

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1440/2019

Date of Institution ... 30.10.2019

Date of Decision ... 13.01.2022

Mr. Shahab Gul, Ex-Constable No. 1410, Police Lines, Peshawar.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa Peshawar and four others.

... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Kabirullah Khattak,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the case are

that the appellant joined Police Department as Constable vide order dated 29-07-1968. The appellant was dismissed from service on the charges of absence from duty vide order dated 26-10-1992. Absence of the appellant was basically due to his involvement in an FIR U/Ss 302/34 PPC Dated 25-03-1993. The appellant was acquitted of the charges vide judgment dated 08-01-1997. After acquittal, the appellant filed departmental appeal, which was rejected. Feeling aggrieved, the appellant filed service appeal No. 269/1997 before this tribunal, which was rejected vide judgment dated 20-08-1998. The appellant filed CPLA No. 231-P/98 before the august Supreme Court of Pakistan, which was later on withdrawn with the request to prefer an application before the concerned authority for seeking

retirement instead of re-instatement, which was allowed vide judgment dated 15-07-1999. The appellant filed departmental appeal to respondent No. 1 for releasing the compassionate allowance in favor of the appellant on the basis of his lengthy service, which was responded vide order dated 25-10-2017 that record pertaining to the appellant is not available with the respondents as the same has been destroyed as per police rules. Feeling aggrieved, the appellant filed Service Appeal No. 1244/2017 before this tribunal, which was sent to respondents vide judgment dated 23-07-2019 by treating it as a departmental appeal with orders to consider it in accordance with law, which was not responded within the statutory period, hence the instant service appeal with prayers that the appellant may be allowed/granted two third compassionate allowance in light of section 19(3) of the Civil Servant Act, 1973.

02. Learned counsel for the appellant has contended that inaction of the respondents by not allowing two third pension to the appellant is against law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his right secured under the Constitution has badly been violated; that the appellant has served for almost 24 years in police department, despite the respondents is not ready to allow compassionate allowance in favor of the appellant; that the respondents acted in arbitrary manner while not allowing the appellant his right guaranteed under the law; that in light of Section 19(3) of the Civil Servant Act, 19973, the appellant is fully entitled for receiving two third of his compassionate allowance of his service, which is about 24 years.

03. Learned Additional Advocate General for the respondents has contended that it is correct that the appellant was appointed as constable in the year 1968, but was dismissed from service due to his absence from duty; that as per report of Fauji Misal Branch, service record of the appellant has been destroyed in light of Police Rules, 12:35.

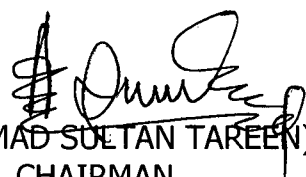
04. We have heard learned counsel for the parties and have perused the record.


05. Record reveals that the appellant fought a long legal battle first for his reinstatement in service on the basis of his acquittal from the criminal charges and later and later on for his retirement keeping in view his long service of 24 years at his credit, but he could not find favor. Lastly, he preferred service appeal, which was converted into departmental appeal and was sent to respondent for consideration, which also was not taken into consideration. Finally, the appellant invoked the jurisdiction of Section 19 (3) of Civil Servant Act, 1973, which reads as under:

"No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal".

06. In view of the provision contained in the rules ibid and keeping in view his long service rendered by the appellant as well as his acquittal from the criminal charges, we are inclined to accept the instant appeal with direction to respondents to grant two third of the pension to the appellant on compassionate grounds. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN



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


ORDER
13.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak,
Additional Advocate General for the respondents present. Arguments
heard and record perused.

Vide our detailed judgment of today, separately placed on file, we
are inclined to accept the instant appeal with direction to respondents to
grant two third of the pension to the appellant on compassionate grounds.
Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
13.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

03.06.2021

Appellant with counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Raziq, H.C and Naseeb Khan, S.O and Haneef Khan, AAO for the respondents present.

Respondents have furnished written reply alongwith cost of Rs. 1000/-. Cost has been handed over to appellant and receipt whereof obtained and placed on file. The appeal is assigned to D.B for arguments on 12.10.2021.



Chairman

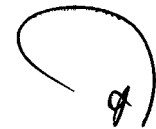
12.10.2021

Junior to counsel for appellant present.

Asif Masood Ali Shah, learned Deputy District Attorney for respondents present.

Former submitted an application for adjournment as senior counsel is busy before Hon'ble Peshawar High Court; granted. To come up for arguments on 07.01.2022 before D.B.

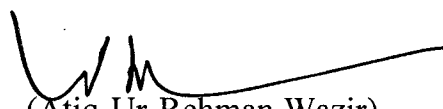

(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

07.01 .2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Arguments heard. To come up for order before the D.B on 13.01.2022.


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


Chairman

03.02.2021

Appellant with counsel and Addl. AG alongwith Raziq H.C for respondents present.

Former has submitted an application for impleadment of the Capital City Police Officer as one of the respondents. The reason for impleadment has been noted in the application to be inadvertence in non arrangement of CCPO as a respondent.


The appeal is at initial stage and is fixed today for submission of reply/comments by the respondents, therefore, the application is allowed. Office shall make necessary endorsement in the calendar of respondents as per procedure. Mr. Raziq accepts notice of the appeal on behalf of added respondent. Respondents shall positively furnish reply/comments on 01.04.2021 before S.B. The costs of Rs.1000/- shall also be paid on the adjourned date.


Chairman

01.04.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG alongwith Raziq Reader for respondents present.

Written reply/comments on behalf of respondents not submitted. Representative of respondents requested for further time to submit written reply/comments. Request is allowed, subject to cost of Rs. 1000/-. To come up for reply/comments on 03.06.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member (E)

26.10.2020

Nemo for parties.

Kabir Ullah Khattak learned Additional Advocate General present.

Written reply on behalf of respondents is still awaited. Notice be issued to respondents by way of last chance, for submission of written reply/comments for 10.12.2020 before S.B.



(Rozina Rehman)
Member (J)

11.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Naseeb Khan S.O and Wisal H.C for respondents present.

Again, a request was made for adjournment in order to submit reply/comments which is allowed on cost of Rs.1000/-. To come up for written reply/comments on 03.02.2021 before S.B.



(Rozina Rehman)
Member (J)

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.



Reader

09.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Written reply on behalf of respondents was not submitted. Learned AAG requested for adjournment in order to submit written reply/comments. Opportunity is granted. To come up for written reply/comments on 08.09.2020 before S.B.



Member (J)

08.09.2020

Counsel for the appellant and Addl. AG for the respondents present.

Learned Addl. AG requests for time to contact the respondents and furnished ~~the~~ the reply/comments from the respondents. Adjourned to 26.10.2020 on which date the requisite reply/comments shall be positively submitted.



Chairman

21.01.2020

Appellant present in person.

Requests for adjournment due to general strike of the Bar. Adjourned to 02.03.2020 before S.B.

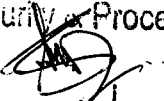

Chairman

02.03.2020

Counsel for the appellant Shahab Gul present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. He was imposed major penalty of removal from service. It was further contended that after availing the remedy of departmental appeal, the appellant filed service appeal for reinstatement but the same was dismissed. It was further contended that since the appellant was having 24 years service in his credit, therefore, under section 19 (3) of the Civil Servant Act, 1973, the appellant was entitled for 2/3 of compassionate allowance, therefore, the appellant filed service appeal before this Tribunal but this Tribunal treated the said service appeal as departmental appeal and directed the departmental authority to decide the same as early as possible vide order dated 23.07.2019 but the same was not decided by the respondent-department within the stipulated period hence, the present service appeal. Learned counsel for the appellant contended that since the appellant has 24 years service in his credit therefore, section 19 (3) of the Civil Servant Act, 1973, the appellant was entitled for 2/3 of normal pension as compassionate allowance.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 15.04.2020 before S.B.

Appellant Deposited
Security & Process Fee


03/3/20


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 1440 /2019

SHAHAB GUL V/S POLICE DEPTT:

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APPELLANT

THROUGH: 
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 1440 /2019

Diary No. 1525

Dated 30/10/2019

Mr. Shahab Gul, Ex-constable No. 1410,
Police Lines, Peshawar.....

APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Account Officer, District Peshawar.

over-stated
03/10/19

5. Capital City Police Officer Peshawar

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR THE GRANT OF
COMPASSIONATE ALLOWANCE IN LIGHT OF SECTION 19(3)
OF THE CIVIL SERVANT ACT, 1973 AND AGAINST NO ACTION
TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the appellant may very kindly be allowed/granted two third compassionate allowance in light of Section 19(3) of the Civil Servant Act, 1973. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed as Constable No.1410 in the respondent Department vide order dated 29.07.1968. That right from appointment the appellant has served the respondent Department quite efficiently and upto the entire satisfaction of his superiors. Copy of appointment letter is attached as annexure.....**A.**
- 2- That during service the appellant was absented from duty due to some domestic problems. That the respondent Department issued order dated 26.10.1992 whereby major penalty of dismissal from service was imposed upon the appellant. Copy of the dismissal order is attached as annexure.....**B.**
- 3- That later on the appellant was charged in case FIR No. 103m, dated 25.03.1993 under section 302/34 PPC in Police Station Mathani. That

Filed to-day
Registrar
30/10/19

later on the appellant was acquitted in the above mentioned criminal case on the basis of compromise. Copy of the FIR & Judgment are attached as annexure.....**C & D.**

4- That after acquittal in the criminal case the appellant was preferred Departmental before the appellate authority but the same was rejected. That appellant feeling aggrieved filed service appeal No. 269/1997 before the august Tribunal which was dismissed vide judgment dated 20.08.1998. Copies of the service appeal & judgment are attached as annexure.....**E.**

5- That being aggrieved the appellant filed CPLA No.231-P/98 before the Honorable Supreme Court of Pakistan which was later on withdrawn with the request prefer an application before the concerned authorities for seeking retirement on regular basis instead of re-instatement, which was allowed and ordered accordingly. Copy of the order is attached as annexure.....**F.**

6- That in pursuance of the order of the Supreme Court of Pakistan, the appellant submitted an application to the respondent No.1 for releasing the compassionate allowance in favor of the appellant on the basis of his lengthy service i.e. 24 years. Copy of the application is attached as annexure.....**G.**

7- That appellant of the appellant was pending before the concerned authority for a long period and finally the concerned authority issued a letter dated 25.10.2017 whereby the report was conveyed above the destruction of service record of the appellant. That feeling aggrieved the appellant filed service appeal No. 1244/2017 before this august Tribunal which was sent to the departmental appellate authority vide order/judgment dated 23.07.2019 for consideration and decision as a departmental appeal in accordance with law. Copies of the letter, memo of appeal/departmental appeal and order/judgment are attached as annexure.....**H, I & J.**

8- That the departmental appellate authority has not been given any response on the departmental appeal of the appellant within the stipulated period of ninety days. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not allowing/granting two third pension to the appellant is against the law, facts, norms of natural justice and materials on the record not tenable in the eye of law.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as

such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

- C- That appellant has served the Police Department for more than 23 years but inspite of that the respondent Department is not willing to issue two third compassionate allowance in favor of the appellant.
- D- That the respondent Department acted in arbitrary and malafide manner while not issuing two third compassionate allowance to the appellant.
- E- That the inaction of the respondents is discriminatory while not issuing two third compassionate allowance to the appellant in light of section 19(3) of the Civil Servant Act, 1973.
- F- That in light of section 19(3) of the Civil Servant Act, 1973, the appellant is fully entitle for receiving two this compassionate allowance of his service which is about 24 years.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of appellant may be accepted as prayed for.

Dated: 30.10.2019

APPELLANT


SHAHAB GUL

THROUGH:


NOOR MOHAMMAD KHATTAK

&


MIR ZAMAN SAFI
ADVOCATES

(8)

A-(4)

محکمہ پبلک ریلیشنز

پریس فکری طرز بیان پریس ضلع

1181

پبلک ریلیشنز
بھارت

1181
DFL

نوٹیشن:-

پریس فکری طرز بیان پریس ضلع کے لئے
پریس فکری طرز بیان پریس ضلع کے لئے

ATTESTED

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ATTESTED

Handwritten signature

BETTER COPY (6) B

O R D E R.

H.C. Shahab Gul No. 1410 of Police

Lines Peshawar was placed under suspension vide order No. 4668 dated 1/10/1992 on the charge of his wilful absence from duty w.e.f. 9/7/92. A Show Cause Notice was issued to him at his Home Address through local vide this office No. 1321/SP-HQ dated 23/6/92. The Local Police reported that the defaulter H.C. was not available on the given address and had migrated to Daru Adam Khel alongwith his family. The local police also pasted duplicate of the show cause notice at out door of defaulter H.C. and ~~xx~~ in this regard recorded the statement of Malik Luqman.

In light of the above facts, the Defaulter Head Constable is dismissed from service.

"The period of absence shall be treated as leave without pay.

No. 5218 Dt. 26/10/92.

Sd/-
M. Manzoor
Supdt of Police
H. Qrs Peshawar.

No. 1739-42/SP-HQ dated Peshawar the 26/10/1992.

Copies for n/action to the:-

1.P.O. (2) CRC (3) OASI (4) PMC with papers.

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B-6-1

O R D E R

H.C. Shahad Gul NO. 1410 of Police Lines Peshawar was placed under suspension vide Ob. NO. 4668 dated 1.10.1992 on the charge of his willful absence from duty w.e.i. 9.7.1992. A Show Cause Notice was issued to him at his home address through Mr. M. Manzoor, office NO. 1321/SP-HQ dated 1.10.1992. It was reported that he was not available on the given address and had migrated to Dara Adam Khel alongwith his family. The local Police also pasted duplicate of the Show Cause Notice at the door of defaulter H.C. and in this regard recorded the statement of Malik Luqman.

In light of the above facts, the defaulter Head Constable is dismissed from service. The period of absence shall be treated as leave without pay.

Ob. No. 5218 dt. 26-10-92

M. Manzoor
(M. MANZOOR)
SUPDT. OF POLICE,
HQRS PESHAWAR.

No. 1739-42 /SP-HQ dated Peshawar the 26-10-92.

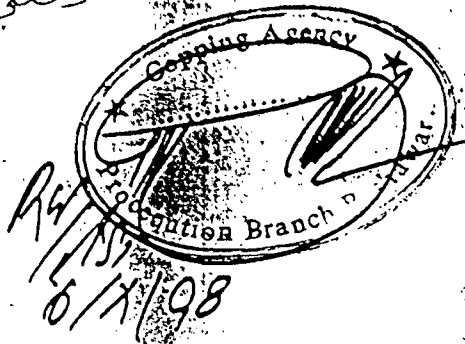
Copies for distribution to the :-
1. TO (2) CRC (3) CASI (4) POC with papers.

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کتاب - صلیب ما کشف عظمی ہے۔ مفلحان روایت سے صورت ہم باہر نکلے گا۔ صحت سے رہے
کیا ہے۔ فریاد کو حدایت ہونی، انہیں باہر اور پوریشن روئے المدیح ریجیڈ۔ صحت
صحت سے مدعی صحت و نفوی ہوسے نسیم نفیسہ روئے صحت سے۔ یہ ہم پوریشن
رہوٹ کڑا رہے۔ دستفوری تشریحی صحت کا کھانہ سننے 25 3/93



صحت کا کھانہ سننے
صحت کا کھانہ سننے

Amir
Muttan
05-10-98

دستخط

عبد

اطلاع کی نیچے اطلاع دہندہ کا دستخط ہوگا یا ان کی نمبر یا نشان لگایا جائے گا اور اسے تحریر کر کے ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔
حروف الف یا ب شروع روشنائی سے بالمتقابل نام پر ایک وزم یا شہر علی الترتیب واسطے ہائے گان علامہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہو
کھنڈا پائے۔

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Announced Peshawar. VSJ, Peshawar

Malik Nisanda Khan ASJ.

Petitioners Sakhi Jan and Samand Khan with counsel present.

Petitioners were charged in case MTR No. 101 dated 25.07.97 u/a 302/74 PPC P.S. Matani for having committed the murder of Nawab Gul.

Today Samar Gul brother/complainant, Khatai Gul, Sahrab Gul brothers, Taj Bibi mother of decd Nawab Gul appeared and recorded their joint statement to the effect that they have patched up the matter with the petitioners through the intervention of the elders of the locality and do not charge them any more. They have pardoned the petitioners in the name of Allah waiving their right of Diyat and Qisas. They have got no objection if the pre-arrest bail of the petitioners is confirmed. They are the only legal heirs of the decd and the decd was unmarried. The compromise deed Ex.D.A and affidavit Ex.D.B correctly bears the signature-thumb impression of the legal heirs of the decd and elders of the locality.

In view of the above I accept the petition on the basis of compromise and confirm the pre-arrest bail of the petitioners.

11/1/97

11/1/97

11/1/97

SHAMIR KHAN

11/1/97

11/1/97

ATTESTED

8.1.97.

①-②

BEFORE THE CHAIRMAN, SERVICES TRIBUNAL, PESHAWAR.

E (10)
N.W.F. Province
Services Tribunal
Diary No. 678
Dated 14-4-97

Civil Appeal. No. _____

Shahab Gul x. M.C.No.1410, Peshawar Police presently
R/O of Vill and P.O. Mattani, P.S. Mattani, Tehsil
and District, Peshawar.

Versus.

1. Government of N.W.F.P., through Secretary Home Department,
Civil Secretariate, Peshawar.
2. Inspector General of Police, N.W.F.P., Peshawar
3. Deputy Inspector General of Police, Peshawar Range, Pesh:.
4. Senior Superintendent of Police, Peshawar.
5. Superintendent of Police, Head Quarters, Peshawar.

APPEAL AGAINST THE IMPUGNED ORDER OF RESPONDENT NO. 3,
NO. 2484, DATED, 24.3.1997 WHERE BY THE APPEAL OF THE
APPELLANT FOR RE-INSTATEMENT, DATED 24.2.1997 WAS REJECTED.

Prayer.

On acceptance of this appeal the impugned order of
respondent No. 3 dated 24.3.1997 may kindly be set-aside
and the appellant may kindly be re-instated in service with
all back benefits.

Respectfully sheweth.

The appellant states as under:-

1. That police service was joined by the appellant on 29.7.68
and was promoted to the Rank of Head Constable in Peshawar
Police.
2. That the appellant was falsely involved in criminal case,
vide F.I.R No. 28, dated 16.2.1991 under Section 302/34 D &
Police Station Mattani, Peshawar and was placed in colum
No. 2. (Copy of the F.I.R. is annexure "A").
3. That due to enmity and unavoidable circumstances, the
appellant applied for long leave, and one month leave was
sanctioned. (Copy of the order is annexure B).

M L
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- 4. That during the leave period the appellant feel ill, and Medical certificate was submitted to the concerned officer issued by a Medical Officer of the Department. (Copy of is annexure "C").
- 5. That againe the appellant was sanctioned four week more long leave, dated 13.6.1992. Copy of the order is annexure "D".
- 6. That due to enmity and unavoidable circumstance, the appellant shifted to F.R Kohat, Dara Adam Khail alongwith his family during the leave period.
- 7. That later on the appellant was falsely involved in other case, vide F.I.R. No. 103, dated 25.3.1993 under Section 302/34 PPC, P.S. Mattani, Peshawar. Copy of the F.I.R is annexure "E".
- 8. That during this period due to serious enmity and unavoidable circumstances, the coming of the appellant to his village was out of question.
- 9. That now the appellant was released on bail on compromise basis, and after the release on bail, it was come in the knowledge of the appellant that the appellant was dismissed from service vide Order No. 5218 Dated. 26.10.91 by respondent No.5. "The period of absence shall be treated as leave without pay".
Copies are annexure F1, F2, and F3.
- 10. That the appellant filed a departmental appeal before respondent No.3, which was dismissed. (Copy of the order is annexure G, 9)
- 11. That aggrieved with the order, the appellant has come to this honourable Court on the following grounds, amongst the others.

GROUND.

- 1. That the order of the respondent, are against law and facts, hence untainable in the eyes of law.
- 2. That the absence of the appellant was not willful but was due to unavoidable circumstances and enmity and due to false

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involvement in criminal cases.

3. That due to enmity the appellant was not available on home address therefore, no charge sheet no show cause, notice, no explanation, no dismissal order was served on appellant as required under the law.
4. That the department adopted exparty proceedings while dismissing the appellant.
5. That the case of the appellant was not decided according to the service, Law and Rules.
6. That the respondents have exercised the jurisdiction not vested to them under the law and service rules.
7. That the appellant was condemned un heard while the respondents dismissed him from service.
8. That the appellant was discriminated too, victimized for no fault of the appellant.
9. That in the similar situation, the Ex. H.C. Naik Muhammad No. 2511 was re-instated in service with all back benefits.
copy is annexure 4
10. That the record of Ex. H.C. Naik Muhammad No. 2511, Peshawar Police is necessary for just decision of the case and to meet the end of justice. *††*
11. That the apps/action of the respondents are malafidi malious illegal against the law, while dismissing the departmental appeal of the appellant.
12. That the appellant served in the department for 24 Years, 2 months and 27 days.
13. That the appellant has got several Govt entries in his service record and also passed various Police courses entered in the service record of the appellant. *copies are annexure 5*
14. That there is no punishment on the character roll of the appellant and no proper enquiry was conducted after the decision of PPC/Q & D cases under section 494, Cr.P.C. but the same was neither had done previously nor after

the decision of the cases, and was dismissed without enquiry.

15. That the appellant is a poor man and have to support a large family.

Therefore, it is requested that the appellant may kindly be re-instated in service from the date of dismissal with all back benefits as well on compensation grounds.

Petitioner

شماره ۱۳
محمد اسف خان

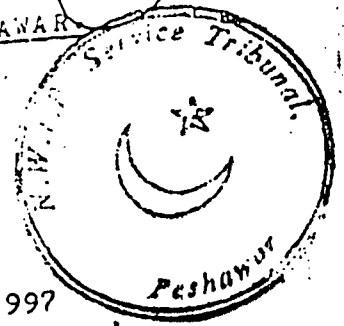
Through.

Mohammad Asif Khan
(Muhammad Asif Khan)
Advocate.

(Eid Muhammad Khatibak)
Advocate.

M.A.K.

42



APPEAL NO. 269/1997

Date of institution ... 14.4.1997
Date of decision ... 20.8.1998

Shahab Gul, Ex-H.C No. 1410,
Peshawar Police presently R/O of Vill & P.O. Mattani,
P.S. Mattani, Tehsil & District, Peshawar. .. APPELLANT

VERSUS

- 1- Government of NWFP through Secretary Home Department, Civil Secretariat, Peshawar.
- 2- Inspector General of Police, NWFP, Peshawar.
- 3- Deputy Inspector General of Police, Peshawar Range, Peshawar.
- 4- Senior Superintendent of Police, Peshawar.
- 5- Superintendent of Police, Head Quarters, Peshawar.

RESPONDENTS

Mr. Eid Mohammad Khatkhat,
Advocate.

For appellant

Mr. Mohammad Faheem Jan,
Advocate (Govt. Pleader).

For respondents

Mr. Mohammad Qaim Jan,
Mr. Mohammad Shaukat Khan,

Chairman
Member

JUDGMENT

MOHAMMAD QAIM JAN KHAN, CHAIRMAN: This is a service appeal filed by Shahab Gul appellant under section 4 of the Service Tribunals Act, 1974 against the impugned order of respondent No. 1 dated 24.3.97, whereby the appeal of the appellant for reinstatement dated 24.2.97 was rejected.

5.8.98
EXAMINED
N.W.F.P. Service Tribunal
Peshawar

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Brief facts giving rise to the present appeal are that the appellant joined police service on 29.7.68 and was promoted to the rank of Head Constable in Peshawar Police. That the appellant was falsely involved in criminal case vide FIR No. 21 dated 16.2.91 U/S 302/34 D & Q, P.S Mattani, Peshawar and was placed in column No.2. Copy of the FIR is Annexure-A. That due to enmity and unavoidable circumstances, the appellant applied for long/and one month leave was sanctioned. Copy of the order is Annexure-B. That during the leave period the appellant fell ill and medical certificate was submitted to the concerned officer issued by a Medical Officer of the department. (Copy is Annexure-C). That again the appellant was sanctioned four weeks more long leave dated 18.6.92 (copy is Annexure-D). That due to enmity and unavoidable circumstances, the appellant shifted to F.F Kotat, Darra Adam Khel alongwith his family during the leave period. That later on the appellant was falsely involved in another case vide FIR No. 103, dated 25.3.93 U/S 302/34 PPC, P.S Mattani, Peshawar. Copy of the FIR is Annexure-E. That during this period due to serious enmity and unavoidable circumstances, the coming of the appellant to his village was out of question. Now the appellant has been released on bail on compromise basis and after the release on bail, it came to the knowledge of the appellant that he has been dismissed from service vide order No. 5218, dated 26.10.92 by respondent No.5. The period of absence has been treated as leave without pay. Relevant copies are Annexures F1, F2 and F3. That the appellant has filed departmental appeal before respondent No.3 which was dismissed, hence the present appeal. Copies of the departmental appeal and the order are Annexures G & G1. The grounds of appeal are that the orders of respondent are against law and facts, hence untenable in the eye of law. That the absence of the appellant was not wilful but

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was due to unavoidable circumstances and enmity and due to false involvement in criminal cases. That due to serious enmity the appellant was not available on his home address, therefore, no charge sheet, no show cause notice, no explanation and no dismissal order was served on the appellant as required under the law. The department has adopted ex-parte proceedings while dismissing the appellant. That the case of the appellant has not been decided in accordance with service law and rules. The respondents have exercised the jurisdiction not vested in them under the law and service rules. The appellant was condemned unheard and has been dismissed from service. That the appellant has been discriminated too & victimised for no fault on his part. That in the similar situation, the Ex-H.C Naik Mohammad No. 2511 was reinstated in service with all back benefits. Copy is Annexure-H. That the record of Ex-H.C Naik Mohammad No. 2511 is necessary for just decision of the case and to meet the end of justice. That the impugned order is mala-fide, malicious, illegal and against the established rules and law. That the appellant has served the department for 24 years, 2 months and 27 days. The appellant has got several good entries in his service record and also passed various police courses entered in the service record of the appellant. Moreover, there is no punishment on the character roll of the appellant and no enquiry was conducted after the decision of PPC/ Q&D cases under section 494, Cr. P.C but the same had/ been done previously nor after the decision of the cases and the appellant was dismissed without enquiry. The appellant is a poor man and had to support a large family. In the prayer the appellant has asked for the acceptance of the present appeal and for reinstatement in service from the date of dismissal with all back benefits on compassionate grounds.

Notices were issued to the respondents. Respondent

20.8.99

ATTESTED
 EXAMINED
 BY
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No. 1 did not appear in this Tribunal despite proper service, hence proceeded against ex-parte vide order sheet No. 7 dated 2.3.98. Remaining respondents appeared through their respective representative/counsel, submitted reply refuting all the allegations of the appellant. The appellant has also submitted his rejoinder after which detailed arguments of Mr. Eld Mohammad Chhattak, Advocate for appellant and Mr. Mohammad Faheem Khan, Advocate (Government Pleader) for respondents 2 to 5 have been heard and record perused.

No preliminary/legal objection has been raised by the respondents.

On factual side the case of the appellant is simple and short. He remained absent for very long time. Twice he has been charged in murder cases. The appellant has admitted himself that he has shifted to Darra Adam Khel, F.R Kohat. Show Cause Notice and charge sheet have been duly served on his home address. As he was not available there, a duplicate copy was pasted at his last residence, followed by the impugned order of dismissal. As far as the case of one Naik Mohammad H.C is concerned, that order has been passed on 1.9.88 and no record and no document of the said H.C Naik Mohammad is available on the record. Police Force is a disciplinary force and the conduct of the appellant is such that he cannot be retained in this force as twice he has been directly charged for effective firing and murders and last of all the appellant has not impugned the original dismissal order dated 26.10.92. So with this back-ground of the case the appeal has got no legal force and the same is hereby dismissed, with no order as to costs. File be consigned to the record.

MJ

ANNOUNCED

20.8.1998

certified to be true copy

[Signature]
 JUDGE
 S.P. SERVICES

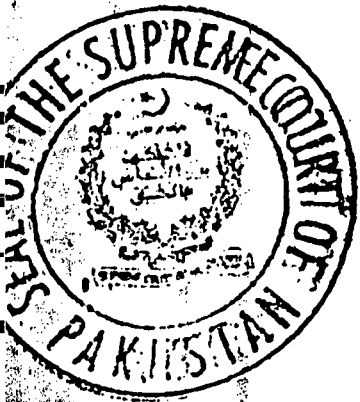
[Signature]
 (MOHAMMAD SHAUKAT KHAN)

[Signature]
 (MOHAMMAD QAIM JAN KHAN)
 CHAIRMAN

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Amir Khan - 18
F - (18)

PRESENT: Mr. Justice M. Bashir Jehangiri
Mr. Justice Munawar Ahmad Mirza
Mr. Justice Abdur Rahman Khan



CIVIL PETITION NO. 231-P/98
(Shahab Gul. Vs. Govt. of NWFP
and others.)

(On appeal from the judgment and order
of the NWFP Service Tribunal, Peshawar
dated 20.8.1998 in Appeal No. 269/1997)

For the Petitioner: Mr. K. G. Sabar, ASG/AOR
For the respondent: N.R.
Date of hearing: 15.7.1999

ORDER

Learned counsel for the petitioner seeks permission to withdraw this petition for approaching I.G Police N.W.F.P for seeking retirement instead of reinstatement in order to obtain retirement benefits accruing therefrom.

The petition is, therefore, dismissed as withdrawn. The petitioner is at liberty to seek any remedy available to him under the law from quarters concerned.

Sd/-Muhammad Bashir Jehangiri, J.
Sd/-Munawar Ahmad Mirza, J.
Sd/-Abdur Rahman Khan, J.

Peshawar
15.7.1999

Certified to be True Copy
Officer Incharge
Supreme Court of Pakistan
Registry Peshawar

M/S

EF

ججفوری صاحب انسٹیکٹمنٹ جنرل صاحب پولیس صوبہ خیبر پختونخواہ کینٹنمنٹ

19
MAY

اپیل برائے بحالی ریٹائرمنٹ پینشن اور سب سے پہلے 260
آئین پاکستان۔ حکم عدالت عظمیٰ صدر عدالت 15-7-1999
برضا سنگھ کوٹری 24 سال 2 مہینے اور 27 دن

صاحب عالی!

1. یہ کہ سائیل شہدائت میں 1410 حکم پولیس میں 29-7-1968 کو بطور
کنسٹیبل مقرر ہوئے اور حوالہ درج کی طور پر ترقی دی گئی۔

2. یہ کہ سائیل نے بددوران نوٹری اچھی کارکردگی کی بنا پر ریٹائرمنٹ اور ریٹائرمنٹ حاصل کیے ہیں۔
جس پر سائیل بجا طور پر خوش محسوس کر رہے ہیں۔ یہ کہ پاکستانی کے بہادر پولیس میں اچھی کارکردگی
کی بنا پر ایوارڈ ملے (ایوارڈ ڈزلف میں)

3. یہ کہ سائیل نے تقریباً 24 سال سے زیادہ حکم پولیس میں خدمات انجام دی ہیں
اور بددوران نوٹری کوئی غیر حاضر نہیں کی ہے۔ سائیل کی Leave Account پر پورے نوٹری
کے مطابق کافی چھٹیوں کا بھی مجموعہ موجود ہے۔ (نوٹری پر یہ مفید ہے)

4. یہ کہ نوٹری کے دوران سائیل Long Leave پر تھا۔ یہ دشمنوں نے سائیل کو
فوجداری مقدمات میں لٹا دیا۔ حالانکہ سائیل بے گناہ تھا۔ سائیل کی موجودہ
اپنی جان بچانے کی خاطر علاقہ غیر منتقل ہو گیا۔ اور ضروریات اور قدرتی
طور پر ڈیوٹی سے غائب ہو گیا۔

ATTESTED
ML

5. یہ کہ دشمنوں نے سائیل کی نوٹری کو نقصان پہنچانے کیلئے فوجداری مقدمات میں
ملوث کرنے کی کوشش کی۔ بددوران Un-avoidable circumstances کی بنا پر ریٹائرمنٹ کرنے
سے قاصر رہا جو کہ سائیل کی ایس کی بات نہیں تھی۔ حالانکہ بعد میں دشمنوں کے ساتھ
راضی نامہ ہو گیا۔ اور تمام اصول سے متبرک ہو گیا۔

6. یہ کہ صاحب سپرنٹنڈنٹ صاحب پولیس ریٹائرمنٹ نے بغیر کوئی وجوہ
بتائے بغیر حاضر کی بنا پر نوٹری سے حسب قانون suspend کر دیا گیا
لیکن تقریباً 25 دن کے بعد بغیر کسی رٹورنٹری۔ شوکار نوٹری اور نوٹری

قانونی کارروائی نہ کرنے کی بجائے نوکری سے Dismissed کر دیا گیا۔
جو کہ قانون کے مطابق بالکل نہیں ہے۔ اس حکم کی قدرت کی قانون
سروسز کے کسی بھی تقاضے کو پورا نہیں کیا گیا ہے۔ عدالت عظمیٰ
نے اس طرح کے ایسی کیسوں میں Major Punishment کو ظالمانہ حکم قرار دیا ہے۔
اور مختلف کیسوں میں نوکری پر جالی کی اصلاحات دئے ہیں۔ (مقررہ حکم لیا ہے)

۷۔ یہ کہ بمطابق نوٹیفکیشن نمبر 16-1-1992 جس میں Authorized officer اور
ایسٹریکٹ نوٹیفکیشن لیا گیا ہے۔ Order مقررہ نوٹیفکیشن کے
صلاف وزیر ہے۔ یوں مقررہ حکم قابل رفتار ہے۔ اور اس میں
ارٹیکل 4, 5, 10, 13 اور 25 کی سکیم کے تحت صلاف وزیر پر نہیں ہے۔

۸۔ یہ کہ مقررہ حکم نمبر 10-26-1992 کی رفری پر سرفراہ ہے۔
جس میں سائیل کی غیر حاضری کو Leave without pay کے طور پر Justified کر
دیا گیا ہے۔ نیز یہ کہ سائیل کی غیر حاضری Defaulter نہ ہے۔

In light of the above facts the Defaulter
Head Constable is Dismissed from Service.

The Period of Absence will be treated as leave without pay.

۹۔ یہ کہ تمام کارروائی Suspension اور Dismissal order میں بہت سارے
قانونی سقم موجود ہیں۔ Code of Criminal Procedure کے مطابق نہیں کی گئی ہے۔
سائیل بے لگاؤ تھا۔ اور پتلی پولیس ذیلی کے 24 سال سے زیادہ عرصہ
صوبہ خائشاہی اور جسٹس نے نوکری کی ہے۔ جس کی بنا پر سائیل
ریٹائرمنٹ پنشن کا حقدار ہوں۔

۱۰۔ یہ کہ اب یہ قانون بن گیا ہے۔ کہ کوئی بھی شخص حکومت کی نوکری کے بعد
پنشن دیرہ کی مرعات سے محروم نہیں کیا جائے گا۔ کیونکہ پنشن نوکری
کا اصل شمر ہوتا ہے۔

۱۱۔ یہ کہ قانون کے مطابق تنخواہ اور پنشن کی ادائیگی کیلئے بنائے گئے
کیلئے کوئی Limitation نہیں ہوتا۔ یہ Contingent cause of action ہے۔

اور اس طرح کی کیسوں میں پنشن کیلئے Condonation کا لگاؤ ہے۔
یہ کہ سائیل کی ^{circumstances} Um-avoidable کی وجہ سے غیر حاضری ہوئی
جو کہ قانوناً Condemnable ہے۔ اور اس طرح کی کیسوں میں پولیس میں

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مختصر بیان پاک و سادہ گوشت کے ساتھ بہ سیریل اور آڈیو کرتا ہے۔
 - مجھے کئی بار کہہ کر یہ وہ روز نوکری اچھی رکھا رکھو تو سو نظر رکھنے
 ہوئے مسائل کی 24 سال سے دیباہوں میں اجازت ہے کہ میں ریٹائرنگ
 پنشن عطا کروانے کی درخواستیں بنا دوں اور جلد ہی وہ کلمہ پڑھاؤنگی
 کو بڈریج Corrigendum ریٹائرنگ پنشن میں تبدیل کر دی جاوے

عین ورزش ہوگی

فقط آداب

مخاتبہ میں تسلیم کر دو

المکر قوم: ۱۵-۷-۱۹۹۹

سائیل شہاب اصل ایس جوالدار ۱۹۱۵
 گاہوں و ڈاکخانہ عینی ضلع لیٹار

ATTESTED

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no 648
13-1-17
S/1170
13/1/2017

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 189

17, dated Peshawar the 13/01/2017.

H-23

To: The Capital City Police Officer,
Peshawar.

Subject: REVIEW PETITION.

Memo: Enclosed please find herewith review petition submitted by Ex-Head Constable Shahab Gul No. 1410 of District Police Peshawar for grant of pension for recording of your para-wise comments.

His service record alongwith copy of complete enquiry file may also please be sent to this office as early as possible in connection with his review petition.

It may please be clarified that whether he has instituted a service appeal in Service Tribunal or otherwise.

(PERVEZ ELAHI)
Registrar.

For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

S.P. (Headquarter)
Please respond
to this letter
thanks

CRC/FMC
For report with
No. 280/BA dt 16/1/17

[Signature]

Police
10/01/17

(SHAH FARMAN)
Minister for Information, PR
& PHED Khyber Pakhtunkhwa

[Signature]

[Signature]



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No 091-9210641
Fax No 091-9212597

23/A

No. 19344 CRC, dated Peshawar 23/10/2017

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Subject: REVIEW PETITION

Memo:
Sir,

Kindly refer to your office memo: No.S/189/17, dated
13.01.2017 on the subject noted above.

In this connection, it is submitted that as per the
report of FMC, the Fuji Missal, Enquiry File and other relevant
documents in respect of Ex-Head Constable Shahab Gul No. 1410
was destroyed vide this office OB No. 301 dated 15.09.2017 under
Police Rules 12.35 (photocopy enclosed)

SP/HQrs:
For Capital City Police Officer,
Peshawar

ATTESTED

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P-24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

AMENDED APPEAL NO. _____/2019

IN

APPEAL NO. _____/2017

Mr. Shahab Gul, Ex-Constable No. 1410,
Police Lines, Peshawar.....**APPELLANT**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Account Officer, District Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ALLOWING/GRANTING TWO THIRD COMPASSIONATE ALLOWANCE IN LIGHT OF SECTION 19(3) OF THE CIVIL SERVANT ACT, 1973 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the appellant may very kindly be allowed/granted two third compassionate allowance in light of Section 19(3) of the Civil Servant Act, 1973. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was appointed as Constable No.1410 in the respondent Department vide order dated 29-07-1968. That right from appointment the appellant has served the respondent Department quite efficiently and upto the entire satisfaction of his superiors. Copy of the appointment letter is attached as annexure.....**A.**
- 2- That during service the appellant was absented from duty due to some domestic problems. That the respondent Department issued order dated 26.10.1992 whereby major penalty of dismissal from service was imposed upon the appellant. Copy of the dismissal order is attached as annexure.....**B.**

ATTESTED



3- That later on the appellant was charged in case FIR No.103, dated 25-03-1993 under section 302/34 PPC in Police Station Mathani. That later on the appellant was acquitted in the above mentioned criminal case on the basis of compromise. Copy of the FIR & Judgment are attached as annexure.....**C & D.**

4- That after acquittal in the criminal case the appellant was preferred Departmental appeal before the appellate authority but the same was rejected. That appellant feeling aggrieved filed service appeal No. 269/1997 before this august Tribunal which was dismissed vide judgment dated 20.08.1998. Copies of the service appeal & judgment are attached as annexure.....**E.**

5- That being aggrieved the appellant filed CPLA No.231-P/98 before the Honorable Supreme Court of Pakistan which was later on withdrawn with the request prefer an application before the concerned authorities for seeking retirement on regular basis instead of re-instatement, which was allowed and ordered accordingly. Copy of the order is attached as annexure.....**F.**

6- That in pursuance of the order of the Supreme Court of Pakistan, the appellant submitted an application to the respondent No.1 for releasing the compassionate allowance in favor of the appellant on the basis of his lengthy service i.e. 24 years. Copy of the application is attached as annexure.....**G.**

7- That application of the appellant was pending before the concerned authority for a long period and finally the concerned authority issued a letter dated 25.10.2017 whereby the report was conveyed about the destruction of service record of the appellant. Copy of the letter is attached as annexure.....**H.**


8- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal before this august tribunal on the following grounds amongst the others.

GROUND:

A- That the inaction of the respondents by allowing/granting two third pension to the appellant is against the law, facts, norms of natural justice and materials on the record hence not tenable in the eye of law.

B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 hence not tenable and liable to be set aside.

ATTESTE:

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- C- That appellant had served the Police Department for more than 23 years but inspite of that the respondent Department is not willing to issue two third compassionate allowance in favor of the appellant.
- D- That the respondent Department acted in arbitrary and malafide manner while not issuing two third compassionate allowance to the appellant.
- E- That the inaction of the respondent Department is discriminatory while not issuing two third compassionate allowance in light of section, 19(3) of the Civil Servant Act, 1973 to the appellant.
- F- That in light of section-19 of the Civil Servant Act-1973 the appellant is fully entitle for receiving two third compassionate allowance of his service which is about 24 years.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 22.07.2019.

WASTED
ML

APPELLANT

SHAHAB GUL

THROUGH:

NOOR MOHAMMAD KHATTAK

&

**MIR ZAMAN SAFI
ADVOCATES**

J-27

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

AMENDED APPEAL NO. _____/2019

IN

APPEAL NO. 1244 /2017



Mr. Shahab Gul, Ex-Constable No. 1410,
Police Lines, Peshawar.....**APPELLANT**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Account Officer, District Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ALLOWING/GRANTING TWO THIRD COMPASSIONATE ALLOWANCE IN LIGHT OF SECTION 19(3) OF THE CIVIL SERVANT ACT, 1973 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the appellant may very kindly be allowed/granted two third compassionate allowance in light of Section 19(3) of the Civil Servant Act, 1973. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

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- 1- That appellant was appointed as Constable No.1410 in the respondent Department vide order dated 29-07-1968. That right from appointment the appellant has served the respondent Department quite efficiently and upto the entire satisfaction of his superiors. Copy of the appointment letter is attached as annexure.....**A.**
- 2- That during service the appellant was absented from duty due to some domestic problems. That the respondent Department issued order dated 26.10.1992 whereby major penalty of dismissal from service was imposed upon the appellant. Copy of the dismissal order is attached as annexure.....**B.**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

Appeal No. 1244/2019
Shahab Gul vs Govt



23.07.2019

Appellant alongwith counsel present.

Amended appeal has been submitted which is made part of the original appeal.

The prayer contained in the amended appeal is to the effect that the appellant be allowed 2/3 of normal pension as Compassionate Allowance under Rule 19(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973.

The record suggests that previously the appellant had submitted applications in the year 1999 as well as in 2015, wherein, request for conversion of his penalty of dismissal from service to that of retirement was made. The record is however silent regarding any prayer made in past through departmental appeal as contained in the memorandum of amended appeal.

Learned counsel, when confronted with the position, stated that the appellant would be at present satisfied in case instant amended appeal is sent to the departmental appellate authority for its consideration and decision as a departmental appeal in accordance with law.

The request on behalf of the appellant appears to be reasonable. The delay, if any, may not hamper the legal rights of the appellant including claim for accord of pension or Compassionate Allowance. Certified copy of entire brief of instant appeal, therefore, shall be sent to the respondent No. 1 for its decision on merits at an early occasion.

Disposed of accordingly. File be consigned to record room.

Chairman

Announced:
23.07.2019

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appeal: 26-7-19
Number of Words: 800
Copying Fee: 4-00
Urgent: 16-00
Total: 20-00
Name of Counsel: [Signature]
Date of Completion: 26-7-19
Date of Delivery of Copy: 26-7-19

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Shahab Gul

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

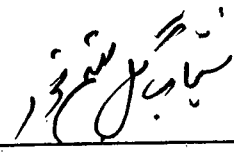
Police Department

(RESPONDENT)
(DEFENDANT)

I/We Shahab Gul

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2019



CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&

**MIR ZAMAN SAFI
ADVOCATES**

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1440/2019.

Ex- Constable Shahab Gul No.1410 of CCP, Peshawar.....Appellant.

VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1440/2019.

Ex- Constable Shahab Gul No.1410 of CCP, Peshawar.....**Appellant.**

VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

REPLY BY RESPONDENTS NO. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from the Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.
8. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.
9. That the matter has already been dismissed by this Honorable Tribunal.

FACTS:-

- (1) Correct to the extent that the appellant was appointed as constable in the year 1968 in the respondent department. It is worth to mention here that the performance of the appellant was not up to the mark. As per report of Incharge Fuiji Misal Branch, service record of appellant has been destroyed in light of Police Rules 12.35. (copy of Rules as annexure A)
- (2) The appellant while posted at Police Lines Peshawar absented himself from official and lawful duty without prior permission or leave from the competent authority. A Final Show Cause Notice was issued and served upon appellant on home address through local police station, but he failed to submit his reply. After observing all codal formalities, he was awarded major punishment of dismissal from service.
- (3) Para not related to answering respondents, record. The appellant willfully absented from his lawful duty without leave/permission.
- (4) Correct to the extent that the appellant filed departmental appeal, which after due consideration was rejected on the ground that the charges leveled against him was proved. The appellant then filed Service appeal No.269/1997 before the honorable tribunal which was also dismissed by the honorable service tribunal vide order dated 20.08.1998.

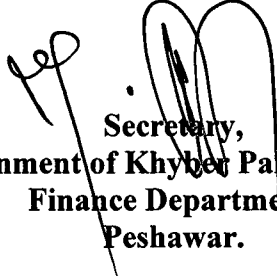
- (5) Correct to the extent that the appellant filed CPLA against the judgment of the honorable Service Tribunal, before Apex Supreme Court of Pakistan, but the same was withdrawn by appellant.
- (6) Incorrect. At the very outset appellant had sought remedy against the punishment order of dismissal from service by the competent authority and subsequently the said penalty when challenged in the honorable Service Tribunal was maintained on its own merit and appeal of the appellant was turned down vide judgment order dated 20.08.1998, which clearly suggests that punishment order passed by the respondent department was in accordance with facts and law/rules.
- (7) Incorrect as explained above, the punishment awarded to the appellant was maintained by the Service Tribunal. Then appellant approached the Apex Court by filing CPLA against the order of Service Tribunal, but when the appellant came to know that punishment awarded to him is likely to be sustained, he withdraw his petition on his own without any consent of respondent department. It is worth to clarify that respondent department had no binding to accept his application rather department has to contest his CPLA.
- (8) That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

GROUND:-


- A- Incorrect. The appellant was treated as pr law/rules. In fact the appellant availed all remedy and no injustice has been done by the respondent department.
- B- Incorrect. The appellant was treated as per law/rules and no violation of the constitution of Pakistan 1973 has been done by the respondents department.
- C- Incorrect. The appellant has also agitated the issue of compensation for his service rendered in the department, but this aspect was also ignored by the Service Tribunal and dismissed his appeal.
- D- Incorrect. In fact the appellant availed all remedy and no injustice has been done by the respondent department.
- E- Incorrect. The appellant was dismissed by the competent authority as per law/rules. The service appeal of the appellant was also dismissed by the honorable tribunal. Infact the appellant not is entitled for any compensation.
- F- Incorrect. As explained above.
- G- Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1440/2019.

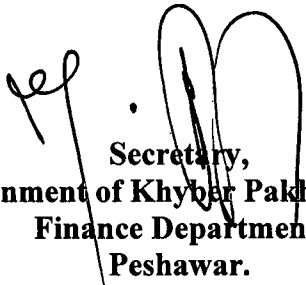
Ex- Constable Shahab Gul No.1410 of CCP, Peshawar.....**Appellant.**


VERSUS.


Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

AFFIDAVIT.

We respondents 1, 2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.**


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**


**Capital City Police Officer,
Peshawar.**

29-12-2

than specific rewards granted under the provisions of Chapter XV. Police officers are strictly forbidden either themselves to give to their subordinates or to accord any recognition to private and unauthorized testimonials from others.

12-35. Character and service rolls shall be kept in a locked cabinet containing a sufficient number of drawers for the purpose. The rolls of upper subordinates shall be kept in the upper drawers, and those of lower subordinates in the other drawers, according to their district constabulary numbers.

Custody of character rolls.

The rolls of men who have quitted the service or died shall be kept in a separate drawer for three years, after which they and the Urdu personal files (rule 12-39) relating to them shall be destroyed.

12-36. (1) Service books in form F. R. 10 as required by Articles 73 and 74, Civil Account Code, shall be maintained for all upper subordinates and establishment appointed otherwise than under the Police Act to whole time pensionable employment.

Service books.

(2) Service books shall be kept in the office in which the pay of the person concerned is drawn. Entries in service books shall be in English and shall be properly attested by the Superintendent. When non-gazetted officers are officiating in gazetted appointments their service books shall be kept by the head of the office to which they are posted, and when they are confirmed in such appointments the books shall be sent to the Accountant-General, Punjab, for record.

(3) The service books in each office should be taken up for verification of pensionable service at a fixed time each year, say in January, by the head of the office who, after satisfying himself that the services of the Government servant concerned are correctly recorded in his service book, should record in it a certificate in the following form over his signature:—

“Service verified up to.....(date) from.....
(the record from which the verification is made).”

All Records
as per lists attached
been destroyed under
supervision

08P/149
28/9/09

تمام دستاویزوں کے متعلق جانچ کر اعلیٰ اور ادنیٰ کی فوجی دستاویزات کی مطابقت
کے لئے 12 فوجی 35 کے تحت تعلق کاغذوں میں 3 سال پورے ہو چکے ہیں
جو کہ دستاویز ہیں اور یہ بھی کثیر ہیں۔ جس کی وجہ سے انہیں کون کون سے
دستاویزات، دستاویز اور دستاویزات، فوجی دستاویز اور دستاویزات کے متعلق
دستاویزات کے متعلق جانچ کر اعلیٰ اور ادنیٰ کی فوجی دستاویزات کی مطابقت

دستاویزات کے متعلق جانچ کر اعلیٰ اور ادنیٰ کی فوجی دستاویزات کی مطابقت
کے لئے 12 فوجی 35 کے تحت تعلق کاغذوں میں 3 سال پورے ہو چکے ہیں
جو کہ دستاویز ہیں اور یہ بھی کثیر ہیں۔ جس کی وجہ سے انہیں کون کون سے
دستاویزات، دستاویز اور دستاویزات، فوجی دستاویز اور دستاویزات کے متعلق
دستاویزات کے متعلق جانچ کر اعلیٰ اور ادنیٰ کی فوجی دستاویزات کی مطابقت

2006
2005
2000
1991
FMC
CCP Peshawar
11/19/09

ادنیٰ کی فوجی دستاویزات کی مطابقت
کے لئے 12 فوجی 35 کے تحت تعلق کاغذوں میں 3 سال پورے ہو چکے ہیں
جو کہ دستاویز ہیں اور یہ بھی کثیر ہیں۔ جس کی وجہ سے انہیں کون کون سے
دستاویزات، دستاویز اور دستاویزات، فوجی دستاویز اور دستاویزات کے متعلق
دستاویزات کے متعلق جانچ کر اعلیٰ اور ادنیٰ کی فوجی دستاویزات کی مطابقت

According to 12.35 of Police Rules the
role of men have quitted the service or died shall
be kept in separate drawer for three years, after which
they and under passed files (rule 12.39) relating to
them shall be destroyed.
The above record / files - missing are
5 to 9 years old, therefore it need to be
destroyed under the supervision of G.O
submitted for favour of personal order to

W/S/149
SP-HO
14-09-2009
D/S/149
14-09-2009
JAMAL
SP-HO
14-09-2009
Destruction under the
supervision of DSP/149
14-09-2009

فہرست ملازمان ٹریننگ کالج لاہور سال 92

نمبر شمار	نمبر شمار	نمبر شمار
273	21	2386
1844	22	1410
1375	23	822
1504	24	1998
1623	25	500
3335	26	3839
		2824
		504
		1425
		1615
		488
		34
		2703
		2910
		1177
		89
		1177
		4005
		3954

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No.1440/2020

Mr.Shahab Gul.....Appellant.

VERSUS

Inspector General of Police Khyber Pakhtunkhwa & others.....Respondents.

(Reply on Behalf of Respondent No. 04)

Respectfully Sheweth:-

Para No. 01 to 8.

Being an Administrative matter, the issue relates to Respondent No. 1 and 2. Hence, they are in a better position to redress the grievances of the Appellant. The Pension case of the Appellant when received to this office will be dealt in accordance with the rules. Besides, the Appellant has raised no grievances against this office.

It is pertinent to mention here that the Administrative Department as well as the appellant have not submitted the pension case of the appellant to Respondent No.4. As and when received Respondent No.4 will be entertained under the Pension rules without any delay.

Keeping in view the above mentioned facts, it is humbly prayed that the Appellant may be directed to approach Respondent No. 1 and 2 for the satisfaction of his grievances and the appeal in hand may be dismissed with cost.

For


**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

Receipt

I have received Rs. 1000/- from the official
Respondent as cost ordered by this august court,
in appeal No. 1440/2019 titled Shahab Gul,
vs Police Deptt.

Dated: 03/06/2021.

Appellant
Shahab Gul



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 518-519 1ST

Dated: 22-2-2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

1. The Inspector General of Police,
Government of Khyber Pakhtunkhwa
Peshawar.
2. Capital City Police Officer,
Government of Khyber Pakhtunkhwa
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1440/2019 MR. SHAHAB GUL.

I am directed to forward herewith a certified copy of Judgement dated 13.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

under section 161, Cr.P.C. It was never recorded in the presence of the doctor. It does not bear any date. The Investigating Officer admitted that he recorded Exh.P.A./3 on the basis of already recorded statements of Exh.P.A./2. That it was handed over to him by some unknown person. Because of the aforesaid background Exh.P.A./3 is a word-by-word reproduction of Exh.P.A./2. Khair Muhammad had remained unconscious for quite some time and was so unconscious even when the Investigating Officer contacted him in the Lady Reading Hospital, Peshawar. The strong possibility cannot be ruled out, as rightly held by the High Court, that it could be the result of consultations and prompts by the relatives. This statement also cannot be relied upon as genuine dying declaration.

5. Next is the identification of the accused on the spot. The torch in the light of which the accused were identified, was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akbar who produced the same before the Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along. There is no evidence as to how it came to the possession of Haid Akbar, who was not produced.

6. In nutshell, we are convinced that the dying declarations in the instant case are not worthy of credence and cannot be placed reliance upon in a case of capital charge. We are also convinced that it was an unseen night occurrence where the identity of the accused could not be established. The respondents, therefore, were rightly acquitted. The petition being no force in the petition, it is hereby dismissed and leave to appeal refused.

M.H./H-10/SC

Petition dismissed

2006 S C M R 1630

[Supreme Court of Pakistan]

Present: Ch. Ijaz Ahmad and Syed Jamshed Ali, JJ

EXECUTIVE DISTRICT OFFICER SCHOOLS AND LITERACY, DISTRICT DIR LOWER and others---Petitioners

versus

QAMAR DOST KHAN and others---Respondents

Civil Petitions Nos.786, 787 and 788-P of 2004, decided on 8th July 2006.

(Against the order, dated 28-8-2004 passed by High Court of Peshawar in Service Appeal No.51 of 2003).

North West Frontier Province Service Tribunals Act (I of 1974)---

Ss. 4---Appeal before Service Tribunal---Maintainability---It is only a final order, original or appellate, against which an appeal lies to North West Frontier Province Service Tribunal. [p. 1635] A

North West Frontier Province Service Tribunals Act (I of 1974)---

Ss. 4 & 7---North West Frontier Province Service Tribunals Rules,

R.27---Service Tribunal---Jurisdiction---Direction to departmental

authorities---Non-availability of any final order---Grievance of civil

servants was that after their appointment as PTC teachers, they were not

produced anywhere---Service Tribunal allowed appeals filed by civil

servants and directed departmental authority to issue posting orders---

objection raised by Authorities was that Service Tribunal did not have any

jurisdiction to issue direction to them and appeal filed by civil servants

was not maintainable as there was no final order---Validity---Powers

conferred in R.27 of North West Frontier Province Service Tribunals

Rules, 1974, were not intended to enlarge the scope of S.4 of North

West Frontier Province Service Tribunals Act, 1974---Such power was

not available to Service Tribunal while hearing an appeal and question of

maintainability of an appeal was to be answered with reference to Ss.4

of North West Frontier Province Service Tribunals Act, 1974---

objection had not been such an order within the contemplation of S.4 of

North West Frontier Province Service Tribunals Act, 1974, which could

be brought under challenge before North West Frontier Province Service

Tribunal---Relief claimed by civil servants through appeals was in the

nature of a command to departmental authority to give them suitable

posting---In essence, the civil servants were seeking writ of

certiorari which jurisdiction the Service Tribunal did not possess---

objection for leave to appeal was converted into appeal and judgment

rendered by Service Tribunal was set aside---Appeal was allowed. [p. 1635, 1637] B & H

Secretary to the Government of N.-W.F.P., Agriculture

Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289;

Amjad Malik v. Pakistan State Oils Co. Ltd. and others

PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O.

and others 2006 SCMR 285; Muhammad Sarwar v. The State

Education and others 1969 SC 278 and Board of Intermediate and Secondary Education,

through its Chairman and another v. Mst. Salma Afroz and 2

PLD 1992 SC 263 ref.

Jurisdiction---

Question of jurisdiction---Raising for the first time before Supreme

Handwritten notes:
 raised
 as
 (in) S.M.A.S
 H.A.H

(Against the order, dated 28-8-2004 passed by High Court of Peshawar in Service Appeal No. 51 of 2003)

North West Frontier Province Service Tribunals Act (I of 1974)---

S. 4---Appeal before Service Tribunal---Maintainability---It is only a final order, original or appellate, against which an appeal lies to North West Frontier Province Service Tribunal. [p. 1635] A.

North West Frontier Province Service Tribunals Act (I of 1974)---

Ss. 4 & 7---North West Frontier Province Service Tribunals Rules, R.27---Service Tribunal---Jurisdiction---Direction to departmental authorities---Non-availability of any final order---Grievance of civil servants was that after their appointment as P.T.C. teachers, they were not posted anywhere---Service Tribunal allowed appeals filed by civil servants and directed departmental authority to issue posting orders---

objection raised by Authorities was that Service Tribunal did not have any jurisdiction to issue direction to them and appeal filed by civil servants was not maintainable as there was no final order---Validity---Powers conferred on R.27 of North West Frontier Province Service Tribunals Act, 1974, were not intended to enlarge the scope of S.4 of North West Frontier Province Service Tribunals Act, 1974---Such power was not available to Service Tribunal while hearing an appeal and question of maintainability of an appeal was to be answered with reference to Ss. 4 & 7 of North West Frontier Province Service Tribunals Act, 1974---

There had not been such an order within the contemplation of S.4 of North West Frontier Province Service Tribunals Act, 1974, which could be brought under challenge before North West Frontier Province Service Tribunal. Relief claimed by civil servants through appeals was in the nature of a command to departmental authority to give them suitable posts. In essence, the civil servants were seeking writ of certiorari which jurisdiction the Service Tribunal did not possess---

Application for leave to appeal was converted into appeal and judgment rendered by Service Tribunal was set aside---Appeal was allowed. [p. 1637] B & H

Secretary to the Government of N.W.F.P., Agriculture v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; and Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2003 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. and others 2006 SCMR 285; Muhammad Sarwar v. The State Board of Intermediate and Secondary Education, Peshawar through its Chairman and another v. Mst. Salma Afroze and 2 others 2006 SC 278 and Board of Intermediate and Secondary Education, Peshawar v. Mst. Salma Afroze and 2 others 2006 SC 263 ref.

jurisdiction---

jurisdiction---Raising for the first time before Supreme Court---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

jurisdiction---

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6. In nutshell, we are convinced that the dying declarations in the instant case are not worthy of credence and cannot be placed in reliance upon in a case of capital charge. We are also convinced that the facts of the unseen night occurrence where the identity of the accused could not be established. The respondents, therefore, were rightly acquitted. Being no force in the petition, it is hereby dismissed and leave to appeal is refused.

M.H./H-10/SC

Petition

2006 S C M R 1630

[Supreme Court of Pakistan]

Present: Ch. Ijaz Ahmad and Syed Jamshed Ali, JJ.

EXECUTIVE DISTRICT OFFICER SCHOOLS AND LITERACY, DISTRICT DIR LOWER and others---Petitioners

versus

QAMAR DOST KHAN and others---Respondents

Civil Petitions Nos.786, 787 and 788-P of 2004, decided on 11/11/2006

Court---Principles---Question of jurisdiction goes to the root of case can be raised for the first time even while appearing before the high Court of country---Only constraint where a party could be said to be estopped to raise question of jurisdiction would be where the party invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates its own action and throws challenge to jurisdiction of such Court or Tribunal but even in such a case, it depends on facts of that case---Yet in another case where question of jurisdiction may not be entertained for the first time before superior Courts courts when the equities are plainly against the person raising objection and upheld consequence would be to perpetuate all ill-gotten gain or to avoid about a plainly unjust consequence---Objection to jurisdiction should be shut even though raised for the first time before Supreme Court. [p. 1636] C & E.

(d) Administration of justice---

---Duty of Court or Tribunal---Non-engaging of counsel by a party
Effect---Court or Tribunal has to decide lis before it in accordance with law and parties are not bound to engage a counsel---Justice according to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. [p. 1636] D

(e) Jurisdiction---

---Territorial or pecuniary jurisdiction---Scope---Objection to territorial or pecuniary jurisdiction is regulated by Civil Procedure Code, 1908 and Suit Valuation Act, 1887, respectively. [p. 1637] F

(f) Jurisdiction---

---Conferring of jurisdiction---Principle---Jurisdiction is conferred either Constitution or law---Consent or acquiescence has never been considered as a factor conferring jurisdiction. [p. 1637] G

Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2000 SC 1622; Ali Muhammad and others v. Muhammad Shafi and others 1996 SC 292; Shagufta Begum v. The Income Tax Officer, Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690 rel.

M. Saeed Khan, A.A.-G. for Petitioners (in all cases)

Khushdil Khan Mohmand, Advocate Supreme Court
Adam Khan, Advocate-on-Record for Respondents (in all cases)

ORDER

SYED JAMSHED ALI, J.--- This order shall dispose of Civil Petitions Nos.786, 787 and 788-P of 2004 because common questions of law and fact are involved therein. The facts of the cases are briefly noted hereunder.

2. Qamar Dost Khan, respondent in C.P. No.786-P of 2004, Gul Zaman Khan, respondent in C.P. No.787-P of 2004 and Saeed Anwar in C.P. No.788-P of 2004 claimed to have been appointed as PTC teachers by separate orders dated 23-4-1998. Their grievance in the appeals before the N.-W.F.P. Service Tribunal was that the departmental authorities were not issuing any posting order. Qamar Dost Khan, respondent in C.P. No.786-P of 2004, stated to have made a representation on 4-12-1999 to the Incharge Monitoring Cell and filed complaints and a departmental representation on 21-10-2002 for a suitable posting and then approached the learned N.-W.F.P. Service Tribunal by filing appeals on 1-2-2003.

2-A. The appeals were contested on a number of grounds including that the appeals were barred by time, and these were not maintainable as the respondents were not civil servants, since they had never taken over the charge of the post. On facts, the position taken was that the orders of appointment of the respondents were invalid and dubious. As far as the respondents, Gul Zaman Khan, respondent in C.P. No.787-P of 2004 and Saeed Anwar, respondent in C.P. No.788-P of 2004, are concerned, from the objections noted above, an additional objection was taken that they were not duly qualified on the date of submission of the appeals.

The learned Service Tribunal, however, relying on their own decision in Appeal No.2879 of 2000 titled Nasrullah v. D.E.O. (M) Dir Lower and others, allowed all the three appeals notwithstanding their observation that "it is the burden of respondent to verify the authenticity of the claims of the appellants and to request departmental enquiry, if they so desire".

The learned Additional Advocate-General, submits that the departmental appeal lay only against a final order and in these cases there was no order to be assailed before the learned Service Tribunal. The respondents were not permitted to join the posts because their appointment orders were forged and bogus and, therefore, they never attained the status of a civil servant to invoke section 4 of the N.-W.F.P. Service Tribunals Act, 1974 and that the so-called departmental appeal was filed by Qamar Dost Khan on 21-10-2002 and was not against any order, it was for directing a posting. In the other cases, he submits that no representation was filed, even it be

assumed that respondents could invoke the jurisdiction of N.-W.F.P. Service Tribunal. In case of Gul Zaman Khan and Saeed Anwar, invited our attention to the copy of the PTC certificates, showing announcement of their result on 24-2-1998 while the public notice through press, inviting applications was issued on 3-10-1997 and the closing date was 13-10-1997. It was maintained that since they were not eligible; there was no question of their being summoned for test and interview for selection to the post of PTC teachers. He submits that record of appointment of these respondents is available with the department.

5. The learned counsel for the respondents first addressed us C.P. No.786-P of 2004. On the basis of pay rolls of a number of officials whose names find mention in the order, dated 23-4-1998 (in which name of respondent Qamar Dost also appears) such as Muhammad Rasheed, Asghar Khan, Muhammad Saleem Khan, Muhammad Ishaq and Inayat Ullah which were placed on record to contend that the aforesaid officers in the said order were in receipt of salaries which was by itself sufficient to defeat the plea of the departmental authorities that the order dated 23-4-1998, was a forged document. Before we proceed further we would like to observe here that the departmental representative explained that the basis of this consolidated order, dated 23-4-1998, were separate orders, the copy of the orders being relied upon contain the two so-called selectees but as a matter of fact sixteen out of them were genuine selectees and the department had record of those sixteen. Learned counsel for the respondents strenuously relied on the case of Nasrullah Khan relied upon by the learned Service Tribunal. Secretary to the Government of N.-W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289 and Muhammad Amjad Malik v. Pakistan State Oil Co. Ltd. and others 2005 PLC (C.S.) 318 to contend that the rule of consistency was rightly followed by N.-W.F.P. Service Tribunal in allowing the appeal of the respondents. He urged that if the record was not available with the department, respondents should not be made to suffer. As far as Gul Zaman Khan and Saeed Anwar Khan are concerned, he submits that before the date of their selection, they had become eligible and, therefore, their selection was in order. As far as objection of non-maintainability of the appeal before the learned Service Tribunal is concerned, he contends that such objection was taken before the learned Service Tribunal, however, relied on rule 27 of the N.-W.F.P. Service Tribunals Rules, 1974, which according to his reading, gave jurisdiction to the learned Service Tribunal to entertain and adjudicate upon the grievance of the respondents. He maintains that the respondents had submitted their reports and had thus, become civil servants.

6. Exercising his right of rebuttal, the learned Additional Advocate-General relied on Muhammad Zahid Iqbal and others v. E.O. Mardan and others 2006 SCMR 285. Explaining the case of Nasrullah, he submitted that the fact of the said case were distinguishable because there was no allegation of fraud and forgery against Nasrullah.

7. Right of appeal has been created by section 4 of the N.-W.F.P. Service Tribunals Act, 1974. It will be appropriate to reproduce the said provision:--

"Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal having jurisdiction in the matter:

Provided that:

- (a)
 - (b)
- (underlining is ours)"

A careful reading of the said provision shows that it is only against a final original or appellate, against which an appeal lies to the N.-W.F.P. Service Tribunal. The powers of the Tribunal are given in rule 27 of the said Act, according to which "the Tribunal may on appeal set aside, vary or modify the order appeal against." (underlining is ours). Rule 27 of N.-W.F.P. Service Tribunals Rules, 1974 which is relied upon by the learned counsel for the respondents is also reproduced hereinbelow:--

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

The powers contained in rule 27 are not intended to enlarge the scope of section 4. A careful reading of the said rule shows that this power will be available to the Tribunal while hearing an appeal and the question of maintainability of an appeal is to be answered with reference to section 4 and 7 of the Act. There has not been such an order within the contemplation of section 4 which could be brought under challenge

before the learned N.-W.F.P. Service Tribunal. The relief claimed by the respondents through the appeals was in the nature of a command of the departmental authority to give them suitable posting. In essence, they were seeking issuance of writ of mandamus which jurisdiction the learned Tribunal did not possess.

8. The contention of the learned counsel for the respondents that the question of non-maintainability of the appeals before the learned Tribunal, in the absence of a final order of the departmental authority not having been raised before the learned Tribunal, could not be allowed to be raised before this Court, has not impressed us for the reason that the question of jurisdiction goes to the root of the case and could be raised for the first time even while appearing before the highest Court of the country. It is a fundamental principle of law that a Court or Tribunal has to decide the lis before it in accordance with law and parties are bound to engage a counsel. Justice according to law is the duty of the Court which can neither be abdicated in favour of the whims or ignorance of the litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. In making the above observations, I am fortified by the following observations of this Court in Muhammad Sarwar v. The State, PLD 1969 SC 278.

"It appears that the Judges were not properly advised, but it is to be said that there is a well-known adage that a Judge wears all the law of the country on the sleeve of his robe" (underlining is ours).

The rule laid down was reiterated in Board of Intermediate and Secondary Education, Lahore through its Chairman and another v. Salma Afroz and 2 others PLD 1992 SC 263. The only constraint on a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates its own action and throws challenge to the jurisdiction of the said Court or Tribunal. Even in such a case, it will depend on the facts of that case. Yet in a case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are against the person raising objection and if upheld the consequences would be to perpetuate an ill-gotten gain or to bring about a plain and palpable consequence. Examined on the basis of the above stated principles, we do not see that the objection to jurisdiction should be shut eyes and raised for the first time before this Court. We find yet another principle permitting the objection to be raised and that is to clarify the jurisdiction of the learned Tribunal lest the impugned judgment become a precedent. We may add a word of caution i.e. that this judgment

deals with the subject-matter jurisdiction and not the territorial or pecuniary jurisdiction. Objections to the said jurisdictions are regulated respectively by the Code of Civil Procedure and the Suits Valuation Act.

9. We may also add that jurisdiction is conferred by either Constitution or law. Consent or acquiescence has never been considered as a factor conferring jurisdiction. The judgments of this Court in support of the above view-point are Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SCMR 1622; Ali Muhammad and others v. Muhammad Shafi and others PLD 1996 SC 292; Shagufta Begum v. The Income Tax Officer, Circle XI, Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690.

10. Accordingly, these petitions are converted into appeals, are allowed and the judgment of the learned Service Tribunal is set aside.

H./E-2/SC

Appeal allowed.

2006 S C M R 1637

[Supreme Court of Pakistan]

Present: Javed Iqbal and Abdul Hamid Dogar, JJ

ATA ULLAH KHAN and others---Petitioners

versus

Mst. SURRAYA PARVEEN---Respondent

Petition No. 102 of 2005, decided on 13th March, 2006.

(On appeal from the order, dated 2-12-2004 of the Lahore High Court, Lahore passed in Civil Revision No. 1461 of 2003).

Punjab Pre-emption Act (IX of 1990)---

3---Constitution of Pakistan (1973), Art. 185 (3)---Superior right of pre-emption---Shafi Khalit and Shafi Jar---Talb-i-Muwathibat and Ishhad---Proof---Pre-emptor, on coming to know about sale on 22-6-1995 immediately disclosed her intention to pre-empt the suit-land of village in presence of witnesses---Sale was kept secret and pre-emptor had knowledge of pre-emptor after about two months and 24 days, fact was established and not rebutted---Factum of sending notice to pre-emptor---Ishhad on the same day i.e. 22-6-1995 after getting it attested by truthful witnesses also stood established on record---Witnesses of pre-emptor had categorically stated that she had superior right on the

Before the KP Service Tribunal, Peshawar.

S. A #s): - 1440/2019, 14127/20,
3578/2019, 7259/21.

Application for Adjournment in
the above titled appeal

Respectfully Sheweth;

- 1) That, the above titled appeals are pending adjudication before this Honourable Tribunal and fixed for hearing today on. 12.10.2021
- 2) That, Counsel for the appellants is busy before the Peshawar High Court and is unable to attend Tribunal.

Therefore, the above titled appeals may be adjourned.

12th Oct 2021.

Appellant
through
Noor Mohammad Khattak
Ase

PESHAWAR HIGH COURT, PESHAWARDAILY LIST FOR TUESDAY, 12 OCTOBER, 2021

BEFORE:-

MR. JUSTICE LAL JAN KHATTAK &
JUSTICE MS. MUSARRAT HILALI

Court No: 3

MOTION CASES

- | | | |
|---|--|--|
| 16. W.P 2622-P/2020
With IR(Travelling
matters/
Tourism/license)
(161838) | M/s Travel Agencies Associatio
V/s
Fed of Pakistan etc | Muhammad Yasir Khattak ...
<hr/> Deputy Attorney General, Ali
Gohar Durrani, Adil Saeed,
Shakeel Ashghar, Zakaullah Kh.
Aziz Ghafar, Muhammad Anwar
Khan Barvi, Writ Petition Branch
AG Office, Qalat Khan |
| 17. W.P 3034-P/2020
With IR()
(162739) | Hazrat Bilal
V/s
Govt of KPK etc | Noor Muhammad Khattak
<hr/> Hidayatullah (Focal Person),
Muhammad Khalid Matten, Writ
Petition Branch AG Office |
| 18. W.P 3400-
P/2020(Appointm
nt as Computer
Operator)
(163913) | Adil Nawaz
V/s
Govt of KPK | Fazal Iahil
<hr/> 35/81
Hidayatullah
Muhammad Khattak Matten, Writ
Petition Branch AG Office, Qala
Khan |
| 19. W.P 3484-P/2020
With
IR(Extension/Dep
utation)
(164206) | Alam Zeb
V/s
Secretary Govt KP | Abdul Rauf Rohails
<hr/> Deputy Attorney General, Asad
ullah Khan, Mr. Zakaullah Jan, f
Farhad Durrani, Muhammad
Anwar Khan Barvi, Writ Petition
Branch AG Office, Qalat Khan |
| 20. W.P 3924-P/2020
With IR()
(165632) | Rahim Khan
V/s
National Bank Pak, | Amjad Ali (Mardan)
<hr/> Muhammad Ali, Riaz Hussain |

PESHAWAR HIGH COURT, PESHAWAR

DAILY LIST FOR TUESDAY, 12 OCTOBER, 2021

MR. JUSTICE ROOH UL AMIN KHAN &
MR. JUSTICE HAZ ANWAR

Court No: 2

BEFORE:-

MOTION CASES

16. **W.P 3042-P/2020**(
(162770)
- Mst. Zainab Irshad**
V/s
Director Education etc
- Syed Rifaqat Shah**
Hidayatullah (Focal Person),
Muhammad Khalid Matten, Writ
Petition Branch AG Office
17. **W.P 3305-P/2020**
with IR(Re-
Instatement)
(163638)
- Muhammad Imran**
V/s (Date By Court)
DG NAB
- Zia ud Din Khan**
Syed Azeem Dad ADPG NAB, I
Sofia Siddiqui
18. **W.P 3466-P/2020**(
(164158)
- Muhammad Yousaf**
V/s
Govt of KPK
- ~~Noon~~ **Muhammad Khattak**
Hidayatullah (Focal Person),
Muhammad Khalid Matten, Writ
Petition Branch AG Office
19. **W.P 3820-P/2020**
With IR()
(165219)
- Arif Ullah**
V/s
Govt
- Munsif Saeed**
Hidayatullah (Focal Person),
Muhammad Khalid Matten, Writ
Petition Branch AG Office
20. **W.P 4010-P/2020**(
(165731)
- Akhtar Hussain**
V/s
Commmandant FRP
- Saadullah Khan Marwal**
Writ Petition Branch AG Office,
Salman Khan 5259 (Focal Persn
IGP)
21. **W.P 4101-P/2020**(
(165966)
- Kashif ullah**
V/s
Federation of Pak
- Irfan Ali Yousafzai**
Shakir Ullah Afridi, Deputy
Attorney General, Zargham Isha
Khan

PESHAWAR HIGH COURT, PESHAWARDAILY LIST FOR TUESDAY 12 OCTOBER, 2021

BEFORE:-

MR. JUSTICE LAL IAN KHATTAK &
JUSTICE MS. MUSARRAT HILALI

Court No: 3

MOTION CASES

- | | | |
|---|---|--|
| 21. W.P 4024-P/2020(Service matters/Pay/Allowance/Re-Imbursement)
(165763) | Aftab Ahmad
V/s
Secretary Health | Attiq Ur Rehman, Fida Muhammad Yousafzai (Swabi)
<hr/> Sadaqat Ullah, Writ Petition Branch AG Office, Dr. Amer Hamid, Salman Khan 5259 (Foc Person IGP) |
| 22. W.P 4260-P/2020 with IR, with CM No. 1815/2021()
(166400) | Dr. Irshad Ahmed Khan
V/s (Date By Court)
Zarai Taraqulati Bank | Adeel Anwar Jehangir
<hr/> Muhammad Saeed Ahmad, Ms. Rukhsana Perveen, Malik Javid Iqbal Wains |
| 23. W.P 4364-P/2020()
(166717) | Mulana Asmat Khan
V/s
Govt of KPK | Noor Muhammad Khattak
<hr/> Nasir Mehmood, Muhammad Javed, Writ Petition Branch AG Office, Qalat Khan |
| 24. W.P 4477-P/2020()
(166970) | Attaullah Jan
V/s
Govt of KPK | Javed Iqbal Gulbela
<hr/> Altaf Hussain, Kabir Khan, Writ Petition Branch AG Office |
| 25. W.P 4773-P/2020 With IR()
(167786) | Sulaiman Khan
V/s
Director General KPK Food | Syed Rahmat Ali Shah
<hr/> |