresses and Head Teachers concerned schools.
9. Deputy District Officers (M & F) Swabi, Jaffar.
10. ADO (B&A/Establishment) Local Office
11. Supdt (M&F) Branch Local Office
12. Dealing Assistant concerned.

Amir
Amir
EXECUTIVE DISTRICT OFFICER
SCHOOLS & LITERACY, SWABI

Attested
Amir

ABOUL JALAL MA, M.E.J
HEAD MASTER
G.M.S Charb Abad, KSK (Swabi)

Amir
ATTESTED

63.	Basher Ahmad	Rehmat Shah	Sweeper	GMS Utla Gadoon	AVP
64.	Sultan Akbar	Ali AKbar	Lab Attendant	GHSS Kabgani Gadoon	AVP
65.	Malang Khan	Anwar Khan	Chowkidar	GPS Malak Abad Gadoon	AVP
66.	Shamsul Anwar	Noorul Haq	CHowkidar	GPS Jangal Khel K Khan	AVP
67.	Subhan Bibi	W/O Ali Rehman	Sweepress	GGMS Rafiq Abad	AVP
68.	Yasir Khan	Sher Afzal Khan	N Qasid	GGMS Rafiq Abad	AVP
69.	M Izhar Disable	Noor Zaman	Lab Attendant	GHS Baja	AVP

Terms & Conditions:

1. No TA DA is allowed
2. Charge reports should be submitted to all concerned.
3. The appointment is purely made on Fixed Contract basis and liable to termination at any stage/ time without assigning any notice.
4. The posts are not pension able.
5. They will produced health and age certificate from the medical Superintendent DHQ Hospital Swabi.
6. They will not be handed over charge if their age is less then 18 yeas and above 45 years
7. In case of resignation they will have to give one month prior notice to the Department or forfeit one month pay in lieu thereof to the Government.
8. They will be permanently domiciled of Swabi District.
9. They will have no right of transfer to any other school or post.

Saifur Rehman
Executive District Officer
Schools & Literacy Swabi

Endst No. 5398-G/C-IV Aptt File ?Edo S&L/ dated Swabi the 07.10.2006.

Copy of the above is forwarded for information and n/action to the:

1. Honourable Minister for Education Govt of NWFP Peshawar.
2. Secretary Schools and Literacy Department GOvt of NWFP Peshawar.
3. Director Schools & Literacy NWFP Peshawar.
4. District Nazim Swabi
5. District Coordination Officer, Swabi.
6. District Accounts Officer, Swabi
7. District Officer M&F Local Office.
8. Principals/ Headmasters/ Headmistresses and Head teachers concerned schools.
9. Deputy District Officers (M&F) Swabi Lahore.
10. ADO (B&A / Establishment) Local Office.
11. Supdt (M&F) Branch, Local Office.
12. Dealing Assistant Concerned.

Executive District Officer
Schools & Literacy Swabi

Ann-B

(96)

کار نمبر (15)

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 153 مجرمانہ ضابطہ و بعد از

تاریخ و وقت	ذمہ دار	ذمہ دار کی تاریخ و وقت
16:15 بجے	02/01/12	12:30
02/01/12	02/01/12	02/01/12
18:40 بجے	02/01/12	02/01/12
19:00 بجے	02/01/12	02/01/12
اطلاع دہندہ سنیٹ	مشتاق علی ولد سر سید مشتاق	مشتاق علی ولد سر سید مشتاق
جرم (مورد دفعہ) حال اگر کچھ لیا گیا ہو۔	جان بھائر خان بلوچ	جان بھائر خان بلوچ
ناسازگاری اور دست راستہ حلال نرس ڈیپارٹمنٹ	ذکرہ ولد نعیم ساکن شہرہ	ذکرہ ولد نعیم ساکن شہرہ
بطور 5 اجنٹوں پر 200 روپے فی ماہ کی تنخواہ پر	اسٹیٹ رائل پبلسٹی کے	اسٹیٹ رائل پبلسٹی کے
وقت تک سے متعلق کسی چیز یا اطلاع کو بیان کرنے میں توقف ہوا ہے تو وہ بیان کرے		
روا کی تاریخ و وقت		

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔
 1. مشتاق علی ولد سر سید مشتاق: جو کہ ایک تاجر ہے۔ اس وقت اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔
 2. ذکرہ ولد نعیم ساکن شہرہ: جو کہ ایک تاجر ہے۔ اس وقت اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔
 3. جان بھائر خان بلوچ: جو کہ ایک تاجر ہے۔ اس وقت اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔
 4. ذکرہ ولد نعیم ساکن شہرہ: جو کہ ایک تاجر ہے۔ اس وقت اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔
 5. اسٹیٹ رائل پبلسٹی کے: جو کہ ایک تاجر ہے۔ اس وقت اس وقت ایک سرکاری دہانہ میں داخلہ ہوا ہے۔

A. [Signature]

M.H. Q. [Signature]

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع صوابی

تھانہ کالو خان

تاریخ وقت وقوعہ 01.02.12 وقت 16.15 بجے

نمبر 123

1-	تاریخ و وقت رپورٹ	چا کیدگی پرچہ 01.02.12 وقت 19.00 بجے
2-	نام سکونت اطلاع دہندہ مستغیث	مشتاق علی ولد سید مشال قوم افغان بھر 38/40 سال سکندہ شیوہ محلہ غلام خیل
3-	مختصر کیفیت جرم (معد دفعہ) حال اگر کچھ لیا گیا ہو۔	PPC 302/324/34
4-	جائے وقوعہ فاصلہ تھانہ سے اور سمت	راستہ جلال نزد ڈو پوزان جان بہادر خان بحد شیوہ جانب شرق شمال بفاصلہ 5/6 کلومیٹر از تھانہ
5-	نام سکونت ملزم	1- اختر علی 2- ندیم پسران ابوالحسن 3- ذکریا ولد نعیم ساکنان شیوہ
6-	کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع کرنے میں توقف ہوا تو وجہ بیان کرہ	برسیدگی مراسلہ مقدمہ درج رجسٹر کیا جاتا ہے
7-	تھانہ سے روانگی کی تاریخ و وقت	بطور پیش رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ اس وقت ایک تحریری مراسلہ منجانب فضل امین ASI بدست کنسٹیبل سید نگار 920 موصول ہو کر ذیل ہے۔ بخدمت ایفسر انچارج تھانہ کالو خان حسب اطلاع سول ہسپتال کالو خان بمقام کچولٹی مشتاق علی ولد سید مشال قوم افغان بھر 38/40 سال ساکن شیوہ محلہ غلام خیل بوقت صدر بجے رپورٹ کرتا ہے کہ میں بعد اسد علی ولد صفدر علی نورالامین ولد نور القمر مقصود علی ولد حیدر علی ساکنان دیہہ ام بمقام جائے وقوعہ آپس میں باتیں کرتے ہوئے موجود تھے کہ بوقت 15:16 بجے مسیماں اختر علی ندیم پسران ابوالحسن ذکریا ولد نعیم ساکنان دیہہ ام مسلح بہ کلاشکوف آ کر آتے ہی اسد علی پر بہ ارادہ قتل فائرنگ شروع کی جنگی فائرروں سے اسد علی لگ کر موقع پر جان بحق ہوا جبکہ ملزمان کی فائرنگ سے ایک راہ گیر خیر محمد ولد نذر محمد سکندہ دیہہ ام بھی لگ کر زخمی ہوا وجہ عناد یہ ہے کہ اسد علی مقتول اور ملزمان کے مابین چند یوم قبل زبانی تکرار ہوا تھا رپورٹ میں دیری گاڑی نہ ملنے کی وجہ سے ہوئی ہے وقوعہ ہذا میرے علاوہ نورالامین اور مقصود علی ہمراہان ام کا چشمہ دیدہ ہے میں اسد علی کی قتل اور فقیر محمد کی مجروحیت کا برخلاف اختر علی ندیم ذکریا متذکرہ بالا دعویٰ ہوں۔ العبد نورالامین ولد نور القمر قوم افغان بھر 25/26 سال ساکن شیوہ محلہ ابراہیم خیل نے رپورٹ بالا کی تائید کی العبد کارروائی پولیس حسب گفتہ مسائل درج ہو کر پڑھ کر سنایا سمجھایا گیا بعد سننے زیر رپورٹ خود دستخط جبکہ تائید کنندہ نے تائیدی دستخط ثبت کر کے جسکی میں تصدیق کرتا ہوں۔ مقتول کے کاغذات مرگ اور مجروح فقیر محمد کا نقشہ ضرر بمطابق زخمت مرتب ہو کر بغرض پوسٹ مارٹم و علاج زیر حفاظت کنسٹیبل حضرت اکبر 1092 حوالہ ڈاکٹر صاحب کیا گیا مضمون رپورٹ سے صورت جرم بالا کاپائی جا کر مراسلہ بغرض قائمی مقدمہ تفتیش بدست کنسٹیبل سید نگار 920 ارسال تھانہ ہے۔ افسران الا کو بطور پیش رپورٹ اطلاع دی جائے مراسلہ گزارش ہے دستخط انگریزی فضل امین ASI مورخہ 1.2.12 پس آمدہ مراسلہ حرف بہ حرف درج بالا ہو کر نقول FIR معہ مراسلہ بمراد تفتیش حوالہ انویسٹی گیشن شاف کئے جاتے ہیں اور افسران بالا کو بطور پیش رپورٹ اطلاع دی جاتی ہے۔ پرچہ

گزارش ہے۔ MHCR 01.02.2012

سید امجد علی شاہ

14

Annex-C

(79)

تعمیر و پرورش

صائب عالی

درخواست عہدہ ادا کرنے کے لیے برائے پانچ سال کی

تعمیر و پرورش کے ذریعہ پوزٹری افسن طریقے سے
احکام دے رہا ہے

۱۔ سائل پر نا جائزہ مطلق دعویٰ ترمیم الف آئی آر نمبر 123
حورم 2012
۱۔ سائل پر نا جائزہ مطلق دعویٰ ترمیم الف آئی آر نمبر 123
PPC
(فصل الف آئی آر نمبر 123)

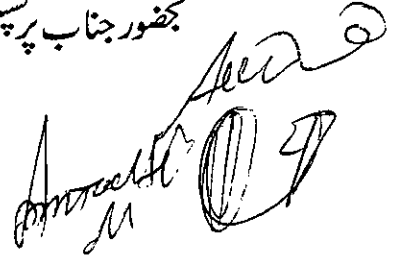
۲۔ سائل کی جہاں کو صدر خطہ ترمیم الف آئی آر نمبر
۳۔ سائل کی جہاں کو صدر خطہ ترمیم الف آئی آر نمبر
نہیں ہو سکتا۔

۴۔ سائل کے ذمہ اور بارے میں کچھ سوچو
استدلال کے لیے سائل کو پانچ سال کے لیے صرف ترمیم الف آئی آر نمبر
المہتمم 2012

۵۔ سائل کے ذمہ اور بارے میں کچھ سوچو
مہتمم 2012
۶۔ سائل کے ذمہ اور بارے میں کچھ سوچو
۷۔ سائل کے ذمہ اور بارے میں کچھ سوچو
۸۔ سائل کے ذمہ اور بارے میں کچھ سوچو
۹۔ سائل کے ذمہ اور بارے میں کچھ سوچو
۱۰۔ سائل کے ذمہ اور بارے میں کچھ سوچو

بجھور جناب پرنسپل صاحب گورنمنٹ گرلز ہائیر سکول شیرہ اڈی ای او فیملیل صوابی

تھرو پراپر چینل



جناب عالی۔ مدعا درخواست بمراء عطا کرنے چھٹی برائے پانچ سال Extraordinary leave

۱۔ یہ کہ سائل جناب کے زیر سایہ یہ نوکری احسن طریقے سے انجام دے رہا ہے۔

۲۔ یہ کہ سائل پر ناجائز غلط دعویٰ بذریعہ ایف آئی آر نمبر 123 مورخہ 01.02.2012 زیر دفعہ PPC 302/34 تھانہ کالو خان صوابی ہوا ہے۔ (نقل ایف آئی آر لف ہے)۔

۳۔ یہ کہ سائل کی جان کو شدید خطرہ بوجہ ایف آئی آر بالا ہے۔

۴۔ یہ کہ سائل کی جان کو خطرہ کی وجہ سے سائل ڈیوٹی پر حاضر نہیں ہو سکتا۔

۵۔ یہ کہ سال کے ذمہ ریکارڈ میں چھٹی موجود ہے۔

استدعا ہے ہ سائل کو پانچ سال چھٹی حسب قانون عطا فرمادیں۔

الرقوم 02.02.2012

محمد ذکریا ولد محمد نعیم ساکن شیوہ محلہ شیخان تحصیل ضلع صوابی

چوکیدار GGHS شیوہ

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Order.....03
25/03/2016

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Accused Zakaria present on bail with his counsel. Muhammad Tariq SPP for the state present. Mushtaq Ali (complainant), Faqir Muhammad (injured) and Safdar Ali (father of deceased Asad Ali) present and their separate statements to the effect of compromise recorded.

Learned defence counsel and accused also brought into the notice of the court, that the statements of major LRs namely Safdar Ali (father of deceased Asad Ali), Mst: Musarat (mother of the deceased), Mst: Zahra (widow of the deceased), Faqir Ahmed (injured), Mushtaq Ali (complainant) along with statement of elders of the locality have already been recorded during bail stage of the accused Zakaria and the major legal heirs of the deceased had raised no objection on the acquittal of accused Zakaria in their statements. The accused party had also already transferred a constructed house measuring 05 marlas through registered deed worth Rs: 12,00,000/- (twelve lacs) in the names of Umar Ali, Mosa Khan and Esa Khan (sons) minors LRs of the deceased at the stage of the bail. They produced copies of court order EX.PF, joint statement of LRs EX.PC, compromise deed EX.PA, affidavit EX.PB and copy of registered deed EX.PD. The original registered deed had already been handed over to grand father of the minors Safdar Ali for safe custody during the stage of bail of the accused facing trial. Thus the legal heirs of the deceased have made compromise with accused Zakaria and they have stated, that the compromise is genuine and effected without any force and coercion and is in the best interest of both the parties. They have also not objected on the acquittal of the accused facing trial Zakaria. As the matter has already been patched up at the stage of

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ABDUL JALAL MA, M.Ed
HEAD MASTER
G.M.S Gharb Awad, KSK (Sh201)

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12
①

9

②

Order
25/3

Continued Order.....03
25/03/2016

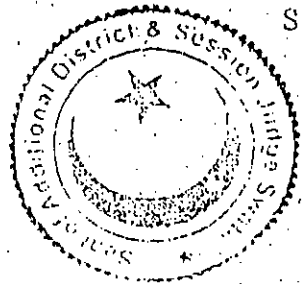
contest the case, further proceedings in the case will be a futile exercise and the ultimate result of the case in compromise is acquittal.

So, keeping in view the above mentioned compromise statements and the fact that offences u/s 302 PPC, vide underlying FIR No.123, dated 01.02.2012, registered at Police Station Kalu Khan, is compoundable as provided u/s 345 Cr.PC and the compromise seems to be in the interest of parties. The ultimate result of compromise is always acquittal, hence, accused Zakaria son of Naeem resident of Village Shewa is discharged in the instant case. He is on bail. His sureties are discharged from the liabilities of his bail bonds.

Case property be kept intact till the expiry of period of appeal/revision and thereafter be dealt in accordance with law. File be consigned to record room after its completion and necessary compilation.

ANNOUNCED
25/03/2016

AA
(MALIK AMJAD RAHIM)
Additional District & Sessions Judge-IV
Swabi.



Arrested
Qas
ABDUL JALAL MA, M.Ed
HEAD MASTER
G.M.S Charb Abad, KSK (Swabi)

A 8/4/16

R

13

Joint statement of (1) Saifdar Ali (father of the deceased Asad Ali resident of Village Shewa District Swabi major LRs of the deceased, on Oath.

I am father of deceased Asad Ali who was murdered regarding which complainant Mushtaq Ali had lodged report against accused facing trial namely Zakaria son of Naeem vide case FIR No.123 dated 01.02.2012 U/S 302/324/34 PPC Police Station Kalu Khan. Beside me the deceased have also Mst. Musarat (mother) and Mst. Zahra (widow of the deceased) whose statements was recorded at the stage of bail to the effect of compromise. The deceased has also minors children namely Umar Ali, Mosa Khan and Esa Khan (sons). Through the efforts of the elders of the locality, we have effected compromise with the accused named above and pardoned him in the name of Allah Almighty by waiving our rights of Qisas and Diyat etc. While for the minor LRs of the deceased the accused party has transferred landed property measuring 05 marlas situated at Village Shewa the market value of which is Rs.12,00,000/-. We the major LRs of the deceased have got no objection, if this Honorable court acquit the accused facing trial namely Zakaria. To this effect we have already produced compromise deed Ex.PA alongwith an affidavit Ex.PB. The compromise is genuine, without any force, pressure and coercion and is in the best interest of both the parties. Joint statement of mine, Mst. Musarat and Mst. Zahra is EX.PC, the copy of registered deed EX.PD and court order is EX.PE. The compromise may kindly be accepted.

RO & AC
25.03.2016

(Malik Anjad Rahim)
Addl; Sessions Judge-IV, Swabi

Saifdar Ali (father of the deceased)
CNIC No.16202-0857863-9

Saifdar
Arrested
Asad

(Malik Anjad Rahim)
Addl; Sessions Judge-IV, Swabi

A 8/4/16

ABDUL JALIL, MA, M.Ed
HEAD MASTER
GZS Gharib Abad, KSK (Swabi)

Arrested

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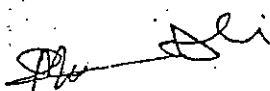
Statement of Mushtaq Ali aged about 46 years son of Said Mashal Kili
R/O Shewa (complainant) District Swabi, on Oath.


Stated that I am complainant of case FIR No.123 dated 01.02.2012 U/S
302/324/34 PPC Police Station Kalu Khan for ineffective firing upon me. Now
through the efforts of the elders of the locality, I have effected compromise with
the accused facing trial namely Zakaria. Through the efforts of the elders of the
locality I have effected compromise with the accused facing trial named above
and pardoned the accused facing trial namely Zakaria in the name of Allah
Almighty by waiving my rights of Qisas, Daman, Arsh etc. I have got
objection, if this Honorable court acquit the accused named above. To this
effect I produce copy of compromise deed Ex.PF. The compromise is genuine,
without any force, pressure and coercion and is in the best interest of both the
parties. The compromise may kindly be accepted.

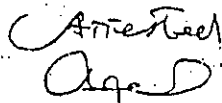
RO & AC.
25.03.2016


(Malik Amjad Rahim)
Addl; Sessions Judge-IV, Swabi

Mushtaq Ali (Complainant)
CNIC No. 16202-8246286-1




(Malik Amjad Rahim)
Addl; Sessions Judge-IV, Swabi



ABDUL JALAL MA; M.Ed
HEAD MASTER
G.M.S Ghazi Abad, KSK (Swabi)

A 8/4/16



To

Alian
Muhammad
Zakria

(12)
(15)

Ann-E

The District Education Officer (Male) Swabi

Subject: Application for permission to perform duty after my bail order dated 05/01/2016

Respected Sir,

I humbly submit as under:

It is most respectfully stated that I was appointed as Chowkidar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi. I performed my duties with sincerity and dedication to the satisfaction of my superiors. My previous record is unblemished and there is no absentee on my part. I am falsely charged in FIR No 123 dated 01/02/2012 Police Station Kalu Khan Swabi wherein the Learned Additional Sessions Judge IV Swabi granted bail vide order dated 05/01/2016 (Copy of the bail order dated 05/01/2016 is attached).

It is therefore humbly requested that after the grant of bail order, I may please be allowed to perform my duties as Chowkidaar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi.

(Signature)

Applicant

Muhammad Zakria S/O Muhammad Naeem
R/O Mohallah Sheikhan, Shewa Tehsil Razzar
District Swabi
Cell No. 0300-5687871

Dated: 12/01/2016

To

16

The District Education Officer (Male) Swabi

Subject: Application for permission to perform duties after my acquittal order dated 25/03/2016 in FIR No 123 dated 01/02/2012

Respected Sir,

I humbly submit as under:

It is stated with utmost respect that I was appointed as Chowkidar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi. I performed my duties with sincerity and dedication to the satisfaction of my superiors. My previous record is unblemished and there is no absentee on my part. I was falsely charged in FIR No 123 dated 01/02/2012 under section 302/324 and 34 PPC. The Learned Additional Session Judge IV Swabi granted bail in the said FIR vide order dated 05/01/2016. To this effect, I have already submitted an application dated 12/01/2016 to your goodself to allow me to perform duty as Chowkidaar which has not been responded till date. Now finally, I have been acquitted by the Learned Additional Session Judge IV Swabi vide judgment dated 25/03/2016 (Copy of the acquittal judgment dated 25/03/2016 of the Learned Additional Session Judge IV Swabi is attached). Since I have been acquitted in the FIR and there is no other allegation against me, therefore I request to allow me to perform duty.

It is therefore humbly requested that after the acquittal order, I may please be allowed to perform my duties as Chowkidaar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi.



Applicant
Muhammad Zakria S/O Muhammad Naeem
R/O Mohallah Sheikhan, Shewa Tehsil Razzar
District Swabi
Cell No. 0300-5687871

Dated: 20/04/2016

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

W.P No. 1513 P/2018

Mohammad Zakria s/o Mohammad Naem r/o Mohallah Sheikh Abad Post Office
Shawa Tehsil Razzar District Swabi.

Petitioner

VS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

RESPECTFULLY SHEWETH:

The Petitioner submits as under:-

1. The petitioner was appointed as Chowkidar in Govt. Girls Higher Secondary School Shawa Tehsil Razzar District Swabi. (Copy of the appointment order is annexed as annexure "A").
2. The petitioner is serving the department from his appointment to the best of his capability.
3. The petitioner was charged in a murder case on 01.02.2012. (Copy of the FIR is annexed as annexure "B").
4. The petitioner became fugitive from law after being charged in the murder case mentioned above.
5. The petitioner was acquitted by the learned Additional Session Judge-IV swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. (Copy of the order dated 25.03.2016 is annexed as annexure "C").
6. The petitioner after his acquittal approached the respondent for his posting against the post of Chowkidar by filing representation/appeal, but till now no order has been passed by the respondents nor he is posted anywhere. (copy of the application/appeal are annexed as annexure "D")

FILED TODAY
Deputy Registrar
09 MAR 2018

ATTESTED
EXAMINER
Peshawar High Court
17 JAN 2019

(18)

7. The petitioner being aggrieved and having no alternate remedy hence approaches this Hon'ble Court inter-alia on the following amongst other grounds:-

GROUNDS:-

- a) Because the non posting of the petitioner by the respondent is illegal void ab-initio and against the norms of justice.
- b) Because there is no order of suspension nor any other order regarding his dismissal, but even then he is not been given a post which is arbitrary and malafide at the hands of respondents.
- c) Because the petitioner are running from pillar to post as both the District Education Officers (Male/Female) are not considering the appeal for posting of the petitioner and not making order of his posting.
- d) Because the non posting of the petitioner by the respondents against the seat of Chowkidar is exceeding of jurisdiction not vested in them under the law.
- e) Because the petitioner is poor person and there is no other source of his income, but inspite of that the respondents are not considering him for his posting.
- f) That any other ground will be taken at the time of arguments, with the kind permission of this Hon'ble Court.

It is therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents may graciously be directed to post the petitioner against the seat of Chowkidar in the large interest of justice.

Any other relief, which is not specifically asked for and deems appropriate in the circumstances of the case may also be granted to the petitioner.

Petitioner
Through
(Abid Ali Khan)
Advocate, Peshawar.

FILED TODAY
Deputy Registrar
09 MAR 2018

Certificate.

It is certified that as per instruction of the petitioner no such like Writ Petition has earlier been filed on the subject matter by the petitioner.

Advocate

ATTESTED
EXAMINER
Peshawar High Court

17 JAN 2019

Sur 

(19)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 1513-P/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office
Shewa Tehsil Razzar District Swabi..... **Petitioner**

VERSUS

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

..... Respondents.....

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 2 TO 4

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the petitioner absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence not maintainable.
2. That the petitioner was appointed against Chwokidar post on contract fixed pay salary basis but he left the department without any permission/information on 02.02.2012 till 19.02.2013. Hence the petition is not maintainable.
3. That the instant petition is badly time barred because he was removed from service on 19.02.2013 while he filed appeal in November, 2017, hence not maintainable.
4. That the petitioner has no locus standi or cause of action to file the instant petition.
5. That the petition is bad for misjoinder and non joinder of necessary party.
6. That the petitioner has not come to the Court with clean hands, hence not maintainable.
7. That the petitioner concealed the material facts from Honourable Court. Hence not maintainable.
8. That the petitioner is, estopped by his own conduct to file the instant petition, hence not maintainable.

FACTS.

1. That the para relates to the appointment of the petitioner as Chowkidar at GGHSS Shewa. He is concealing the fact that his appointment was on contract fixed pay salary basis and due to willful absence he has already been removed from service after observing all the codal formalities in this regard. Removal from service order alongwith other relevant documents are attached as annexure-A.
2. That it is obligatory for each and every servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job; failing which is liable to be treated under E&D Rules. When he absented himself willfully, he was removed from service on 19.02.2013.

3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the petitioner divests him from the right to remain in service. As per 2017 SCMR 965, "Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence".
4. That the petitioner himself confesses that he became fugitive of law after being charged in the murder case. "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
5. That the petitioner himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the petitioner could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which not proves the validity of the charge or otherwise. It can not be assumed that the petitioner has proved his innocence. Furthermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
6. That the petitioner submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS) 15. The petitioner made/submitted first appeal in November, 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred, He has also been made/submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal/petition before the Tribunal/Court, is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as Chowkidar. The same is reported in 2002 SCMR 1691. The petitioner knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect, hence the writ petition is not maintainable. Khyber Pakhtunkhwa Civil Servants (Appeal) rules, 1986, reply of appeal for reinstatement in government service and Court judgment are annexed as B, C & D.
7. That petitioner is not an-aggrieved person. Hence has no cause of action to file the instant petition inter-alia on the following amongst other grounds.

(S)
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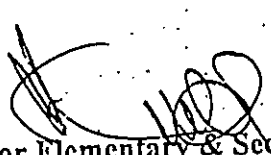
Grounds

- a. Incorrect, hence strongly denied, the non posting/reinstatement of the petitioner by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, "If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon

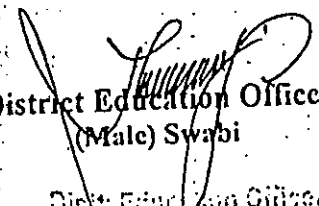
after such release". As it was mandatory for the petitioner but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(c) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence.

- c. Incorrect, hence denied, he has been sent absent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure.
- d. Incorrect, hence denied, he is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.
- e. Incorrect, hence denied, what was the source of his income in absconision and ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

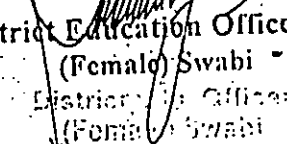
In view of the above submission, it is very humbly prayed that the writ petition may very graciously be dismissed with cost in favour of the respondents.


Director Elementary & Secondary
Education, Khyber Pakhtunkhwa
Peshawar.

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar


District Education Officer
(Male) Swabi

District Education Officer
(Male) Swabi


District Education Officer
(Female) Swabi

09. MAR 2018

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No: 1513-1/2018
Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office
Shewa Tehsil Razzar District Swabi..... Petitioner

VERSUS

1. Secretary to Govt:of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.

.....Respondents.....

AFFIDAVIT

I, Mr. Fazle Khaliq (Litigation Officer) office of the District Education Officer (Male) Swabi on the instruction of DEO(M) Elementary & Secondary Education Swabi, do hereby solemnly affirm & declare that the content of the para-wise comments submitted by respondents No.2 to 4 is true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court.

IDENTIFIED BY

[Signature]
Suprell

ADVOCATE GENERAL
OF KHYBER PAKHTUNKHWA

DEPONENT
CNIC NO. 16202-0893178-1

No. 22167
Certified that the above is a true and correct copy of the original as submitted on solemnly sworn affidavit by Fazle Khaliq on 18 April 2018 at Swabi
Signature: *[Signature]*
Date: 10/4/18

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) SWABI

NOTIFICATION.

WHEREAS Mr. Mohammad Zakarya, Chowkdiar GGHS Shewa VPO, Shewa Tehsil & District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 on account of his willful and un-authorized absence from duty w.e.f. 02.02.2012 and was directed to resume duty by the Principal concerned vide her No.016 dated 21.02.2012, No.18 dated 03.03.2012 and No.021 dated 22.03.2012, but he failed to resume his duty.

AND WHEREAS absentee notice was served upon the accused official Mr. Mohammad Zakarya, Chowkdiar GGHS Shewa VPO, Shewa Tehsil & District Swabi through "Daily New Paper "Mashriq" Peshawar dated 15.12.2012 to resume duty, with in 15 days but he remained absent and did not report for duty in response of the above absence notice.

AND WHEREAS the competent authority i.e the DEO (Female) Swabi after having considered the charges and evidence on record is of the view that the charges of willful and un-authorized absence from duty against the accused have been proved.

NOW, THEREFORE, in exercise of the powers conferred under Section 3 b (iii) of the Khyber Pakhtunkhwa Removal from service under (Efficiency & Discipline) Rules 2011, the competent authority is pleased to impose the major penalty of removal from service upon Mr. Mohammad Zakarya, Chowkdiar GGHS Shewa VPO, Shewa Tehsil & District Swabi with immediate effect. The period of his absence from duty w.e.f. 02.02.2012 till the issuance of this order be treated as un-authorized absence from duty with out pay.

(SAMINA GHANI)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

Endst.No. 246 /F.No. /C-IV (M/F) Side-dated Swabi the: 17-2-2013.

Copy of the above is forwarded for information and n/action to the:-

1. Director Education Khyber Pukhtunkhwa, Peshawar.
2. District Accounts Officer, Swabi.
3. Principal GGHS Shewa w/r to his No.139 dated 19.11.2011.
4. Mr. Mohammad Zakarya, Chowkdiar GGHS Shewa VPO, Shewa Tehsil & District Swabi (Under Registered cover).

DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

Key to level
Amended
26/03/2018

DISTRICT EDUCATION OFFICE (MALE) SWABI
(Office phone & Fax No 0938280239, encls_swabi@yahoo.com)

No. 2864 Dated Swabi the 26 / 03 / 2018

24
Am-G
(9)

To, Mr. Zakarya Ex-Chowkidar,
GGHSS Shewa (Swabi)

Through, The Principal,
GGHSS, Shewa (Swabi)

Subject: APPEAL FOR RE-INSTANTMENT IN GOVT: SERVICE.

Memo: Kindly refer to your appeals of dated 05.12.2017 and 17.01.2018 on the above cited subject.

It is verified by the undersigned in this regard that one Mr. Zakarya Ex-Chowkidar was appointed at GGHSS Shewa (Swabi) against the Chowkidar post and took over on 01.09.2006. He performed his duty from 01.09.2006 to 31.01.2012 and on 01.02.2012 he was charged in a murder case under FIR No.123 dated 01.02.2012. The accused Chowkidar absconded from the above mentioned date and did not surrender to law till he was discharged by the District and Session Judge Swabi in 2016.

The accused Chowkidar has alleged in his appeals that the department has not taken any action against him and nothing has been written in his service book about his accusation in a murder case. His appeals are hereby rejected on the following grounds:

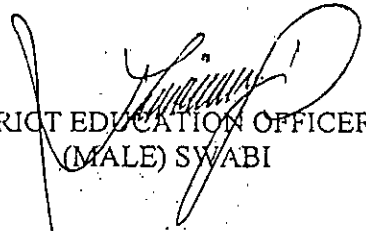
1. His case has been decided by the Honourable Session Court on 25.03.2016 while he has submitted his appeal on 05.12.2017 which is badly time barred.
2. According to the Khyber Pakhtunkhwa Government Servants Conduct rules 1987, rule 20 he has committed misconduct. Rules 20 of conduct rules 1987 states that "if a Government Servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of the office or department, immediately or if he is arrested and released on bail, soon after such release". As it was mandatory for the appellant but he did not do so, hence he committed misconduct as per E&D rules 2011,2(e)(ii) which states that misconduct includes conduct contrary to Khyber Pakhtunkhwa Government Servants, conduct rules 1987 for the time being enforced. Under the above mentioned rules the appellant, did not inform the department well in time but after discharge he informed the department a year later or more than a year.
3. He has submitted more than one appeals while the rules do not allow for repeated appeals/representation when the first one is not rejected/decided. It has been appeared in 2001 SCMR-912,2004 SCMR-497, 2009 OLC(CS)89, 2007 PLC (CS)15. The accused made/submitted 1st appeal in November 2017 to DEO(F) Swabi, 2nd appeal/representation was made to DEO(M) on 05.12.2017 both the appeals are badly time barred as per 2017 SCMR 695. 2nd appeal has also been made/submitted to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptation of the previous ones.
4. The accused Chowkidar has stated in his appeal that department has not taken any action which is not correct as he has been sent absent notice by the Principal of the school. He has been given 1st notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. He has been issued as show cause notice by the Principal of the school. All the letters/ notices issued to him did not receive by the accused Chowkidar and department received no response. The department has been informed by the Principal that the person has absconded from the law of the state. The total period of his absention is more than 04 years i.e. 01.02.2012 to 25.03.2016, but he remained willful absent up to November 2017, which becomes more than 05 years and in such cases the right of the re-instatement of an official automatically vanishes.

ATTESTED

2018

(85)

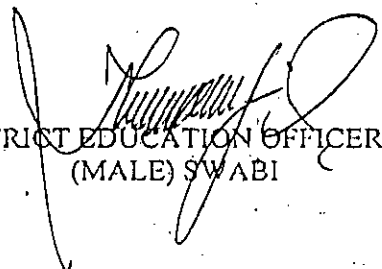
5. The EDO post abolished on 31.12.2012 and on 01.01.2013 two new entities were established in E&SE Department with nomenclature of DEO(Male) and DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of the DEO(F) and in the process of bifurcation his case remained out sight and could not be processed properly.

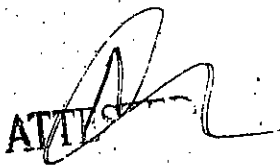

DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst:No. _____

Copy of the above is forwarded to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (Female) Swabi.


DISTRICT EDUCATION OFFICER
(MALE) SWABI


ATTESTED


ATTESTED

مسئلہ
Answers

Q

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(26)

راہداری

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محضور جناب ڈسٹرکٹ ایجوکیشن آفسر صاحب جنواری

درخواست بمطابق دوبارہ تقرری

11/11/17

جناب عالی

موردہ تازہ گزارش ہے

کہ وہ 10/9/2016 سے یکم فروری 2012 تک گورنمنٹ ہائی سکول شیوہ

میں ڈیوٹی سرانجام دے رہا تھا۔ دشمنی کیوجہ سے فدیوی پرائیویٹ آر

کی گئی اس وقت عید السلام 2017 ایگزیکٹو

سکول میں کوئی ریکارڈ نہیں ہے۔ سر میں ہیں کوئی انٹری اس کیس کا بارے میں
انہیں سے محکمہ کی طرف سے جس کوئی نوٹس نہیں دیا گیا ہے۔ سری پور پری تھیٹری کی
ریکارڈ آئی کے پاس ہے



جناب عالی ہمارے درمیان راضی نامہ ہو گیا اور ہر دو سیشن چھ ماہ

نے باعزت طور پر بری کر دیا ہے۔ اب میں اپنی ڈیوٹی پر دوبارہ آنا چاہتا ہوں

لہذا مجھے ڈیوٹی پر لگانے کے احکامات سے مدد فرمائیں۔

(نوٹ) درخواست کے ساتھ درج ذیل مواد شامل ہے۔ بڑی مہربانی ہوگی

5.12.2017

ذیل نام

آپ کا تابع فرمان محمد زکریا ولد محمد نعیم مقیم شیوہ 5 محلہ شیخان محلہ ہروی

مقامی سکول
مدرسہ ہروی
شیخان محلہ ہروی
گورنمنٹ ہائی سکول
شیوہ

Attest

Handwritten signature

PTO

ABDUL JALAL MA, N.EJ
HEAD MASTER
G.M.S Gharib Abd, (SK) (Swabi)

بھخور جناب ڈسٹرکٹ ایجوکیشن آفیسر صوابی

درخواست بمراد دوبارہ تقرری

Assad
Amir

جناب عالی۔

نودبانہ گزارش ہے۔

۱، یہ کہ مورخہ 10.09.2006 سے یکم فروری 2012 تک گورنمنٹ ہائی سکول شیوہ میں ڈیوٹی سرانجام دے رہا تھا دشمنی کیوجہ سے فدوی پرائف آئی آر کی گئی اس وقت عبدالسلام صاحب ایگزیکٹو تھے سکول میں کوئی ریکارڈ نہیں ہے سروس بک میں کوڈ انٹری اس کیس کیبرے میں نہیں ہے محکمہ کی طرف سے ہمیں کوئی نوٹس نہیں دیا گیا ہے میری پوسٹ پر تعیناتی کی گئی ریکارڈ آپ کے پاس ہے۔

جناب عالی ہمارے درمیان راضی نامہ ہو گیا اور صوابی سیشن جج صاحب نے باعزت طور پر بری کر دیا ہے اب میں اپنی ڈیوٹی پر دوبارہ آنا چاہتا ہوں لہذا مجھے ڈیوٹی پر لگانے کے احکامات صادر فرما کر ممنون فرمادیں۔

درخواست کے ساتھ درج ذیل مواد شامل ہیں۔ بڑی مہربانی ہوگی

فقط المرقومہ 05.12.2017

آپکا تابع فرمان محمد ذریا ولد محمد نعیم مقام شیوہ محلہ شیخان ضلع صوابی

(28)

(27)

(29)

باسمہ تعالیٰ

بعضو اجنبات ڈسٹریکٹ گورنر ایجوکیشن آفیسر

(ایپل برائے پوسٹنگ)

DA-111

19/1/18

جناب عالی - موڈ بانہ گزارش ہے

کہ میں گورنمنٹ گورنر ایجوکیشن ڈسٹریکٹ سکول شیوہ میں ڈلاس مور

(چوکیدار) پوسٹ پر تعینات تھا یکم فروری 2012ء کو شیوہ پر
دعویٰ قتل کیا گیا جس میں میرے خلاف کوئی کارروائی نہیں کی گئی

331
19/1/18

اور نہ ریکارڈ موجود ہے

لہذا مجھے نزدیک ترین سکول میں تعینات کرنے کے احکامات
صادر فرمائیں کہ میں فروری 2018ء سے 17/9/2018ء

(نوٹ) ایپل فلڈا کے ساتھ درج ذیل مواد منسلک ہے

العارض واپس کنندہ

1) متعلقہ درخواستیں

2) سروس بک نقل

3) فیصلہ (عدالتی) نقل (راہی نامہ)

4) آرڈر کالی یعنی تقرری نامہ

محمد زکریا ولد محمد نعیم شیوہ ضلع ہواہ

Arrested
شہد

محمد زکریا
محکمہ تعلیم

ان کے بارے میں

(28) (28)

5665 Dated 26/12/12

Forwarded in original to the DEO (M) Swabi with the remarks that the case is related to the period of EDO, and you are requested to provide the record to proceed the case for further action please.

Service book not attached
Tamy DA
26/12/12

Dist. Ed. Officer
Swabi

3826
27/12/12

DA-III

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SWABI
Endsl: No 211 | Ab. susp: File No. 3211-B1C-IV | Dated 5/1/12/18

118
6/1/18

Returned in original to the DEO (A) Swabi as the case relates to her office. The letter issued to EDO Swabi on 19/11/2012. DEO (M) and both are separate entities. Ref. from 1.1.2013. Amination comes under the ambit of DEO.

Affidavit
Amr 

Ann-H

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. *628/2018*

Khyber Pakhtunkhwa
Service Tribunal

Case No. *598*

Dated *19-4-2018*

29

Mohammad Zakria s/o Mohammad Naeem r/o Mohallah Sheikh Abad, Post Office Shawa Tehsil Razzar District Swabi.

Appellant

VS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat Peshawar.
2. Director Education, Khyber Pakhtunkhwa civil Secretariat Peshawar.
3. District Education Officer (F) District Swabi.
4. District Education Officer (Male) District Swabi.
5. Principal Government Girls Higher Secondary School Shawa Tehsil Razzar District Swabi.
6. Executive District Officer Schools and literacy Swabi.

Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT 1974, WHEREBY THE APPEAL FILED BY THE APPELLANT AGAINST THE ORDER DATED NIL FOR HIS REINSTATEMENT WAS DISMISSED ON 26.03.2018.

PRAYER:-

on acceptance of this appeal the impugned order No.2864 dated 26.03.2018 and the order dated Nil whereby the appellant was refused posing be set aside and the appellant may graciously be reinstated to the post of Chowkidar in the large interest of justice.

Respectfully Sheweth:

to-day

REGISTRAR

19/4/18

REGISTRAR

1. The Appellant was appointed as Chowkidar in Govt. Girls Higher Secondary School Shawa Tehsil Razzar District Swabi. (Copy of the appointment order is annexed as annexure "A").
2. The appellant is serving the department from his appointment to the best of his capability.

NOT RECORDED

The appellant was charged in a murder case on 01.02.2012. (Copy of the FIR is annexed as annexure "B").

4. The appellant became fugitive from law after being charged in the murder case mentioned above.
5. The appellant was acquitted by the learned Additional Session Judge-IV swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. (Copy of the order dated 25.03.2016 is annexed as annexure "C").
6. The appellant after his acquittal approached the respondent for his posting against the post of Chowkidar by filing representation/appeal, but his appeal was dismissed vide order dated 26.03.2018. (copy of the application/appeal and order are annexed as annexure "D").
7. That the appellant being aggrieved hence, approaches this Hon'ble Tribunal in appeal on the following amongst other grounds:-

GROUND:-

- a) Because the non posting of the appellant by the respondent is illegal void ab-initio and against the norms of justice.
- b) Because there is no order of suspension nor any other order regarding his dismissal, but even then he is not been given a post which is arbitrary and malafide at the hands of respondents.
- c) Because the appellant are running from pillar to post as both the District Education Officers (Male/Female) are not considering him for posting.
- d) Because the non posting of the appellant by the respondents against the seat of Chowkidar is exceeding of jurisdiction not vested in them under the law.
- e) Because the appellant is poor person and there is no other source of his income, but inspite of that the respondents are not considering him for his posting.
- f) That any other ground will be taken at the time of arguments, with the kind permission of this Hon'ble Court.

It is therefore, most humbly prayed that on acceptance of this appeal, the respondents may graciously be directed to post the

ACCEPTED
[Signature]

(5)

appellant against the seat of Chowkidar in the large interest of justice.

(AE)

Any other relief, which is not specifically asked for and deems appropriate in the circumstances of the case may also be granted to the appellant.

(31)

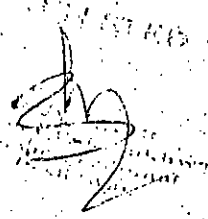
CS

Appellant

Through

(A)
(Abid Ali Khan)

Advocate, Peshawar.

11/11/1965


Amir
Shewath (1) (2) (3) (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 628/2018.

Muhammad Zakria S/O Muhammad Naeem R/O Mohalla Sheikh Abad, Post Office Shewa Tehsil Razzar District Swabi..... Appellant

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa E&SE Department Civil Secretariat, Peshawar.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, Elementary & Secondary Education (Female) District Swabi.
4. District Education Officer, Elementary & Secondary Education (Male) District Swabi.
5. Principal GGHSS Shewa Tehsil Razzar District Swabi.
6. Executive District Officer Schools & Literacy Swabi.... Respondents

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 6

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant absented himself from duty w.e.f. 02.02.2012 without giving any information to the department and was removed from service on 19.02.2013. Hence the appeal is not maintainable.
2. That the appellant was appointed against Chwokidar post on contract fixed pay salary basis and subsequently regularized but he left the department without any permission/information on 02.02.2012. Hence the appeal is not maintainable.
3. That the instant appeal is badly time barred because he was removed from service on 19.02.2013, while he filed appeal in November, 2017. Hence the appeal is not maintainable.
4. That the appellant has no locus standi or cause of action to file the instant appeal.
5. That the appeal is bad for misjoinder and non joinder of necessary party.
6. That the appellant has not come to the Tribunal with clean hands. Hence the appeal is not maintainable.
7. That the appellant concealed the material facts from Honourable Tribunal. Hence the appeal is not maintainable.
8. That the appellant is, estopped by his own conduct to file the instant appeal. Hence the appeal is not maintainable.
9. That the appellant did not impugn his removal from service order. Hence the appeal is not maintainable.

FACTS.

1. That the para relates to the appointment of the appellant as Chowkidar at GGHSS Shewa. He is concealing the fact, that his appointment was on contact fixed pay salary basis and subsequently regularized w.e.f. 01.07.2008. The appellant was removed from service due to his willful long absence, after observing all the codal formalities in this regard. He

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filed a writ petition No.1513-P/2018 on 09.03.2018 and also filed the instant appeal on 19.04.2018 on the same stance/plea, which is illegal and unlawful. Grounds of Writ Petition, comments, absence notices, Removal from service order, Civil Service Appeal rules 1986 annexed as annexure-A,B,C,D & E.

2. Incorrect, hence denied. The appellant is not serving now. It is obligatory for each and every Government servant to discharge his duties up to the entire satisfaction of his superiors and up to the best of his capabilities, because he is paid for his job, failing which is liable to be treated under E&D Rules, 2011. When he absented himself willfully, he was removed from service on 19.02.2013.
3. That the petitioner himself confesses charge of murder against him, but he failed to inform the department well in time as per rules. This act of the appellant divests him from the right to remain in service. As per 2017 SCMR 965, "Act of absconsion or being fugitive from law could not be regarded as a reasonable ground to explain absence". Judgments annexed as F, G & H.
4. That the appellant himself confesses that he became fugitive of law after being charged in the murder case. "Act of absconsion or being a fugitive of law could not be regarded as a reasonable ground to explain absence". The same is reported in 2017 SCMR 965. As he has already been removed from service on 19.02.2013 after observing all the codal formalities due to willful absence from duty, he has no vested right to be posted against the Chowkidar post.
5. That the appellant himself confesses that he was acquitted by the learned Additional Session Judge-IV Swabi on 25.03.2016 from the charges leveled against him on the basis of compromise. The acquittal was not an honourable acquittal. It shows that the appellant could not remove the allegation of murder through legal proceedings on merit but the acquittal was given only on the basis of compromise, which does not prove the validity of the charge or otherwise. It can not be assumed that the appellant has proved his innocence. Furthermore, his removal from service had already been made due to his willful absence under E&D Rules, 2011 on 19.02.2013.
6. That the appellant submitted belatedly more than one appeal which the rules do not allow for repeated appeals/representations when the first one is not rejected/decided. It has been reported in 2001 SCMR 912, 2004 SCMR 497, 2009 PLC(CS) 89, 2007 PLC(CS)15. The appellant made/submitted first appeal in November, 2017 to DEO(F)Swabi, 2nd appeal/representation was made to DEO(M) Swabi on 05.12.2017, both the appeals were badly time barred. He has also been made/ submitted another appeal to DEO(F) Swabi on 19.01.2018 without knowing the rejection/acceptance of the previous one. When the appeal before the authority is time barred, the appeal before the Tribunal is also time barred and hence not maintainable. As he has committed moral turpitude, hence he is not entitled to be posted/reinstated as chowkidar. The same is reported in 2002 SCMR 1691.

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The appellant knocked at the door of Honourable Court before 90 days after filing the 3rd departmental appeal which has no legal effect. He filed a writ petition No.1513-P/2018 on 09.03.2018 and also the instant service appeal No.628-2018 on 19.04.2018 on the same stance/ plea. The writ petition was decided on 14.01.2019. Therefore, the instant service appeal is not maintainable and is liable to be dismissed.

7. That appellant is not an aggrieved person at all. Hence has no cause of action to file the instant service appeal inter-alia on the following grounds.

Grounds

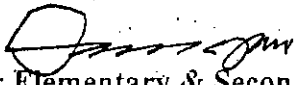
- a. Incorrect, hence strongly denied, the non posting/reinstatement of the appellant by the respondent is legal, genuine and according to the norms of justice because he has already been removed from service on 19.02.2013.
- b. Incorrect, hence denied, according to Khyber Pakhtunkhwa Government servants conduct rules, 1987 rule 20, he has committed misconduct. This rule states, " If a government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction as the case may be to the notice of the Head of office or department immediately or if he is arrested or released on bail, soon after such release". As it was mandatory for the appellant to inform head of the department about his involvement but he did not do so, hence, he committed misconduct as per E&D rules 2011, 2(e) (ii) which states that misconduct includes conduct contrary to Government of Khyber Pakhtunkhwa Government Servants rules 1987 for the time being enforced. He has already been removed from service due to willful absence on 19.02.2013. He is concealing the fact of his removal from service.
- c. Incorrect, hence denied. He has been sent absence notices by the Principal of concerned school. He has been served with first notice on 21.02.2012, 2nd on 08.03.2012 and 3rd on 22.03.2012. All the letters/ notices issued to him, the department received no response from him. Furthermore, it is stated that the EDO Schools and Literacy post was abolished on 31.12.2012 and on 01.01.2013 two new entities were established in Elementary & Secondary Education Department with nomenclature DEO(Male) & DEO(Female). Thus the staff and record was also separated and the Ex-Chowkidar remained at the strength of DEO(Female) and in the process of bifurcation his case remained out sight/misplace and could not process properly in time. Although his misconduct and willful absence had been proved and thus he has been removed from service by DEO(F) Swabi after observing all the codal formalities/legal procedure 19.02.2013.
- d. Incorrect, hence denied. He is not entitled to be posted/reinstated due to his willful absence and negligence. Furthermore, due to his willful absence he has already been removed from service after observing all the codal formalities/legal requirements on 19.02.2013.


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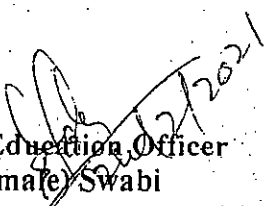
- e. Incorrect, hence denied. What was the source of his income in absconson. Ignorance of law is no excuse. His removal from service has already been made due to his willful absence after observing all the codal formalities/legal procedure on 19.02.2013.
- f. That the respondents seek permission to raise other grounds/points on the day of arguments.

In view of the above submission, it is very humbly prayed that the service appeal may very graciously be dismissed with cost in favour of the respondents.

Secretary
E & SE Deptt: Khyber
Pakhtunkhwa, Peshawar
Respondent No.1



Director Elementary & Secondary
Education, Khyber Peshawar.
Respondent No.2


District Education Officer
(Male) Swabi
Respondent No.4 & 6


District Education Officer
(Female) Swabi
Respondent No.3,5&6
District Edu. Officer
(Female) Swabi

Affidavit

I do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
District Edu. Officer
(Female) Swabi

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

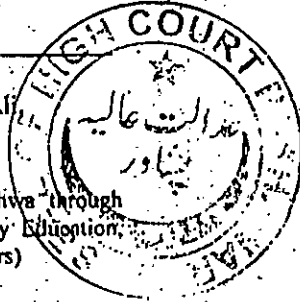
W.P No. 1513-P/2018.

JUDGMENT

Date of hearing 14-01-2019

Petitioner (s) (Muhammad Zakria) By Mr. Abid Ali
Advocate.

Respondent (s) (Government of Khyber Pakhtunkhwa through
Secretary Elementary & Secondary Education,
Civil Secretariat Peshawar and others)
By Mr. Rab Nawaz Khan, AAG,



ISHTIAQ IBRAHIM. J:- Muhammad

Zakria son of Mohammad Naeem, the petitioner,
has invoked the Constitutional jurisdiction of this
Court under Article-199 of the Constitution of
Islamic Republic of Pakistan, 1973, praying for:

*"It is, therefore, most humbly
prayed that on acceptance of
this writ petition, the
respondents may graciously be
directed to post the petitioner
against the seat of Chowkidar
in the large interest of justice."*

2. In essence, the grievance of the petitioner is
that respondents No.3 & 4 are not considering the
appeal of the petitioner for posting him against the
seat of Chowkidar.

ATTESTED
EXAMINER
Peshawar High Court
19 JAN 2019

3. The respondents were put to notice and they have submitted their para-wise comments to the writ petition, wherein they denied the assertions of the petitioner.

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4. The moment the case was taken up for hearing, the learned counsel for the petitioner submitted that after submission of the comments by the respondent, wherein it was contended that the petitioner was contract employee, but during the pendency of this writ petition, it transpired that the services of the petitioner was regularized in the year 2008, and he being a civil servant, and his service appeal is pending before the Service Tribunal. The worthy Additional A.G present before the Court also affirmed and stated that all contract employees including the service of the petitioner has been regularized in the year 2008.

In view of the above, this writ petition is disposed of, accordingly.

Announced:
14.01.2019

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JUDGE
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JUDGE
[Handwritten Signature]
CERTIFIED TO BE TRUE COPY
EXAMINED BY
18 JAN 2019

(U.8)
Hon'ble Mr. Justice Ishfaq Ibrahim,
Hon'ble Mr. Justice Abdul Shakoor,
(Kahar Ali PS)

Before the K.P. Service Tribunal

Reshwar

Page - J

Muhammad Zakaria vs Govt

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Appeal

Solly,

Application for permission to withdraw
the appeal to file a fresh one.

on Appeal hereby submitted as follows

1. That appellant filed service appeal
for posting before this honorable

Tribunal which is pending.

2. That reply has been filed
by respondent and in reply respondent

has submitted and annexed

removal order which has not

been communicated to the appellant

3. That appellant requests to file
departmental appeal to next higher

authority from D.E.O. Beawal to

Director Education

4. That it is right of the appellant

that his appeal is heard by

proper appellate authority as

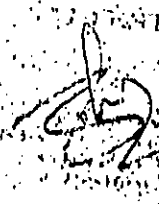
per P/Appeal Rules 1986.

seen
10/10/86


[Signature]

- 5. That although DEO Male has passed some order but that is incompetent and without lawful authority.
- 6. That DEO Male states in said order that no proper dismissal order has been passed due to oversight.
- 7. That instant appeal is for posting.
- 8. That appellant requests for to challenge removal order though a proper departmental appeal and thereafter before this honorable Tribunal.

It is therefore hereby prayed that appellant may please be permitted to ~~amend or~~ withdraw instant appeal with permission to file fresh one.

RECEIVED


Date 18/1/2022

 Appellant
 Adv
 Supreme Court.

18.01.2022

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Learned counsel for the appellant present.

Learned counsel for the appellant submitted an application for withdrawal of the instant service appeal with permission to file a fresh one. Application is allowed and the instant service appeal is therefore, dismissed as withdrawn. File be consigned to the record room.

Announced:
18.01.2022

(Handwritten signature)

(Mian Muhammad)
Member(E)

Certified to be true copy

(Signature)
EX-101/2022
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 31/01/22
 Number of Words 2800
 Copying Fee 30/-
 Urgent 30/-
 Total 30/-
 Name of Copyist _____
 Date of Completion of Copy 01/02/22
 Date of Delivery of Copy 01/02/22

(Handwritten signature)

(Handwritten initials)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(SUBORDINATE JUDICIARY SERVICE TRIBUNAL)
JUDICIAL DEPARTMENT

Service Appeal No.06-P of 2021

Kalim Arshad Khan

Vs.

**Peshawar High Court, Peshawar through
Registrar and others**

Date of hearing 18.12.2021
Appellant(s) by: M/s. Hamid Ali Shah, Advocate
and Barrister Syed Mudassir
Ameer.
Respondent(s) by: Mr. Khalid Rehman, AAG
alongwith Syed Shakir Hussain
Shah, Litigation Assistant,
Peshawar High Court, Peshawar.
Respondents by: In person.
(No.4, 9 and 10)

JUDGMENT

IJAZ ANWAR, J. This appeal has been filed under Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991 against the letter bearing No.3784/Admn dated 13.03.2021 issued by the Registrar, Peshawar High Court, Peshawar, whereby, appellant was conveyed the decision of the Hon'ble Administration Committee regretting his application/departamental appeal for fixation of seniority amongst his batch-mates.

2. In essence, initially appellant was appointed against the post of Additional District & Sessions Judge vide Notification dated 22.02.2005, pursuant to the judgment of

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Alma
QJ
Amir et al

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the Hon'ble Peshawar High Court and now serving as District & Sessions Judge, however, is claiming seniority with effect from the date of Notification dated 19.09.2001 when his other colleagues/batch-mates were appointed in the same selection process, with all back benefits.

3. In view of the averments made in the instant appeal, comments were called from the respondents who furnished the same accordingly.

4. Learned counsel for the appellant argued that appellant was deprived of his appointment as Additional District & Sessions Judge with his batch-mates who were appointed vide Notification No.92-J dated 19.09.2001 and as such, on his appointment dated 22.02.2005 issued pursuant to the judgment of the Division Bench of the Hon'ble Peshawar High Court in W.P. No.1412-P/2001 dated 09.04.2004, he is entitled to be allowed seniority with his colleagues. He further contended that in terms of Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (hereinafter to be referred as "the Act") read with Rule 10(a) of the Khyber Pakhtunkhwa Judicial Service Rules, 2001 (hereinafter to be referred as "the Rules"), the appellant having been appointed in a same selection process; as such, his seniority is to be determined in accordance with the order of merit, assigned by the Selection Committee. He further contended that though, his Service Appeal bearing No.14 of 2010 was dismissed by

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this Tribunal vide judgment dated 08.12.2012 on the ground of limitation, however, in view of the judgment dated 19.12.2015, the matter of his seniority was reopened, because, this Tribunal has already struck down the seniority list dated 14.11.2009 in Service Appeal No.02 of 2009 etc which was maintained by the apex Court in Civil Appeals No.1171 to 1192 of 2013 dated 11.05.2015. It would be pertinent to note that the present appellant was also aggrieved of the said seniority list. He further argued that the recent rejection of his departmental appeal by the Hon'ble Administration Committee is a result of certain misconception and wrong opinion and as such, the order is liable to be set-aside. He next contended that since the issue of seniority of the appellant remained undecided throughout; as such, the principle of *res-judicata* is inapplicable to his case. He placed reliance on the cases titled "National Institutional Facilitation Technologies (Pvt) Limited Vs. The Federal Board of Revenue through Chairman and others (PLD 2020 Islamabad 378), Ibrar Hussain Vs. Collector Customs and others (1997 PLC(CS) 885), Adalat Khan Vs. Mst. Begum Bibi through Legal Heirs and another (1991 SCMR 1381), Shah Behram Vs. Akbar Khan and another (PLD 1992 Peshawar 18), Quetta Development Authority Vs. Abdul Basit (2021 SCMR 1313), Jamal Ali Vs. Engineer-in-Chief, GHO, Rawalpindi (1998 SCMR 2472), Hameed Akhtar Nlazi Vs. Secretary, Establishment Division, Government of Pakistan (1996 SCMR 1185), Government of Punjab through

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Secretary Education, Civil Secretariat, Lahore and others Vs. Sameena Parveen (2009 SCMR 1), Rasool Khan Vs. Federation of Pakistan through Secretary, Ministry of Information and Technology (2021 PLC (CS) 14) and unreported judgment dated 16.10.2017 passed by the Division Bench of the Hon'ble Peshawar High Court in Writ Petition No.227-M/2014".

5. On the other hand, the learned AAG, representing the respondent-PHC, assisted by the added respondents in person, contended that appellant has not questioned the seniority list circulated in the year, 2004 and 2007; as such, his objection to the seniority list 'as it stood on 14.11.2009' was hopelessly time barred and was rightly dismissed by this Tribunal on 08.12.2012 and as such, this appeal is not maintainable. It was further contended that neither in the earlier writ petition questioning his non-appointment nor in the order of the Division Bench of the Hon'ble Peshawar High Court, any order pertaining to his seniority was passed, because, merely an order for his adjustment was issued; as such, his present prayer is not legally tenable. It was further argued that reference of the appellant to the order of the apex Court dated 11.05.2015 is of no help to him, because the appeal was conditionally withdrawn and as such, the matter has become past and closed matter. It was further contended that initial representation of the appellant to the seniority list was hopelessly barred by time, besides, under the law, seniority

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cannot be conferred from a retrospective date to the appointment. It was contended that seniority is to take effect from the date of regular appointment while all the added respondents were appointed/promoted much before the appointment of the appellant and as such, appeal in hand is liable to be dismissed. In support of such contentions, reliance is placed on the cases titled "Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338), Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889), Fida Muhammud Sanai Vs. Chairman, Federal Service Tribunal, Islamabad and others (PLD 1996 SC 845) and Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)".

6. Arguments heard and record perused.

7. During the course of hearing on 16.10.2021, the learned AAG has pointed out that the Judicial Officers, against whom the appellant is claiming seniority, have not been arrayed as respondents in the instant case and as such, on the directions of this Tribunal, appellant submitted amended memo of addresses of the parties and as well impleadment application containing the names of about 38 District & Sessions Judges, they were accordingly impleaded. The added respondents were served and out of which respondents No.5, 12, 15, 20, 21, 23, 26, 31, 32, 37 and 40 have submitted their cognovit, whereas, respondents No.4, 6

to 10, 22 and 28 intended to contest the appeal in hand; while, respondents No.11, 13, 14, 16 to 19, 24, 25, 27, 29, 30, 33 to 36, 38 and 39, despite service, were not in attendance; as such, were placed ex-parte; while respondent No.3 has retired from service; similarly, respondents No.6 to 8 as well as their counsel, despite service, failed to enter appearance.

8. The following questions have arisen out of the arguments of learned counsel for the parties; which require resolution:-

1. Whether the instant Service Appeal is barred by limitation/being past and closed matter?
2. Whether the instant appeal is hit by principle of res-judicata?
3. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

1. Whether the instant Service Appeal is barred by limitation/being past and closed matter?

9. In order to ascertain the fact about the circulation of seniority list of the Additional District & Sessions Judges 'as it stood on 17.11.2009', we directed the representative namely Syed Shakir Hussain Shah, Litigation Assistant, Peshawar High Court, Peshawar for production of seniority list so circulated, which he produced accordingly. The record, so produced, transpires that the seniority list of the year, 2007 was a provisional seniority list and it remained disputed, because, the record, so produced, contained

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numerous objections which remained undecided, while objections regarding circulation of seniority list of the year, 2004 are not applicable to the case in hand, because, by then, appellant was not in service, as he was appointed, pursuant to the judgment of the Hon'ble Peshawar High Court, on 22.02.2005. Thus, merely, because, certain tentative/provisional seniority lists were issued and not questioned before this Tribunal, at the relevant time, are not legally tenable, because, only a final seniority list can be questioned before the Tribunal in terms of Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991. Reference can be made to the case titled "S.H.M Rizvi and 05 others Vs. Maqsood Ahmad and 05 others (PLD 1981 SC 612)".

10. The record further transpires that the appellant submitted representation for the first time against the seniority list 'as it stood on 14.11.2009' on 14.01.2010. The reason, so advanced for condonation of delay before the Tribunal regarding delay in submission of the departmental appeal, was that at the time when the said seniority list was circulated, he was already granted study leave on 04.11.2009 and he relinquished his charge on 11.11.2009 and that he was never communicated the final seniority list, albeit, this Tribunal vide its judgment dated 08.12.2012 dismissed his Service Appeal. The reason for delay in filing departmental

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appeal was duly reflected in the leave granting order of the apex Court in CPLA No.382 of 2013 dated 15.05.2013.

11. It is pertinent to mention here that on the circulation of the seniority list dated 14.11.2009, the seniority of numerous Judicial Officers was disturbed and about 21 Service Appeals were filed before this Tribunal. This Tribunal vide consolidated judgment dated 26.08.2013 in Service Appeal No.02 of 2009 struck down the orders of the Hon'ble Chief Justice dated 13.08.2009 and the subsequent seniority lists so issued. The order of this Tribunal was assailed before the apex Court and it was duly maintained vide order dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013 titled "the Registrar, Peshawar High Court, Peshawar Vs. Shafique Ahmad Tanoli and others". It will not be out of place to mention here that in the above judgments, an order of the Hon'ble Chief Justice dated 13.08.2009 was questioned which was the basis of adversely affecting the seniority of the Judicial Officers and this Tribunal and as well the apex Court held that the decision about the terms and conditions of the service of the Judicial Officers could only be made by the Hon'ble High Court and not the Hon'ble Chief Justice alone. Thus, on the decision of the apex Court maintaining the judgment of this Tribunal, the seniority list, so issued, was struck down and the Judicial Officers who have questioned the orders adversely affecting their seniority,

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their representations were deemed as pending before the Hon'ble Administration Committee of the Hon'ble Peshawar High Court.

12. Thus, when Civil Appeal No.521 of 2013 filed by the appellant against the judgment of this Tribunal dated 08.12.2012 came up for hearing before the apex Court, there was nothing left for adjudication before the apex Court and that's why, it was conveyed to the apex Court in the same manner. For reference, the order of the apex Court is reproduced as under, because, much has been said about this judgment.

"MIAN SAQIB NISAR, J. Learned counsel for the appellant states that in the light of the judgment passed in Civil Appeals No.1171 to 1192/2013 titled Registrar, Peshawar High Court Versus Shafique Ahmed Tanoli etc dated 11.05.2015, the present appeal is rendered infructuous. However, if any relief has been granted on account of the said judgment, the appellant may apply to the concerned authority for redressal of his grievance. Disposed of accordingly.

*Mian Saqib Nisar, J
Sh. Azmat Saeed, J
Qazi Faez Isa, J"*

13. The order of the apex Court, in no manner, has tied the hands of the appellant from agitating his matter of seniority rather has given new life to the matter of seniority to the appellant. Infact, appellant was allowed to apply the concerned competent authority for the redressal of his grievances, in case, any order regarding seniority is passed in favour of the Judicial Officers, pursuant to the order passed

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by the apex Court vide dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013. It being relevant at this stage to bring this fact that before the above judgment of the apex Court in the case of appellant, the question of seniority was discussed in the meeting of the Hon'ble Administration Committee held on 07.05.2014 and the Hon'ble Administration Committee decided that seniority of the appellant will be re-fixed in the light of the judgment of the Hon'ble Supreme Court of Pakistan (underline provided for emphasis).

Again, when the issue regarding the seniority of the appellant was not decided, he approached this Tribunal in Service Appeal No.06 of 2016, however, during the pendency of that appeal, the case, pertaining to his promotion, came up for hearing before the apex Court on 16.11.2020 and the apex Court disposed of his appeals with the following observations:-

"The only grievance of the appellant is that his case for consideration of his seniority is pending before the Administration Committee of the High Court and requests that observation may be made that such case of the seniority of the appellant may be considered at any early date and decide by the Administrative Committee in accordance with law.

2. *The appeals are disposed of accordingly".*

14. In the light of the order of the apex Court, Service Appeal No.06 of 2016 of the appellant was disposed of in the same manner by this Tribunal vide order dated 23.01.2021 and the Hon'ble Administration Committee of the

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Hon'ble Peshawar High Court was requested to decide the case of seniority of the appellant in the light of the judgment of the apex Court within a period of two months. This is how, the Hon'ble Administration Committee considered the case of appellant for seniority and it was regretted duly conveyed to him vide the impugned letter dated 13.03.2021. Thus, the above facts clearly suggest that the question of seniority of the appellant never decided nor attained finality at any stage nor it can be termed as 'past and closed matter'. The judgment of this Tribunal dated 08.12.2012 cannot be made a hurdle in the case of the appellant, because, it was duly questioned before the apex Court and when the impugned seniority list was held to be issued without lawful authority, the question of seniority of the appellant was, thus, required to be re-determined.

15. In view of the above, this Tribunal is of the firm view that appeal of the appellant before this Tribunal is within time against the final order/letter dated 13.03.2021. The law on the point is clear that he has either to file Service Appeal after completion of ninety days of filing his departmental appeal or to wait till the final outcome of his departmental appeal. Reference can be made to the cases titled "Syed Firdos Ali Vs. Secretary, Establishment Division, Islamabad and 02 others (1997 SCMR 1160), Muhammad Jan Marwat and another Vs. Nazir Muhammad and 17 others (1997 SCMR 287), Mir Ajab Khan and another Vs. Deputy Postmaster

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General, SRP, Dera Ismail Khan and others (2013 SCMR 1053), Anwar Muhammad Vs, General Manager, Pakistan Railways, Lahore and another (1995 SCMR 950) and Muhammad Aslam Javed Vs, Government of Pakistan through Secretary, Establishment Division, Islamabad and others (2002 SCMR 1383)".

2. Whether the instant appeal is hit by principle of res-judicata?

16. We have noted that the Division Bench of the Hon'ble Peshawar High Court, while hearing Writ petition of the appellant against the denial of his appointment, has allowed the same as prayed for with directions to the Competent Authority to appoint/adjust and accommodate him as Additional District & Sessions Judge on the available seat vide order dated 09.04.2004. Similar is the order of this Tribunal pertaining to the seniority which was decided and dismissed on 08.12.2012 on the ground of limitation, however, we are of the view that at the time of his appointment, it was specifically held by the Division Bench of the Hon'ble Peshawar High Court that he remained on the top of the merit list alongwith his colleagues. Thus, it has not given any findings denying or restraining the appellant from agitating the matter of his seniority. Similar is the case of this Tribunal dated 08.12.2012, as discussed in the above paras, that judgment has never attained finality as it was duly questioned before the apex Court and when once the seniority

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list, so questioned, the judgment of this Tribunal no more remained in the field, because, the apex Court in its judgment has again allowed the appellant to re-agitate his grievances of seniority. Thus, the *lis* between the parties has never been finalized nor taken to the logical end rather throughout remained disputed, as such, the principle of *res-judicata*, as argued, is inapplicable to the case in hand.

2. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

17. The unfortunate aspect of the case is that despite the fact that appellant secured first position in the written test and as well in the selection process for appointment against the post of Additional District & Sessions Judge, was deprived of his appointment and instead, four Judicial Officers, presently none of them in service, were appointed vide Notification dated 28.08.2001. It is pertinent to mention here that Writ Petition No.1412 of 2001 filed against the denial of his appointment was decided in his favour with the following directions:-

"As a sequel to above discussion, we are constrained to allow the writ petition No.1412/2001 filed by Kaleem Arshad Khan petitioner as prayed for with the direction to the competent authority to appoint/adjust and accommodate the petitioner Kaleem Arshad Khan as Additional District & Sessions Judge on the available seat while the connected Writ Petition No.645/2002

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filed by Muhammad Saeed petitioner is hereby dis-allowed".

18. The memo of Writ Petition, annexed with the reply, depicts that it was one of the prayer of the appellant as "respondents No.1, 2 and 3 be kindly directed to issue appointment order to the petitioner and other candidates in accordance with the merit list duly made and finalized by the Selection Committee". This fact was duly considered by the Division Bench of the Hon'ble Peshawar High Court in para-22 of its judgment which is reproduced as under:-

"The record reveals that the petitioner secured 119 marks in the written test held on 21.4.2001 while Muhammad Saeed secured 114, Tariq Yousafzai 113, Sardar Muhammad Irshad 111, Jamaluddin 110, Muhammad Zubair 108, Muhammad Muqtada 107, Mah Talaat 107 and Shaiber Khan 105 out of 68 candidates appeared in the written test. Total 20 candidates were qualified including Kaleem Arshad Khan and Muhammad Saeed Khan petitioners for interview. In the comments, respondent No.3 admitted as correct vide Para 8 that the petitioner ranked at top in the test and interview. It is astonishing to note that result of viva/interview is missing and not available on the relevant record".

19. We have been informed that the judgment of the Hon'ble Peshawar High Court was assailed before the apex Court in CPLA No.1418 of 2004 but was dismissed for non-prosecution on 30.11.2004. Application for its restoration was filed, however, the said application was subsequently withdrawn on 10.02.2005, and thereafter, vide Notification dated 22.02.2005, appellant was appointed against the post of Additional District & Sessions Judge.

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20. Thus, from the very order of the Hon'ble Peshawar High Court, it is clear that in the selection process, appellant has topped the overall merit; albeit, for the reasons best known to the Appointing Authority, he was denied appointment, however, the Division Bench of the Hon'ble Peshawar High Court found that the appellant has not been treated in accordance with law and that's why direction was issued for his appointment against any of the existing vacancies. Section 8(3) of "the Act" deals with the matter of seniority and its fixation; similarly, Rule 10 of "the Rules" further elaborates fixation of seniority inter-se, the members of the Judicial Service. Both these provisions, being relevant, are reproduced as under:-

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"Khyber Pakhtunkhwa Civil Servants Act, 1973

8. Seniority:

- (1).....
- (2).....
- (3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

Khyber Pakhtunkhwa Judicial Service Rules, 2001

10. Seniority:-

The seniority inter-se of the members of the service in the various Pay Scales thereof shall be determined by the High Court, subject to the conditions that:

- (a) in case of member appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5;

Provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection.

- (b) in the case of members appointed by promotion, seniority in a post, service or cadre to which a Civil Servant is promoted, shall take effect from the date of regular appointment to that post; Provided that Civil Servants who are selected for promotion to a higher post in one batch shall, on their promotion to

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the higher post, retain their enter-se seniority as in the lower post.

Explanation-I If a Jr. Officer in a lower grade is promoted temporarily to a higher grade in the public interest, even though continuing later permanently in the higher grade, it would not adversely affect in the interest his/her senior officer in the fixation of his/her seniority in the higher grade.

Explanation-II If a Jr. Officer in a lower grade is promoted to higher grade by superseding a senior officer and subsequently that officer is also promoted, the officer promoted first shall rank senior to the officer promoted subsequently".

21. Till date, no effort was made for the determination of seniority of the appellant, because, in the first instance, after exhausting the departmental remedies, his service appeal was dismissed on the ground that his departmental appeal was barred by time against which he filed CPLA, in which, leave was granted and during the pendency of appeal, the matter was again taken up by the Hon'ble Administration Committee of the Hon'ble Peshawar High Court but as pointed above, the Hon'ble Administration Committee in its meeting held on 07.05.2014 deferred fixation of his seniority and decided that seniority of the Officer will be re-fixed in the light of the judgment of the apex Court. It is pertinent to mention here that before the said decision, the Hon'ble Administration Committee of the Hon'ble Peshawar High Court in compliance with the judgment of this Tribunal dated 26.08.2013 while deciding the representations of M/s. Jehanzeb and Shoaib Khan and other Judicial Officers, besides, other decisions, also directed that revise seniority list shall be prepared/recast and uploaded

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on the official website of the Peshawar High Court. Similarly, after the decision of the apex Court, the matter of his seniority was referred to the Hon'ble Administration Committee, still the matter of his seniority was not discussed nor decided on merit and again was declined any relief without any plausible and convincing reasons.

22. Section 8 of "the Act" read with Rule 10 of "the Rules" deals with the matter of seniority. Section 8(2) of "the Act" provides that "seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre in the same department or office or not, as may be prescribed". Similarly, sub-section (3) of Section 8 provides that "seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed", while Rule 10(a) of "the Rules" prescribes that "in case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5; provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection".

23. Admittedly, the appellant has applied for appointment against the post of Additional District & Sessions Judge and appeared in the same selection process whereby, four Judicial Officers were appointed vide Notification dated 28.08.2001, depriving him of his

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appointment, while this process/selection was held by the Division Bench of the Hon'ble Peshawar High Court as violative of his rights and specific direction for his appointment was issued. Meaning thereby that when he was appointed pursuant to the same selection process, as such, for the determination of his seniority in terms of Rule 10(a) of "the Rules", his seniority shall be determined in accordance with the order of merit assigned by the Selection Committee. The mere fact that the appointment orders were issued belatedly will not deprive the appellant of his seniority particularly when the Division Bench of the Hon'ble Peshawar High Court has raised eyebrow on the selection process. Moreover, the respondents appointed/promoted in the later selection, prior to the appointment of the appellant, have no right whatsoever to claim seniority over the appellant.

24. The Hon'ble Supreme Court of Pakistan in the case titled "Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)", while dealing with somewhat similar situation, held that "it is well-settled proposition of law that the appointments made as a result of the selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority intense, the

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appointees of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission". Similar view was earlier given by the Provincial Service Tribunal in the case titled "Musa Wazir Vs. NWFP Public Service Commission (1993 PLC(C.S) 1188)", wherein, it is held that "when the selection is made out of one competitive examination, it cannot be bifurcated into two or more. The competitive examination being one, the selection has to be one and it cannot be said that any number of selections can be made out of the same competitive examination. Such a practice cannot stand scrutiny or the test of law applicable to the case".

25. The above propositions of law propounded by the Hon'ble Supreme Court of Pakistan in the light of Section 8 of "the Act" read with Rule 17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 (*pari materia* with Rule 10 of "the Rules") clearly demonstrate that seniority of the civil servants appointed pursuant to a same selection process, is to be determined in the light of the merit assigned by the Selection Committee. In the instant case, the appointment of the appellant was though made on 22.02.2005; albeit, his seniority will be determined alongwith his batch-mates appointed on 19.09.2001. Reference can be made to the cases titled "Fazal Muhammad Vs. Government of NWFP and others (2009 SCMR 82) and Nadir Shah, S.D.O., Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali

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and 2 others Vs. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others (2003 PLC(CS) 961)".

26. The judgment relied upon by the respondents on the case titled "Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)" has its own facts and circumstances and in that case, only determination was seniority to take effect from the date of regular appointment and there was no contest regarding the same selection process. Same is the case titled "Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338)".

In that case, the principle of estoppel was applied and the contest was between two civil servants appointed on the same date and one of a civil servant was declared 'senior' on the ground of age which was never challenged for continuously ten years, which is completely distinguishable; being not applicable to the facts of the instant case. While the case titled "Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)", relied upon by the respondents, favours the case of the appellant and is also relied upon by this Tribunal in the above paras. Similarly, the case titled "Chairman, FBR through Member Administration Vs. Muhammad Asfandyar Janjua and other (2019 SCMR 349)" is also distinguishable, wherein, the principle of estoppel was applied and the determination of seniority was in respect of the civil servants where there was

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no question of determination of seniority of the same batch in terms of the merit position assigned by the Selection Committee.

27. For the reasons stated above, this Tribunal finds that the appellant has not been assigned his correct seniority alongwith his batch-mates, thus, the mere fact that he was appointed vide order dated 22.02.2005 would not deprive him of his seniority in terms of Rule 5(c)(ii) read with Rule 10 of "the Rules". As such, this Tribunal holds that the appellant be assigned seniority with effect from the date, his batch-mates of the same selection process were appointed.

28. This Service Appeal is allowed in the above terms.

Announced
Dt:18.12.2021


Member


Member

1997 S C M R1160

[Supreme Court of Pakistan]

Present: Shafiur Rahman, Abdul Qader Chaudhry and Wali Muhammad Khan, JJ

Syed FIRDOS ALI --- Appellant

versus

SECRETARY, ESTABLISHMENT DIVISION, ISLAMABAD and 2
others---Respondents

Civil Appeal No.586 of 1992, decided on 30th November, 1993.

(On appeal from the judgment of the Federal Service Tribunal dated 11/12-5-1992 passed in Appeal No.266(R) of 1990).

(a) Service Tribunals Act (LXX of 1973)---

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Dismissal of appeal, as time-barred---Validity---Leave to appeal was granted to examine whether Service Tribunal had correctly found that appeal filed by civil servant was time-barred and, thus, untenable.

(b) Service Tribunals Act (LXX of 1973)---

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---S.4---Constitution of Pakistan (1973), Art. 212---Appeal before Service Tribunal---Limitation---Dismissal of appeal on ground of being time-barred---Validity---Order which aggrieved the civil servant with regard to his seniority 1 was promptly challenged by civil servant in Departmental appeal---Service Tribunal had taken view that after filing Departmental appeal, civil servant should have come to Service Tribunal within 120 days available to him and that appeal having been filed after such available period was time-barred---Provision of S.4, Service Tribunals Act, 1973 confers right on civil servant to appeal against original or appellate order of Departmental Authority---Such right could not be restricted to only original order and not the appellate order---Civil servant having filed appeal within thirty days from appellate order before Service Tribunal, same was within time---Case was remanded to Service Tribunal for decision on issues other than limitation.

Appellant in person.

Mumtaz Ali Mirza, Deputy Attorney-General instructed by Khan Imtiaz Muhammad Khan for Respondents.

Date of hearing: 30th November, 1993.

ORDER

SHAFIUR RAHMAN, J.---Leave to appeal was granted under Article 212(3) of the Constitution to examine whether the Tribunal had correctly A held that the appeal filed by the appellant was time-barred and hence untenable.

2. The order which aggrieved the appellant with regard to his seniority was passed on 4-11-1984. He filed a departmental appeal against it the same month on 29-11-1984, The Tribunal has taken the view that immediately after filing the departmental appeal he should have come to the Service Tribunal within 120 days available to him. The departmental appeal itself was disposed of on 2-5-1990 and the appellant filed the Service Appeal before the Tribunal on 30-5-1990.

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3. Section 4 of the Service Tribunals Act by express words confers a right on the civil servant to appeal against the original or the appellate order of a departmental authority. This right cannot be abridged to only original order and not the appellate order. From the date of the appellate order i.e. 2-5-1990 the appeal filed within thirty days before the Service Tribunal was within time. The appeal could not be dismissed as time-barred.

4. In the circumstances, we accept the appeal, set aside the judgment of the Service Tribunal and remand the case to the Service Tribunal for decision on issues other than limitation.

A.A./F-407/S

Appeal accepted.

1997 SCMR 287

[[Supreme Court of Pakistan]

Present: Saïduzzaman Siddiqui and Muhammad Bashir
Khan Jehangiri, JJ

MUHAMMAD JAN MARWAT and another---Petitioners

versus

NAZIR MUHAMMAD and 17 others---Respondents

Civil Petition No. 76-P of 1996, decided on 15th December, 1996.

(On appeal from the judgment of N.-W.F.P. Service Tribunal, Peshawar, dated 10-1-1996 passed in Appeal No. 123/94).

(a) North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---Ss. 8 & 9---Constitution of Pakistan (1973), Art.212(3)---Promotion--Seniority---Civil servant's case was deferred by Departmental Promotion Committee while his juniors were promoted---Civil servant was subsequently promoted with effect from the date when his juniors were promoted---Civil servant's claim to seniority was accepted by Service Tribunal and he was assigned seniority to his juniors---Validity---Nothing was on record to indicate that civil servant was superseded when his juniors were promoted to Grade-18---Civil servant's case having been deferred when his juniors were promoted and he having been subsequently promoted, he would rank senior to all those persons who were promoted earlier to him but ranked junior to him in lower grade when they were promoted---Service Tribunal had, thus, rightly found civil servant to be senior to petitioners who were admittedly junior to him in Grade-17.

(b) North-West Frontier Province Service Tribunals Act (XVIII of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212(3)---Appeal before Service Tribunal---Competency---Departmental representation/appeal filed by civil servant remained un-disposed of for a long time---Secretary of concerned department, however, informed Head of civil servant's department through letter, that representation/appeal of civil servant had been turned down---Copy of such letter was endorsed to civil servant, who admittedly filed appeal before Service Tribunal within 30 days from the date of such letter---Appeal filed before Service Tribunal was, thus, within time---Departmental appeal of civil servant having not been dismissed on ground of limitation, Service Tribunal could not have dismissed such appeal as not competent---No exception could be taken to order of Service Tribunal deciding appeal of civil servant on merits---Leave to appeal was refused in circumstances.

Zafar Iqbal v. WAPDA 1995 SCMR 16 and Anwar Muhammad v. General Manager, Pakistan Railways 1995 SCMR 950 ref.

Qazi Attiqur Rehman, Advocate Supreme Court and Abdul Hamid Qureshi, Advocate-on-Record for Petitioners.

M. Sardar Khan, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No. 1.

Date of hearing: 15th December, 1996.

JUDGMENT

SAIDUZZAMAN SIDDIQUI, J.---The petitioners are seeking leave to appeal against the judgment of N.-W.F.P. Service Tribunal dated 10-1-1996 whereby the learned Tribunal accepted service appeal filed by respondent No.1 against the departmental authority and

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held respondent No.1 eligible for pro forma promotion w.e.f. 15-9-1985 and also declared him senior to respondents Nos.5 to 18.

2. The admitted position in the case is that respondent No. 1 was senior to the petitioners in the lower grade namely, grade-17. The respondent No.1 was considered for promotion alongwith the petitioners and others but his case was deferred by the Departmental Promotion Committee (DPC) while his juniors were promoted to the next grade on 15-9-1985. The respondent No.1 was also subsequently promoted to grade-18 w.e.f. 26-3-1987 vide notification dated 26-10-1987. The respondent No.1 made a representation to the departmental authority to give effect to his promotion to grade-18 either from 10-8-1982 or 15-9-1985, the dates on which persons junior to him were promoted to grade-18. The departmental authority finally communicated respondent No.1 on 6-2-1994 that his representation for ante-dating his promotion has not been accepted where after respondent No.1 preferred appeal before the Service Tribunal which has been accepted.

3. In seeking leave to appeal, the learned counsel for the petitioners raised two-fold contentions. It is firstly, contended that respondent No.1 was considered by the D.P.C. and he was superseded when his juniors were promoted to next grade namely grade-18. The second contention of the learned counsel for the petitioners is that respondent No. 1 failed to prefer service appeal before the Service Tribunal within limitation prescribed for filing of appeal as he could at the most wait only for 120 days after filing departmental representation for submitting his service appeal before the Service Tribunal. The contentions raised by the learned counsel for the petitioners have not impressed us.

4. The learned Tribunal categorically held in the impugned judgment after perusing the minutes of Provincial Selection Board held on 3-8-1985 which were summoned in the case, that the case of respondent No.1 for promotion to grade-18 was deferred. The learned counsel for the caveator has also drawn our attention to the parawise comments filed by the department before the learned Tribunal wherein the allegation of respondent No. 1 that his case for promotion to grade-18 was only deferred by the Provincial Selection Board was not denied. There is nothing on record before us to show that respondent No.1 was superseded when his juniors were promoted to grade-18. As the case of respondent No.1 was deferred by D.P.C. and he was subsequently promoted, according to well-settled principles of seniority, respondent No. 1 would rank senior to all those persons who were promoted earlier to him but ranked junior to him in the lower grade from where they were promoted. We, therefore, do not find any error in the order of Tribunal in declaring respondent No.1 senior to the petitioners and other private respondents as admittedly respondent No. 1 was senior to them in the next lower grade namely, grade-17. The second contention of the learned counsel for the petitioners is that the appeal before the learned Tribunal was incompetent as it was filed long after making the representation to departmental authority by the respondent No.1. It is contended that under the law, respondent No.1 should have approached the Service Tribunal within 30 days of the expiry of the period of 90 days from the date of filing of the departmental representation/appeal, if the same was not decided. The record produced before us indicates that the departmental representation/appeal filed by respondent No. 1 remained un-disposed of for a long-time. However, in reply to a letter sent by the Chief Conservator of Forests, N.-W.F.P. to the Secretary, Forestry, Fisheries and Wildlife Department, Government of N.-W.F.P. on 6-2-1994, the latter informed the Chief Conservator of Forests that the appeal /representation of respondent No.1 has been turned down. The copy off this letter was endorsed to respondent No. 1 on 29-3-1994. It is not disputed that from the date of this letter the appeal filed by respondent No. 1 before the Tribunal, was within time. In the case of Zafar Iqbal v. WAPDA (1995 SCMR 16), this Court while considering the period of limitation within which an aggrieved civil servant could file appeal before the Service Tribunal observed as follows:--

"3. It seems that section 4, Service Tribunals Act, prescribes two periods of limitation for preferring appeals to the Tribunal. An aggrieved civil servant can come to the Tribunal after his appeal for representation before the department has been disposed of, or, he can wait for the decision on his departmental appeal for 90 days and then file an appeal before the Tribunal without waiting any further; in this case the appellant chose to wait for the final decision on his departmental appeal and he filed the appeal before the Tribunal within 30 days of the communication of the order of the rejection of his appeal. It is to be noticed

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that even though his appeal was rejected on 30-9-1986 the order of rejection was not communicated to him till 21-11-1986 and he preferred the appeal before the Tribunal on 4-12-1986. In the circumstances his appeal could not be dismissed on the ground of limitation. Accordingly, we accept this appeal, set aside the judgment of the learned Tribunal and direct that the appellant's appeal should be disposed of in accordance with law.

Similarly, as the departmental authority has not dismissed the representation/appeal of respondent No. 1 on the ground of limitation, the Tribunal could not dismiss the appeal of respondent No. 1 as not competent, see Anwar Muhammad v. General Manager, Pakistan Railways (1995 SCMR 950). Therefore, no exception could be taken to the order of Tribunal deciding the appeal of respondent No. 1 on merits."

5. No case is made out for interference with the order of Service Tribunal.

The petition is, accordingly, dismissed and leave is refused.

A.A./M-3342/S

Leave refused.

2002 S C M R 1383

[Supreme Court of Pakistan]

Present: Muhammad Bashir Jehangiri, Actg. C. J., Ch. Muhammad Arif and Mian Muhammad Ajmal, JJ

MUHAMMAD ASLAM JAVED---Appellant

versus

GOVERNMENT OF PAKISTAN through Secretary, Establishment Division, Islamabad and 6 others---Respondents

Civil Appeal No. 1213 of 1995, decided on 30th May, 2001.

(On appeal from the judgment dated 5-6-1995 passed by the Federal Service Tribunal, Islamabad in Appeal No. 14(R) of 1995).

Service Tribunals Act (LXX of 1973)---

---S.4---Civil Servants Act (LXXI of 1973), S.8---Constitution of Pakistan (1973), Art.212(3)---Appeal---Limitation---Civil servant on 3-2-1990 represented against provisional seniority list dated 21-1-1990, but Authority upheld said list through order dated 30-11-1994---Civil servant on coming to know of said decision applied for its copy, which was supplied to him on 27-2-1995, whereafter he tiled appeal before Service Tribunal on 27-3-1995, but same was dismissed as being time-barred---Validity---Case of authority was not that either civil servant had not represented against provisional seniority list or appellate order, dated 30-11-1994 had been conveyed/supplied to him earlier than 27-2-1995 or he had not filed appeal before Tribunal on 27-3-1995 i.e. within 30 days of the supply of copy of appellate order dated 30-11-1994 rejecting his representation on 27-2-1994 against provisional seniority list dated 21-1-1990, went a long way in establishing his bona tides in making appeal against appellate order within 30 days of receipt of its copy on 27-3-1995---Supreme Court accepted the appeal, set aside the impugned judgment and remanded the case to Service Tribunal for decision on issues other than limitation.

Syed Firdos Ali v. Secretary, Establishment Division, Islamabad and 2 others 1997 SCMR 1160 rel.

Muhammad Arshad Saeed, D.I.-G. Police Government of Pakistan through Secretary, Establishment Division, Islamabad and 29 others 1994 SCMR 1033 ref.

Fazal Ellahi Siddiqui, Advocate Supreme Court with Ejaz Muhammad Khan, Advocate-on-Record (absent) for Appellant.

~~M. Nawaz Bhatti, Deputy Attorney General with Raja Abdul Ghafoor, Advocate-on-Record for Respondents Nos. 1 to 3.~~

Nemo for Respondents Nos.4 to 7.

Date of hearing: 30th May, 2001.

JUDGMENT

CH. MUHAMMAD ARIF, J.---The relevant facts as also the question of law giving rise to this Appeal with the leave of the Court stand mentioned in leave, granting order, dated 15-11-1995 against judgment dated 5-6-1995 of the Federal Service Tribunal, hereinafter referred to as the Tribunal, paras. 2 and 3 whereof read thus:--

"2. It is stated by the learned counsel that the petitioner, an Assistant in the office of Protector of Emigrants felt aggrieved of the provisional seniority list dated 21-1-1990 wherein he was shown junior to the respondents. He represented against it on 3-2-1990, This was followed by several reminders/applications but no response was given by the authorities. The petitioner ultimately approached the Wafaqi Mohtasib

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on 28-3-1994 who advised him to keep in touch with the Manpower Division for redressal of his grievance. The Establishment Division vide O.M. dated 30-11-1994, addressed to the Manpower Division, upheld the seniority position assailed by the petitioner. On coming to know of this decision, the petitioner made an application to the Director (Admn.), Bureau of Emigration, for copy of the Establishment Division's O.M. dated 30-11-1994 which copy was supplied to him on 27-2-1995. Petitioner then challenged the decision of the Establishment Division in an appeal filed before the Federal Service Tribunal on 27-3-1995.

"3. Learned counsel contended that the appeal against the decision of the Establishment Division filed within 30 days of the receipt thereof was well within time and the view taken to the contrary by the learned Tribunal was not tenable. It was further contended by the learned counsel that the petitioner's representation/appeal remained pending with departmental Authorities for all these years and the petitioner had been pursuing it very diligently. He could not be held responsible for their failure to dispose of the matter expeditiously. The learned Tribunal was in error in holding that the petitioner having agitated the grievance in 1988, he should not have waited for such a long time for getting the final reply for the purpose of filing the appeal before the Tribunal. Learned counsel also submitted that the judgment of this Court (1994 SCMR 1033) relied upon by the learned Tribunal is distinguishable on facts."

2. Mr. Fazal Elahi Siddiqui, learned Advocate Supreme Court appearing in support of this appeal has referred to the communication exchanged between the Government of Pakistan, Bureau of Emigration and Overseas Employment, Labour Manpower and Overseas Pakistanis Division (Manpower and Overseas Pakistanis Wing), Wafaqi Mohtasib Secretariat, Islamabad and the appellant as also between Wafaqi Mohtasib (Ombudsman)'s Secretariat, the appellant and Director (Admn.), Bureau of Emigration and Overseas Employment, Islamabad on the subjects: (i) 'Seniority of Assistants (BPS-11)' (pp. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54), (ii) 'Provisional Seniority List of Assistants (BPS-11/15) of Bureau of Emigration and Overseas Employment, Islamabad' (pp. 55 to 58), (iii) 'Representations against the Seniority of Messrs Pir Khitab Shah and Allah Dad, Assistant made by Messrs Aslam Javed and Ghulam Hussain Assistants' Memorandum No. 1471/89.Estt/Enig.1, dated 4-12-1993 (p.59), (iv) 'Delay in responding various applications/representations made to the employer' (p.60), (v) 'Failure to respond to representations', dated April 16, 1994, April 26, 1994, November 16, 1994, 4-10-1994 and 28th September, 1994 (pp. 61, 62, 63, 64 and 65), (vi) 'Seniority of Assistants, B-11 in the Bureau of Emigration and Overseas Employment' dated 26-2-1995 (p.66), (vii) 'Provisional Seniority List of Assistants (BPS-11/15) in the Bureau of Emigration and Overseas Employment' (p.67) and (viii) Office Memorandum No. 1/53/ 94-R-6, Islamabad, the 30th November, 1994 (p.68), to contend that as many as 22 reminders were issued by and/or at the instance of the appellant to the concerned quarters for deciding his departmental representation addressed to the Director-General, Bureau of Emigration and Overseas Employment, Government of Pakistan, Islamabad on 3-2-1990 (pp.26-28). It was only on 27-2-1995 that Establishment Division O.M. No. 1/53/94-R-6 dated 30-11-1994 was supplied to his client on 27-2-1995 whereafter he made the appeal before the Tribunal on 27-3-1995 (incorrectly mentioned as 26-3-1995 in leave granting order dated 15-11-1995). According to him, the Tribunal was in error in holding that his client was in any manner responsible for not making an appeal earlier than 27-3-1995 in that section 4 of the Service Tribunals Act, 1973 (No.LXX of 1973) clearly provides for a concerned civil servant having the statutory right to file an appeal against an order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service ... within thirty days of the communication of such order to him.... In this behalf he has made a reference to Syed Firdos Ali v. Secretary, Establishment Division, Islamabad and 2 others (1997 SCMR 1160) in which this Court ruled as under:--

"3. Section 4 of the Service Tribunals Act by express words confers a right on the civil servant to appeal against the original or the appellate order of a Departmental Authority. This right cannot be abridged to only original order and not the appellate order. From the date of the appellate order i.e. 2-5-1990 the appeal filed within thirty days before the Service Tribunal was within time. The appeal could not be dismissed as time-barred."

He reiterated the chronology of events between the years 1990 and 1995 to contend that copy of Establishment Division O. M. No.1 /53/94-R-6 dated 30-11-1994 was supplied to his client on 27-2-1995 and his appeal before the Tribunal on 27-3-1995 cannot but be held to be within time. He concluded his arguments by submitting that reliance placed by the Tribunal on Muhammad Arshad Saeed, D.I.-G. Police v. Government of Pakistan through Secretary, Establishment Division, Islamabad and 29 others (1994 SCMR 1033) for non-suiting his client cannot be countenanced in law.

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3. Contrarily, Mr. Muhammad Nawaz Bhatti, learned Deputy Attorney-General for Pakistan appearing on behalf of official respondents (Nos. 1 to 5) has supported the findings recorded by the Tribunal to the effect that Appeal No. 141(R) of 1995 was time-barred.

4. Nobody has entered appearance on behalf of the private respondents.

5. We have considered the arguments addressed at the Bar and have also been taken through the available material by Mr. Fazal Elahi Siddiqui and the learned Law Officer.

6. It is not the case of the official respondents that: (i) either the appellant did not represent against Provisional Seniority List dated 21-1-1990 to the Director-General, Bureau of Emigration and Overseas Employment Government of Pakistan, Islamabad on 3-2-1990-----or (ii) the Establishment Division O.M. No.1/53/94-R-6, dated 30-11-1994 was conveyed/supplied to appellant Muhammad Aslam Javed earlier than 27-2-1995-----or (ii) the appellant did not file Appeal No. 141(R) of 1995 before the Tribunal on 27-3-1995 i.e. within 30 days of the supply of copy of Establishment Division O.M. No.1/53/94-R-6, dated 30-11-1994.

7. We find that the dismissal of Appeal No.141(R) of 1995 by the Tribunal as time-barred cannot stand a detailed scrutiny of the attending facts and circumstances of this in juxtaposition with the contents of the communications between all concerned, including the Wafaqi Mohtasib Secretariat, between the years 1990 and 1995. The fact that the appellant was made to run from pillar to post for well over a period of 5-1/4 years to obtain copy of Establishment Division O.M. No.1/53/94-R-6, dated 30-11-1994 rejecting his representation against Provisional Seniority List dated 21-1-1990 on 27-2-1995, goes a long way in establishing his bona fides in making appeal against the appellate order dated 30-11-1994 within 30 days of the receipt of its copy i.e. on 27-3-1995. The case of Syed Firdos Ali (supra) is on all fours with the present case.

8. In view of the above discussion, we are of the considered view that this appeal qualifies for being accepted, judgment, dated 5-6-1995 of the Tribunal set aside and case remanded to the Federal Service

9. The above are the reasons for our short order of even date which reads thus:--

"For reasons to be recorded, we accept the appeal, set aside the impugned order of the learned Federal Service Tribunal on the point of limitation and remand the case to it to decide it on merits. Costs to follow the event."

S.A.K./M-345/S ????????

Case remanded.

Att. Gen.
Muhammad Asif

①②

③④

Anx-M

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provisions of Limitation Act, 1908 would fully be attracted. [2005 YLR 1931] No period of limitation would run for challenging an order which is passed in violation of mandatory provision of law. [2007 SCMR 834] Limitation would not run against a judgment passed without jurisdiction as the same is nullity in the eyes of law. [2011 P Cr L J 411]

There are weighty judgments of the Superior Courts of Pakistan holding that a void order is only a type of an illegal order and if it has created certain consequences, an aggrieved person must get rid of it. One of the objects of legal system, particularly to prescribed limitation is to settle rights of parties and provide certainty in human affairs. If it is accepted that no limitation runs against void order, then it will have the effect of unsettling the rights and may affect transaction which may have taken place meanwhile and thus prejudice a third party. [2007 SCMR 914; PLD 1977 S.C. 599] Even against a void order an aggrieved person is required to initiate proceedings with reasonable time. [2001 SCMR 1062]

6. **Laches.** Where provisions of Limitation Act, 1908 do not apply, when principle of laches would play a role. [PLJ 2005 Kar 75]

7. **Co-sharer.** No limitation for a co-sharer to enforce his right of inheritance against another co-sharer. [PLD 2005 Lah. 578 + 2005 YLR 2198]

8. **Right to sue—Right to sue** accrues when the right of the plaintiff is denied by the defendant. PLD 2000 Lah 385.

9. **Technicalities—Technicalities** have to be avoided unless it is essential to comply with them on grounds of public policy. English system of administration of justice on which our own is based may be to certain extent technical but we are not to take from that system its defects. Any system, which by giving effect to the form and not to the substance defeats substantive rights, is defective to that extent. Ideal must always be a system that gives it every person what is his. [PLD 2011 Kar. 426]

4. **Where Court is closed when period expires.** Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

NOTES

Extension of limitation. Where period of limitation for an action is provided by law, equitable considerations cannot be attracted, applied and adhered to against the express provisions of the limitation, so as to override, defeat and nullify the law. It is the duty of the Court under this section to apply relevant and correct provision of law on the basis of the admitted fact of the case irrespective, whether the concerned party has raised the plea or not. Courts can neither grant extension or exclude time from specific period of limitation except where a case squarely falls within the purview, ambit and mischief of Ss. 4 to 24 of Limitation Act, 1908. Such extension of limitation cannot be allowed by Court while exercising inherent jurisdiction. [PLD 2005 Lah 129]

5. **Extension of period in certain cases.** Any appeal or application for a revision or a review or judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

70 87

3. **Intra Court Appeal.** Law requires filing of Intra Court Appeal along with impugned order within limitation period of 20 days. Appeal filed after expiry of its limitation period without certified copy is not a valid presentation. [2010 MLD 466] Every Intra Court Appeal filed against the order of a Single Judge of High Court as per Order XLI, Rule 1, C.P.C., has to be accompanied with a copy of the decree appealed from. The time limit for such appeal is twenty days from the date of the decree as per Article 151 of the Limitation Act, 1908. Section 12 of the Limitation Act, 1908 allows the time elapsed between the day of the application and the day of obtaining copy of the decree. The decree should bear date on which it was signed and drawn in accordance with the judgment. Time for filing the appeal will commence from the date of decree and copy of the judgment can be dispensed with by the Court, but not the decree, as appeal is incompetent if the same is filed without the decree. Article 151 of Limitation Act, 1908 clearly stipulates the period of 20 days for filing appeal commences from the date of decree or order as per Order XLI, Rule 1, C.P.C., appeal has to be accompanied with a copy of the decree. If these two provisions of law are read together, it would reveal that the limitation would start running from the date of decree, which is 20 days and any appeal filed thereafter would be barred by limitation. [2011 MLD 1597] Once time begin to run it does not stop, and an appeal filed after the expiry of limitation period would abate as a whole. [2011 MLD 1597]

13. **Exclusion of time of defendant's absence from Pakistan and certain other territories.** In computing the period of limitation prescribed for any suit the time during which the defendant has been absent from Pakistan and from the territories beyond Pakistan under the administration of the Central Government shall be excluded.

NOTES

Redemption of evacuee land. Non-Muslim mortgagee leaving Pakistan and limitation has stopped to run in 1947. Evacuee interest allotted to the private respondents. Entries in jamabandis on the basis of mutation to be considered acknowledgment on which occasion fresh period of limitation would start running. Application for redemption filed within 60 years of such entry within time. [PLD 2005 Lah 119]

14. **Exclusion of time of proceeding bona fide in Court without jurisdiction.** (1) In computing the period of limitation prescribed for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

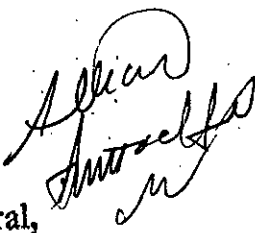
(2) In computing the period of limitation prescribed for any application the time during which the application has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature is unable to entertain it.

Explanation I. In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceeding therein ended, shall both be counted.

Explanation II. For the purposes of this section, a plaintiff or an application resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III. For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

To,


The Director General,
Elementary & Secondary Education,
Peshawar.

(71)

Subject: Departmental Appeal against the order dated 09/02/2013 wherein appellant has been removed from service which is illegal against law and facts.

Respected Sir,

Appellant humbly submits as under:

1. That appellant was appointed as Chwokidar in Govt Girls Higher Secondary School Shewa Tehsil Razzar District Swabi vide order dated 07/10/2006 (Copy of the appointment order is attached as Annexure A)
2. That appellant performed his duty to the entire satisfaction of his superiors.
3. That appellant has neither been given any explanation nor charge sheet nor show cause notice earlier.
4. That appellant has never remained absent even for a single day in the past.
5. That thus appellant was fit and best suitable with respect to performance of his duty and particularly punctuality and regular attendance.
6. That thus everything was going well and appellant was one of the best civil servant.
7. That unfortunately, one day i.e on 01/02/2012, appellant was falsely charged for the murder of Asad Ali along with Akhtar Ali and Nadeem sons of Abdul Hassan vide FIR No 123 dated 01/02/2012 Police Station Kalu Khan Swabi (Copy of FIR is attached as Annexure B)
8. That appellant was on duty on 01/02/2012 in School.
9. That appellant informed the School's Principal through a written application for leave, on 02/02/2012 at the hand of his father namely Naeem. (Copy of the said application dated 02/02/2012 for extra-ordinary leave is attached as Annexure C)
10. That unfortunately said application was not processed and not acted upon for which appellant may not be penalized.
11. That as it was a matter of high risk to appellant's life so attendance in school was beyond imagination in Pashtoon Society.

- (78) (2)
12. That the elders and locals of the village were constantly approaching legal heirs of the deceased that appellant is innocent and they have spoiled life of appellant for no good reason, however, these efforts finally bore fruit on 25/03/2016 which is visible from order of A.S.J IV Swabi dated 25/03/2016 as appellant is acquitted. (Copy of the order/judgment dated 25/03/2016 is attached as Annexure D)
 13. That neither any notice nor letter has been served upon the appellant nor notice published in 2x daily newspaper as per requirement of law.
 14. That appellant immediately after his release on bail approached the Principal of School for duty it was delayed on the pretext that your file/service record is with officers of Education Department.
 15. That appellant was running from pillar to the post including officers of Education Department but in vain (Copies of application dated ~~12-1-2016~~ and ~~20-4-2016~~ for posting are attached as Annexure E)
 16. That appellant was constrained to approach the Honorable Peshawar High Court Peshawar through writ petition no. 1513-P/2018 on the ground that there is neither suspension nor dismissal of appellant wherein comments were submitted on 9th March 2018 by Education Department providing an order dated 19/02/2013 of removal of appellant (Copy of writ/comments of Department dated 09/03/2018 and removal order dated 19/02/2013 is attached as Annexure F)
 17. That during pendency of said writ petition, instead of Director Education, DEO Female Swabi passed order dated 26/03/2018 on appeal of appellant for posting and rejected the same (Copy of order dated 26/03/2018 as well as application for posting is attached as Annexure G)
 18. That appellant challenged said order of DEO Female Swabi through service appeal No: 628/2018 on 19/04/2018, within one month wherein comments were asked and filed by Education Department (Copy of service appeal and reply is attached as Annexure H)
 19. That the writ petition was disposed off vide order dated 14/01/2019 that his services have been regularized in the year 2008 and service appeal is pending in Service Tribunal (Copy of order dated 14/01/2019 of PHC is attached as Annexure I)
 20. That at this juncture, appellant engaged another counsel namely Amjad Ali Advocate Supreme Court wherein Tribunal observed that neither appellate authority i.e Director Education under KP Appeal rules 1986 has decided appeal nor in the service appeal removal order has been challenged, so counsel for appellant filed application dated 18/01/2022 for withdrawal of service appeal with permission to file fresh one, after exhausting the procedural

remedies as well as substantial right of Departmental appeal which is accepted vide order dated 18/01/2022 by Service Tribunal (Copy of the application dated 18/01/2022 for withdrawal as well as order dated 18/01/2022 of Service Tribunal is attached as Annexure J)

21. That removal order dated 19/02/2013 has not been served upon the appellant and this fact has been admitted by Service Tribunal as well by accepting application for withdrawal and underlined the same in Para 2 of application plus posting in Para No 1 of application.

22. That as per famous recent judgment of KP Subordinate Judicial Tribunal in S.A No 06/2021 titled as Kalim Arshad Khan vs Peshawar High Court Peshawar decided on 18/12/2021 held that the appeal is not time barred as it is not decided on merit (Copy of judgment dated 18/12/2021 is attached as Annexure K)

23. That the Honorable Tribunal relied upon reported judgment of Honorable Supreme Court 1997 SCMR 1160-287, 2002 SCMR 1383 wherein departmental appellate authority decided appeal (Copy of reported judgment is attached as Annexure L)

24. That as per KP Appeal Rules 1986, this departmental appeal is within time from date of knowledge coupled with judgment of Honorable Peshawar High Court showing to decide his departmental appeal on merit and Honorable Service Tribunal, noting that departmental appeal need to be filed against removal order, plus as per Section 5 and Section 14 of the Limitation Act, time spent in wrong forums is condonable. (Section 5 and Section 14 of Limitation Act is attached as Annexure M)

25. That appellant approached this Honorable appellate authority for setting aside removal order dated 09/02/2013 on following grounds:

GROUND:

A. Because admittedly, appellant never remained absent in the past than instant one, thus he can't be termed as habitual absentee as per judgment of KP Service Tribunal (Copy of judgment of Chairman of Honorable KP Service Tribunal is attached as Annexure N)

B. Because in the peculiar circumstances as per judgment of Honorable Tribunal upheld by Honorable Supreme Court of Pakistan can't be termed as willful as there was a serious threat to his life (Copy of judgment of Service Tribunal and Supreme Court is attached as Annexure O)

C. Because neither charge sheet nor statement of allegation nor inquiry has been conducted.

(74)

- D. Because the request of appellant for leave has been conveniently ignored and not decided till date.
- E. Because leave was available at credit of appellant and had the application for leave decided in time there would be no occasion of passing of impugned order of removal.
- F. Because as per Revised Leave Rules 1981, extra-ordinary leave can be granted to appellant.
- G. Because post facto orders can also be passed by the Departments in routine for the ends of justice when facts are known to the officers, subsequently.
- H. Because it would be in the interest of Department as well as appellant to reinstate him as he is trained and experienced and ready to serve.
- I. Because removal order is back dated as EDO himself admits in Para 5 of order dated 26/03/2018 that officers were separated and record was not available and his case remained out of sight.
- J. Because since absence is neither willful nor intentional nor deliberate, so appellant can't be heavily punished.
- K. Because acquittal means exoneration from all charges including absence from criminal law as well as service law.
- L. Because اعذرني بالاحسان is demand of Holy Quran.
- M. Because appellant is jobless and titled for back benefits.
- N. Because appellate authority is bound under the law to decide departmental appeal on merit.

It is therefore humbly prayed that removal order dated 19/02/2013 may please be set aside and appellant may please be reinstated in service with all back benefits.

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Appellant
Muhammad Zakria S/O Muhammad Naeem
R/O Mohallah Sheikhan, Shewa Tehsil Razzar,
District Swabi.
Cell No. 0300-5687871

Through

Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

Dated: 04/02/2022



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
 KHYBER PAKHTUNKHWA PESHAWAR.
 No. LISA /E.No 12/A-20-C-IV/Swabi
 Phone: 091-9225344 Email: ddadmin.eses@gmail.com
 Dated Peshawar the 30 / 03 / 2022

86
 AIX-0
 (75)

To
 The District Education Officer
 (Female) Swabi.

Subject: **DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 19.2.2013, WHEREIN APPELLANT HAS BEEN REMOVED FROM SERVICE WHICH IS ILLEGAL AGAINST LAW AND FACTS**

Memo:

I am directed to refer to your letter No 742 dated 14/03/2022 on the subject cited above and to ask you that the appeal in r/o Muhammad Zakria Ex-Chowkidar has been examined/analyzed by this office hence inform the appellant concerned that his appeal has been rejected by the appellate authority.

[Signature]
 29/3/22

Assistant Director (Admn)
 Directorate E& Secondary Education
 Khyber Pakhtunkhwa, Peshawar

Encls: No. _____

Copy forwarded to the: -

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Master File.

[Signature]
 29/3/22

Assistant Director (Admn)
 Directorate E& Secondary Education
 Khyber Pakhtunkhwa, Peshawar

[Signature]
 29/3/22

[Large Signature]

1. Appeal rejected by District IV Appeal Rejected (APPEAL REJECTED OF Muhammad zakria (for

the status of the appellant is conspicuous, contemptuous and ludicrous.

That as per rule 20 of Khyber Pakhtunkhwa Government servants conduct rules 1987, he has committed misdeed.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR



(76)

Service Appeal No. 1682/2020

Member Peshawar
Khyber Pakhtunkhwa Service Tribunal

No. 142-8

02/03/2020

Habib Shah, No.1710
S/o Rahim Shah R/o Haji Mian Kalay, Jehangir Abad
P/o Kalpani Railway Station, Tehsil Takht Bhai, District
Mardan.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary,
Home & Trimble Affairs, Civil Secretariat,
Peshawar.
2. Inspector General of Police, KP Peshawar.
3. Deputy Inspector General Mardan Division,
Mardan
4. District Police Officer, Mardan

.....Respondents

~~Submitted to~~
~~Registrar~~
2/3/2020

Re-submitted to
and filed.

~~Registrar~~
12/03/2020

SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER
DATED 17.07.2018 BY RESPONDENT
NO.2 (RECEIVED ON 20.2.2020),
ORDER DATED 03.11.2016 BY
RESPONDENT NO.4, ORDER DATED
31.03.2017 PASSED BY D.I.G,
MARDAN WHICH ARE ILLEGAL
AGAINST LAW AND FACTS.

ATTESTED

Registrar
Khyber Pakhtunkhwa Service Tribunal

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1682/2020

Date of Institution 02.03.2020

Date of Decision 10.01.2022



Habib Shah, No. 1710 S/o Rahim Shah R/o Haji Mian Kalay, Jehangir Abad P/o Kalpani Railway Station, Tehsil Takht Bhal, District Mardan.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs, Civil Secretariat, Peshawar and three others.

(Respondents)

Taimur Ali Khan,
Advocate

For Appellant

Muhammad Adeel Butt,
Additional Advocate General

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 joined Police Department as Constable in 2011. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 03-11-2016. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 31-03-2017. The appellant filed revision petition, which was also rejected vide order dated 17-07-2018, hence the instant service appeal with prayers that the impugned orders dated 03-11-2016, 31-03-2017 and 17-07-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

(Signature)
Secretary, Home & Tribal Affairs
Civil Secretariat, Peshawar

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05. Record reveals that the appellant while performing duty with a Polio team, was attacked by miscreants on 19-05-2015 and the appellant sustained firearm injuries, who was shifted to the hospital, where he was under treatment for quite long time, which is evident from the letter dated 03-08-2015 of District Police Officer addressed to Medical Superintendent regarding health condition of the appellant. After resuming duty, the appellant was posted at a station, where he was allegedly found absent and the appellant was proceeded against and was ultimately dismissed from service vide order dated 05-01-2016. The appellate authority however, vide order dated 24-02-2016 re-instated him into service by converting his major penalty into minor penalty of stoppage of two increments.

Wm

06. In the meanwhile, a letter was received from Public Prosecutor Anti-Terrorist Court vide his letter dated 19-01-2016 that the appellant had denied his statement in the court of law in a case, in which the appellant had sustained firearm injuries. Upon such allegations, explanation dated 29-02-2016 of the appellant was called followed by a show cause notice issued on 10-03-2016. The appellant responded to the show cause that the appellant could not recognize the culprits as he was injured and was not in his senses; hence, he had given correct statement in the court of law. Record is silent as to whether the appellant was further proceeded or not in that case, but the appellant was again transferred to the same station, where the appellant was earlier proceeded on the charges of absence. Again, the appellant was proceeded against on the charges of absence and was issued charge sheet/statement of allegations and inquiry was conducted. The appellant in response to the show cause notice had submitted his reply reiterating the stance that absence of the appellant was not willful but was due to his illness and also submitted his medical prescriptions, which were checked by the inquiry officer but were not taken into consideration. The appellant in reply to show cause notice had pointed out that he was not absent from duty on the

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second occasion but the respondents wanted to penalize me for a fault, for which I had already been penalized.

07. We have observed that absence of the appellant was neither so long nor willful but was due to compelling reason of his illness, which however was not taken into consideration. Even otherwise absence on medical grounds without permission of the competent authority does not constitute gross misconduct entailing major punishment of dismissal from service. The appellant was not guilty of charges of gross misconduct or dereliction therefore, with the penalty of dismissal from service for the charge of absence is on higher side hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. We have noted that vide the impugned order of dismissal the absence period of the appellant was treated as leave without pay, hence the authority had itself condoned the absence by allowing him leave without pay. Hence there is no justification with the authority to penalize the appellant for such absence which has been recognized. Wisdom to this effect is derived from judgment of Supreme Court of India reported as 2007 SCMR 434 and 2012 TD (Service) 345. The appellant was suspended on 10.12.2009 for the charge of absence but was reinstated on 10.12.2009. The appellant was also charged with gross misconduct about the credibility of the proceedings conducted in the

08. We are of the view that the punishment awarded to the appellant is not departmentally. It is well admitted that the appellant was absent from duty due to his illness, which has already been admitted by the inquiry officer in his report. In this view of the matter, while taking into account the absence period of the appellant, his length of service and the fact that the appellant is a long standing employee, this Tribunal is of the view that the punishment awarded to the appellant appears to be harsh. Moreover this Tribunal had already granted relief in numerous cases of similar nature.

ATTESTED

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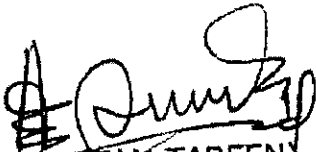
02. Learned counsel for the appellant has contended that the impugned appellate order dated 17-07-2018 was communicated to the appellant on 20-02-2020 and just after communication of the order, the appellant filed the instant service appeal on 03-03-2020, hence the delay in filing service appeal was not intentional; that aggrieved civil servant could prefer representation to prescribed authority or appeal to Tribunal from the date of communication of the impugned order. Reliance was placed on 2011 SCMR 1111; that in the impugned order of dismissal, absence period of the appellant was treated as leave without pay, thus his absence period was regularized and there remains no ground to further penalize the appellant; that the appellant has not been treated in accordance with law, as no proper inquiry was conducted, thus the appellant was condemned unheard; that absence of the appellant was not intentional but was due to compelling reason of his illness and such stance had already been taken by the appellant in his departmental appeal, but such aspect of the appellant was not taken into consideration; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt.


03. Learned Additional Advocate General for official respondents has contended that the appellant has properly been proceeded against by issuing him charge sheet/statement of allegations and the same were received by the appellant himself on 05-09-2016; that the appellant willfully absented himself from lawful duty without permission of the competent authority; that proper inquiry was conducted by DSP Headquarters and during the course of inquiry, the appellant was afforded appropriate opportunity of defense; that the appellant was issued show cause notice but the appellant failed to prove his innocence; that departmental appeal of the appellant was rejected being devoid of merit.

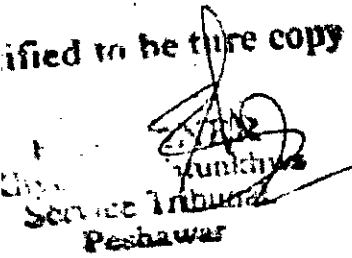
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09. As a sequel to the above, the instant appeal is partially accepted. The impugned orders are set aside and the appellant is re-instated in service by converting the penalty of dismissal from service into stoppage of two increments. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ified to be three copy

Service Tribunal
Peshawar

Date of Presentation of Application 21-2-22
No. 26/100
C. No. 41/-
V. 30/-
Date of Copy 21-2-22
Date of Copy 21-2-22



IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Shakerullah Jan.
Mr. Justice Ijaz-ul-Hassan.
Mr. Justice Mohammad Qaim Jan Khan.

Petition No. 249-P/2007.
(An appeal against the order dated 16.02.2007
passed by NWFP Service Tribunal, Peshawar,
in Appeal No. 236/2006)

Government of NWFP, etc.

Petitioner(s).

Versus

Abdul Hassan.

Respondent(s).

For the Petitioner(s):

Mr. Qasir Rasheed, Addl. A.G., NWFP.

For the Respondent(s):

Mr. Taseen Hussain, AOR.

Date of Hearing:

24.12.2008.

JUDGMENT

Mian Shakerullah Jan, J: - The respondent, who was appointed as A.W.I in the Bajaur Agency and posted at G.I.S. Navagai, who later on was transferred to G.I.S. Torru, Mardan, was dismissed from service on the ground that after being involved in a murder case he was sentenced to imprisonment for life. The respondent after availing the departmental remedy approached the Service Tribunal with a prayer that his dismissal may be converted into that of compulsory retirement. His this prayer was accepted. It is this order which the petitioner/Education Department has challenged and seeking leave to appeal. It is not an order of the kind to justify interference by this Court. Resultantly, leave to appeal is refused and the petition is dismissed.

Sd. Mr. Justice Mian Shakerullah Jan
Sd. Mr. Justice Ijaz-ul-Hassan
Sd. Mr. Justice Mohammad Qaim Jan Khan

Certified to be true copy
[Signature]
Assistant Registrar
Supreme Court of Pakistan,
Peshawar.

PESHAWAR

24.12.2008.

(Parikh)

Not approved for reporting:

[Signature]
03/11/09

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE JAVED IQBAL
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE SAYED ZAHID HUSSAIN

CIVIL PETITION NO. 704 OF 2008

(On appeal from the judgment dated 19.3.2009
of the Federal Service Tribunal, Islamabad
passed in Appeal No.23(P)CS of 2003).

Akhtar Ali

Petitioner

Versus

Director Federal Government
Educational Institution FGET DTA,
Rawalpindi and others

Respondents

For the petitioner

Mr. Amjad Ali, ASC

For the respondents

Agha Tariq Mehmood, D.A.G.

Date of hearing:

21.4.2009

JUDGMENT

SAYED ZAHID HUSSAIN, J.— Akhtar Ali petitioner was Trained Under Graduate Teacher (TUGT) F.G High school (PRC), Mardan who on 19.8.2000 absented from duty. He was suspended on 27.9.2000 which suspension was extended latter on and was issued notice dated 19.4.2001 for being absent from duty. Since no reply was received show-cause-notice dated 06.7.2001 was issued calling for reply thereto within 15 days. As this notice also remained un-responded, a final show-cause-notice dated 04.9.2001

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

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Amjad Ali
Agha Tariq Mehmood

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was issued in terms of section 3 (i)(b) of Removal From Service (Special Powers) Ordinance, 2000. He was eventually removed from service on 23.10.2001. Departmental appeal for reinstatement in service was made by him on 18.11.2002. Having no response to the same, he approached the Federal Service Tribunal through an appeal dated 06.2.2003, which was dismissed by the learned Federal Service Tribunal, Islamabad on 19.3.2008. Aggrieved thereby he has invoked the jurisdiction of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan. In that notice to respondents was ordered to be issued by this Court to consider the quantum of punishment in the matter.

2. The learned counsel for the petitioner and the learned Deputy Attorney General have been heard primarily to consider as to whether the penalty of removal from service was justified in the facts and circumstances of the case. The contention of the learned counsel for the petitioner is that the absence of the petitioner from duty was due to the circumstances beyond his control as he had been involved in a murder case in case FIR No. 511 dated 19.8.2000 registered under Section 302/34 PPC; which fact was brought to

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the notice of the Headmaster of the School informing that due to threat to his life it had become impossible for him to attend the school and he may be granted leave with effect from 21.8.2000. It is contended that he was acquitted in that case on 13.11.2002 by the Trial Court on the basis of compromise. Whereafter, he approached his school when he learnt of his removal from service and agitated the matter, departmentally and thereafter before the learned Tribunal. According to him the view taken by the learned Tribunal in the case was not based on correct appreciation of the matter. He places reliance upon Auditor-General of Pakistan and others versus Muhammad Ali and others, (2006 SCMR 60) and Abdul Hassan versus Secretary, Education (S&L) N.W.F.P. and 3 others, (2008 PLC (C.S.) 77) to contend that harsh penalty of removal from service deserved to be reduced to some minor penalty.

3. The learned Deputy Attorney General, Pakistan, however, supports the order made by the departmental authority and the judgment of the Federal Service Tribunal and seeks dismissal of the petition.

4. The factual background is not in dispute. We have considered the matter from various angles and find that the petitioner who got employment as Teacher in the year 1984, had unblemished service record but

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due to involvement in the case he absented from duty with effect from 19.8.2000 due to threat to his life. He had made an application to the Headmaster of the School also to this effect. The notices dated 19.4.2001, 6.7.2001 and 4.9.2001 remained un responded having not been received by him. These were the circumstances preventing him from continuing to perform his duty as a Teacher. As soon as he was acquitted by the Court on 13.11.2002 he approached the authorities and agitated the matter for his reinstatement within the Department and before the Tribunal. No doubt he remained absent but the punishment he has been awarded i.e. removal from service, appear to be too harsh and disproportionate. It may be observed that while proceeding against a person under section 3 of the Removal From Service (Special Powers) Ordinance 2000, the competent authority had the discretion to dismiss or remove from service or compulsorily retire from service, or reduce the person concerned to lower post or pay scale or impose one or more minor penalties. It may be observed that Clause (a) of section 3 (1) of the Ordinance deals with the inefficiency of a person in Government service or being habitually absent from duty without prior approval of leave. But a person guilty of misconduct (clause b) or a

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person who is corrupt (clause c) etc. have been dealt with separately. While imposing penalty the competent authority is thus expected to keep in mind the gravity and severity of the allegations and past conduct of the person concerned. The petitioner's removal from service was not the only option for the competent authority. He could be awarded other penalty of lesser implications. When he filed appeal before the Federal Service Tribunal even the learned Tribunal did not advert to this aspect of the matter although under section 5 of the Service Tribunal Act, 1973, the Tribunal had power on appeal to "confirm, set aside, vary or modify the order appeal against". There is no dearth of precedents where the Tribunal modified the orders of the departmental authority by converting the penalties and substituting order in place of removal from service. For instance in Abdul Hassan versus Secretary, Education (S&L) NWFP and 3 others, (2008 PLC (C.S.) 77), the NWFP Service Tribunal ordered the conversion of dismissal order from service with that of compulsory retirement. Incidentally, in that case also the appellant had been involved in a murder case who had been sentenced to imprisonment for life and after undergoing the sentence, years after his dismissal from service he filed appeal before the Service Tribunal and the Tribunal

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altered the penalty. The petition for leave C.P. No. 249-P of 2007 filed by the Government of NWFP against the order of the Tribunal was dismissed by this Court on 24.12.2008. In Shamim Ahmed Kazmi versus Pakistan International Airlines Corporation and another, (2005 SCMR 638), the Federal Service Tribunal had ordered the conversion of dismissal from service into compulsory retirement which was maintained by this Court by dismissing the petition thereagainst. In Agriculture Development Bank of Pakistan through Chairman and another versus Akif Javed, (2005 SCMR 752), the penalty of dismissal from service was modified by the Federal Service Tribunal to compulsory retirement where-against the petition was dismissed by this Court. In Auditor-General of Pakistan and others versus Muhammad Ali and others, (2006 SCMR 60), removal from service order was converted into reduction in time scale by the Federal Service Tribunal where against the appeal of the Department was dismissed by this Court. Reference may also be made to Javed Akhtar and others versus Chief Engineer, Highway Department and others, (2006 SCMR 1018). As to the scope of powers of the Tribunal under the Service Tribunal Act and of this Court under Article 212 reference may be made to

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Islamic Republic of Pakistan versus Dr. Safdar Mahmood, (PLD 1983 SC 100), Water and Power Development Authority, Lahore and 2 others versus Muhammad Yousaf, Test Inspector, (PLD 1996 SC 840); Mian Shafiuddin, Deputy Director and 4 others versus Surat Khan Marri, Director Regional Information Office, Islamabad and 41 others, (1991 SCMR 2216) and Aijaz Nabi Abbasi versus Water and Power Development Authority and another, (1992 SCMR 774).

5. Even this Court while hearing petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, had been exercising its jurisdiction in appropriate cases of converting the penalty found not commensurate to the nature of the charges. In Inspector-General (Prisons) NWFP Peshawar and another versus Syed Jaffar Shah, Ex-Assistant Superintendent Jail and others, 2006 SCMR 815), the judgment of the Tribunal was modified to convert the penalties imposed by the departmental authority. In Abdul Sattar and another versus Director Food, Punjab and others (2007 PLC (C.S.) 319), this Court ordered the conversion of penalty of dismissal from service into compulsory retirement from service. In Muhammad Ali S. Bukhari versus

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Federation of Pakistan through Establishment
Secretary, Islamabad and 2 others, (2008 PLC (C.S)

428), modifying the judgment of the learned Tribunal this Court ordered the conversion of penalty of compulsory retirement into reduction of two steps in time scale for a period of two years.

6. The object of making reference to the above cited precedents is that not only the Tribunal while dealing with an appeal under section 5 of the Act has the power to vary and modify the order of departmental authority; this Court while sitting in appeal over the judgment of the learned Tribunal can also exercise such a power to meet the ends of justice dependent upon of course the facts and circumstances of each case.

7. In the instant case as noted above the petitioner who had a long unblemished service of about 17 years had by force of circumstances (involvement in a case in which he was latter on acquitted) been prevented from performing his duty as Teacher. He was absent from duty entailing some penalty under the law. His removal from service in the circumstances was too harsh a penalty for him. We had therefore, on conclusion of hearing passed the following short order:-

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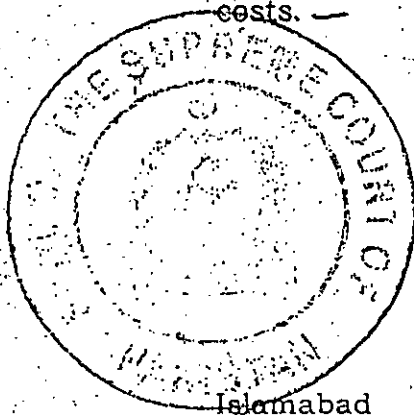
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"For the reasons to be recorded separately, after having heard the learned counsel for the parties at length, we are inclined to convert this petition into appeal which is accepted and penalty of removal from service is converted to that of compulsory retirement."

These are the reasons for the above order

accepting the appeal partially with no order as to

costs.



Islamabad
21.4.2009.
(Naseer)

Mr. Iqbal J
Mr. Nasir-ul-Mulk J
Mr. Qazi Zahid Hussain J

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Not approved for reporting

5/9/09

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بعدالت صاحب سون ٹریڈنگ ایسٹاٹ

(99)

20/4/22
مختار علی ایڈووکیٹ

20/4/22

مورخہ:

مقدمہ:

دعویٰ:

جرم:

بنام:

مختار علی ایڈووکیٹ

باجت نہرو انڈیا

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آین مقام لاہور کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان ایڈووکیٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ

برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک در پیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر
دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا ایبل کی برآمدگی اور منسوخی نیز دائر کرنے ایبل نگرانی و نظر ثانی و پیروی کرنے کا
اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ
التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔
لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

20/4/22
العبد

20/4/22
گواہ

20/4/22
المرقوم:
العبد

بمقام
لاہور کے لیے منظور ہے۔

Amjad Ali
ADVOCATE
SUPREME COURT

مختار علی ایڈووکیٹ