


22.10.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Learned District Attorney seeks adjournment as he has not prepared the case. Adjourn. To come up for arguments on 24.10.2019 before D.B at Camp Court, Abbottabad.



Member




Member
Camp Court Abbottabad

24.10.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Learned counsel for the appellant seeks adjournment to further prepare the brief. Adjourn. To come up for arguments on 18.12.2019 before D.B at Camp Court, Abbottabad.



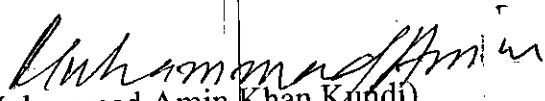
Member




Member
Camp Court Abbottabad

18.12.2019

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondents present. Vide our detail judgment of today of this Tribunal placed on file, this Tribunal directs the appellate authority to consider the departmental appeal, of the appellant, dated 17.05.2018 and decide the same within sixty (60) days through a speaking order. The present service appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad




(Hussain Shah)
Member
Camp Court Abbottabad

ANNOUNCED
18.12.2019


19.03.2019

Counsel for the appellant present. Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Representative of the department is absent therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 22.05.2019 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

22.05.2019


Counsel for the appellant present. Mr. Suleman, Senior Instructor alongwith Mr. Muhammad Bilal, Deputy District Attorney for the respondents present and submitted written reply. Adjourned to 19.08.2019 for rejoinder and arguments before D.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

19.08.2019

Learned counsel for the appellant and Mr. Muhammad Bilal, DDA alongwith Mr. Abdul Malik, Law Officer for respondents present. Learned DDA seeks adjournment. Adjourn. Case to come up for arguments on 22.10.2019 before D.B at Camp Court, Abbottabad.


Member


Member
Camp Court A/Abad


19.10.2018

Appellant Asad Rahman in person alongwith his counsel Mr. Muhammad Aslam Tanoli, Advocate present and heard in limine.

Contends that the appellant was retired on the strength of reversion by the Medical Board, however, later on he recovered from illness and applied for re-examination of his health. However, his request was not considered by the Medical Board rather asked to apply through proper channel. Further contended that when he approached the respondent department, his request was not entertained.


The points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections, if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 15.01.2019 before S.B at Camp Court Abbottabad.

Appellant Deposited
Security & Process Fee


Chairman
Camp court, A/Abad

15.01.2019



Appellant with counsel present. Written reply not submitted. No one present on behalf of respondent department. Adjourn. To come up for written reply/comments on 19.03.2019 before S.B at camp court Abbottabad. Notice be issued to the respondents for written reply.


Member
Camp Court Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1055/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/08/2018	<p>The appeal of Mr. Asad Rehman presented today by Mr. Muhammad Aslam Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	10-9-18	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>19-10-18</u>.</p> <p> CHAIRMAN</p>

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	18.12.2019	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD</u></p> <p style="text-align: center;"><u>Appeal No. 1055/2018</u></p> <p style="text-align: center;">Date of Institution ... 24.08.2018 Date of Decision ... 18.12.2019</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Asad Rehman S/O Nazakat Khan R/O Mohallah Pathanan-Wala, Sera-e-Saleh, Tehsil & District Haripur. -----Appellant</p> <p style="text-align: center;"><u>Versus</u></p> <p style="text-align: center;">Inspector General of Prison Khyber Pakhtunkhwa Peshawar and others -----Respondents</p> <p style="text-align: center;">Muhammad Amin Khan Kundi.....Member(J) Mr. Hussain ShahMember (E)</p> <p><u>JUDGMENT</u></p> <p><u>Mr. HUSSAIN SHAH:-</u> Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondents present.</p> <p>2. The appellant was appointed as Warder BPS-05 in the Prison Police vide order dated 22.01.2015 while posted in District Jail Mansehra. The appellant was seriously wounded in road accident sustained serious head injuries. He remained under treatment in King Abdullah Teaching Hospital Mansehra as well as Ayub Teaching Hospital Abbottabad. During his illness the Superintendent Circle Headquarters Prison Haripur referred his case to the Medical Board. The said Medical Board sought the opinion of Neurosurgeon at Ayub Teaching Hospital Abbottabad. After the receipt of the report of Neurosurgeon the Medical Board Mansehra recommended that the appellant is not fit for sensitive service hence the Superintendent Circle Headquarters Prison Haripur vide order dated 12.06.2017 retired the appellant from service on Medical</p>

ground. Relevant entry was made in his service book accordingly and no pension was granted. After prolong treatment the appellant re-gain his health and after complete recovery of his health the appellant approached the Superintendent District Jail Mansehra as well as Superintendent Headquarter Haripur for duty but no response was given to him. Where after the appellant approached the Director General Health Service Khyber Pakhtunkhwa Peshawar for arranging another medical board for reinstatement in service. The Director General Health Service vide his letter dated 17.05.2018 advising the appellant to route his application for re-employment and for constitution of medical board through parent department. Accordingly the appellant approached the Inspector General of Prison Khyber Pakhtunkhwa through his departmental appeal on 16.05.2018 but no response was received within the statutory period hence the instant service appeal filed on 24.08.2018 with the prayer that on acceptance of instant appeal the impugned order dated 12.06.2017 of the Superintendent Circle Headquarters Prison Haripur may graciously be set aside and the appellant may kindly be re-instated in his service as Warder (BPS-05) after conducting his re-medical examination with all consequential back benefits. Learned counsel for the appellant relied as PLD 1994 (647) and the judgments of the Khyber Pakhtunkhwa Service Tribunal reported on 2005 PLC (C.S.) & Service Appeal No. 1406/2015 filed by Bashir Ahmed Versus Government of Khyber Pakhtunkhwa through Secretary, Forest & Environment Department, Peshawar and others.

3. Learned District Attorney contested the facts, grounds of the appeal and arguments of the learned counsel for the appellant and argued that the service of the appellant was disposed up after the receiving report of the Medical Board constituted by the government. The appellant was required to file an appeal before the competent authority within the thirty (30) days in case he was not satisfied with the opinion of the Medical Examination Board Further argued that there is no provision for reinstatement into service if the opinion of the Medical Board is not in favor of the Civil Servant. He further stated that on the grounds of delay in his request for the constitution of another Medical Board the appeal may be dismissed with costs.

4. Arguments heard. File Perused.


5. After the detailed scrutiny of the documents record on file arguments and counter arguments of learned counsel for the appellant and learned District Attorney this Tribunal observes that the application of the appellant to the Director General Health Service was considered by the Director General Health Service, and the appellant was advised vide letter No.1545/Medical dated 14.05.2018 that the request of the appellant for constituting second Medical Board to the Directorate General Health Services Khyber Pakhtunkhwa Peshawar be routed through the parent Department i.e. Prison Department. Accordingly the appellant preferred appeal to respondent No.1 on 17.05.2018 which has not been replied within the stipulated time period. As regarding the ground of the respondent authorities of the expiry of the statutory provisions for


Atch

filing appeal/application for a second Medical Board within thirty (30) days, it is observed that the appellant was retired from service on 12.06.2017 on the ground of the opinion of the Medical Board. After treatment he was recovered from Head Injury. This shows that the appellant was compelled by circumstances beyond his control.

6. This Tribunal examined the facts and circumstances faced by the appellant in the light of the judgments referred by the learned counsel for the appellant during arguments and form its views that as regarding the prayers of the appellant in the memo of the appeal regarding setting aside the impugned order, dated 12.06.2017 this Tribunal is of the opinion that without the second opinion of the Medical Examination Board no such order can be issued at this stage. As regarding the second point in the prayer pertaining to the reinstatement of the appellant in service we are also of the opinion that no such order can be pass without a specialized opinion of the competent medical examination board.

7. In view of the above circumstances this Tribunal directs the appellate authority to consider the departmental appeal, of the appellant, dated 17.05.2018 and decide the same within sixty (60) days through a speaking order. The present service appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Amin Khan Kundi)
Member
(Camp Court Abbottabad)


(Hussain Shah)
Member
(Camp Court Abbottabad)

ANNOUNCED
18.12.2019

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal no. 1055/2018

Asad Rehman S/O Nazakat Khan R/O Mohallah Pathanan-
Wala, Sera-e-Saleh, Tehsil & District Haripur

Appellant

VERSUS

1. Inspector General of Prisons Khyber Paktunkhwa, Peshawar
2. Superintendent, Circle Headquarters Prison Peshawar.
3. Superintendent, Circle Headquarters Prison Haripur.

Respondents

SERVICE APPEAL

INDEX

S/N o	Description of Document	Ann- exure	Page No.
1.	Appeal and condonation application.		01-10
2.	Appointment order dated 22-01-2015	"A"	11-
3.	Medical Treatment's Document.	"B"	12-
4.	Letter dated 27-11-2016 of Medical Board	"C"	13-
5.	Letter dated 13-05-2017 of Medical Board	"D"	14-
6.	Impugned Office Order dated 12-06-2017	"E"	15-
7.	Page from Service Book.	"F"	16-
8.	Letter dated 14-05-2018 Health Deptt.	"G"	17
9.	Departmental Appeal dated 17-05-2018	"H"	18-19
10.	Wakalatnama		

Through

Asad
Appellant

M. Aslam

(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

Dated: 26-08-2018

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1055/2018

Asad Rehman S/O Nazakat Khan R/O Mohallah Pathanan-
Wala, Sera-e-Saleh, Tehsil & District Haripur

Appellant Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 1338
Dated 24-8-2018

1. Inspector General of Prison, Khyber Paktunkhwa, Peshawar.
2. Superintendent, Circle Headquarters Prison Peshawar.
3. Superintendent, Circle Headquarters Prison Haripur.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL
ACT 1974 AGAINST ORDER DATED 12-06-2017 OF THE
SUPERINTENDENT CIRCLE HEADQUARTER PRISON HARIPUR
WHEREBY THE APPELLANT HAS BEEN RETIRED FROM SERVICE ON
MEDICAL GROUNDS.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL
IMPUGNED ORDER DATED 12-06-2017 OF SUPERINTENDENT
CIRCLE HEADQUARTER PRISON HARIPUR MAY GRACIOUSLY BE
SET ASIDE AND APPELLANT BE RE-INSTEATED IN SERVICE WITH
ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Filed 24/8/18
Registrar

Respectfully sheweth,

1. That the appellant appeared before the Departmental Selection Committee for test/interview scheduled for the post of **WARDER (BPS-05)** and having declared as successful he was inducted in KPK

2

Prisons Police vide appointment order dated 22-01-2015. **(Copy of appointment order dated 22-01-2015 is Annex-"A")**.

2. That since his induction in employment the appellant always performed his assigned official duties with zeal, zest, devotion, dedication and honesty to the entire satisfaction of his superiors and never provided a chance of reprimand. Appellant has meritorious service record at his credit.
3. That while posted at District Jail Mansehra the appellant met a road accident and was seriously wounded. Appellant also sustained serious head injuries and comatosed for a considerable time. He was treated by Neurosurgeon. He remained under medical treatment at King Abdullah Teaching Hospital Mansehra as well as at Ayub Teaching Hospital Abbottabad. **(Copy of medical treatment's document is attached as Annex-"B")**.
4. That during appellant's illness the Superintendent Circle Headquarters Prison Haripur referred his case to the Medical Board constituted at King Abdullah Teaching Hospital Mansehra for medical opinion. The said Medical Board vide its letter dated 27-11-2016 sought the opinion of Neurosurgeon at Ayub Teaching Hospital Abbottabad for deciding the matter. **(Copy of letter dated 27-11-2016 is attached as Annex-"C")**.

3

5. That upon receipt the opinion from the Neurosurgeon Ayub Medical Teaching Hospital Abbottabad the Medical Board Mansehra vide its letter dated 13-05-2017 recommended the appellant as not fit for sensitive services. **(Copy of letter dated 13-05-2017 is attached herewith as Annex-"D")**.
6. That on receiving the decision of Medical Board Mansehra, the Superintendent Circle Headquarters Prison Haripur vide his Office Order dated 12-06-2017 retired the appellant from service on medical grounds. Appellant's retirement order was also incorporated in his service book at page-11 by the Superintendent District Jail Mansehra. **(Copies of letter dated 12-06-2017 and Service Book's page are attached herewith as Annex-"E & F")**.
7. That though appellant was retired from service on 12-06-2017 by the respondents but no service benefits, what so ever, were extended to him.
8. That after his retirement from service, the appellant continued his medical treatment and by the grace of Almighty Allah he regained his health. After complete recovery of his health the appellant approached the Superintendent District Jail Mansehra as well as the Superintendent Circle Headquarters Prison Haripur but of no avail.

4

9. That thereafter the appellant approached the Directorate General of Health Service KPK Peshawar for conduction of his medical board for re-instatement in service but the Health Department advised the appellant to route through parents department. **(Copy of letter dated 14-05-2018 of Health Department is attached as Annex- "G")**.
10. That ultimately the appellant had to approach the Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar through his departmental appeal dated 17-05-2018 explaining therein all facts and circumstances of the matter but unfortunately his appeal was never responded to this day even on expiry of statutory period. **(Copy of departmental appeal dated 17-05-2018 is attached as Annex-"H")**. Hence this service appeal, inter alia, on the following:-

GROUND:

- a) That on having got recovery of his health the appellant, under the law, departmental rules and regulations has become eligible and entitled to be re-instated in his service by the Respondents.
- b) That on having got recovery of health the order dated 12-06-2017 of the respondent No. 2 has become infructuous and the appellant has gained entitlement for re-instatement in his service with all service back benefits.

5

- c) That the respondents have no justification and reason under the law to keep the appellant out of service after regaining his health; hence the act of respondents is illegal, unlawful, against the departmental rules and regulations. They are under legal obligations to re-instate the appellant in his service.
- d) That upon the request of appellant for re-instatement in service, the respondents are under legal obligations to get the appellant medically re-examined from an authorized medical officer and re-instate him in service and denial is illegal and unlawful.
- e) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 and unlawfully kept him out of service, which act of respondents is unjust, unfair and hence not sustainable in the eyes of law.
- f) That the appellate authority has also failed to abide by the law and even did not take into consideration the grounds taken in the memo of appeal. Thus such act of the appellate authority is contrary to the law as laid down in the KPK Prison Police Rules, other departmental rules regulations read with section 24-A of the General Clause Act 1897 read with Article 10A of the Constitution of Islamic Republic of Pakistan 1973.

6

- g) That on medical re-examination if appellant is not found fit for sensitive services he can be adjusted against any other post like Naib Qasid and Mali etc in the prison department as he is a young man and belongs to poor family but presently he is jobless facing financial troubles.
- h) That appellant fulfils the criteria and all other requirements for re-instatement in service from the date of his retirement with all service benefits.

PRAYER:

It is therefore, humbly prayed that on acceptance of instant appeal the impugned order dated 12-06-2017 of the Superintendent Circle Headquarters Prison Haripur may graciously be set aside and the appellant may kindly be reinstated in his service as WARDER (B-05) after conducting his re-medical examination with consequential all back benefits of service.

Any other relief which this Honour Tribunal deems fit in the circumstance of the case may also graciously be awarded.

Asad
APPELLANT

THROUGH

M. Aslam
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

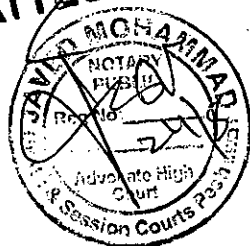
Dated: 29-08-2018

AFFIDAVIT

I, ~~Asad Rehman~~ S/O ~~Nazakat~~ do hereby solemnly declare and affirm on oath that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

Dated: 29-08-2018

ATTESTED



Asad
Deponent/Appellant

(7)

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Asad Rehman S/O Nazakat Khan R/O Mohallah, Pathanan-
Wala, Sera-e-Saleh, Tehsil & District Haripur

Appellant

VERSUS

1. Inspector General of Prisons Khyber Paktunkhwa, Peshawar
2. Superintendent, Circle Headquarters Prison Peshawar.
3. Superintendent, Circle Headquarters Prison Haripur.

Respondents

SERVICE APPEAL


AFFIDAVIT:

I, Asad Rehman S/O ~~Nazakat Khan~~ do hereby solemnly
declare and affirm on oath that the contents of the instant
Service Appeal are true and correct to the best of my
knowledge and belief and nothing has been suppressed
from this Honourable Service Tribunal.

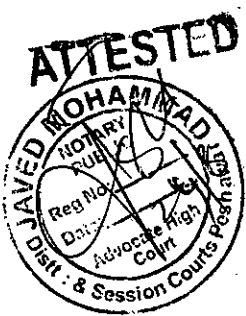

Deponent/Appellant

Dated: 24-08-2018

Identified By:


Mohammad Aslam Tanoli
Advocate High Court
At Haripur,


Appellant



8

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Asad Rehman S/O Nazakat Khan R/O Mohallah Pathanan-
Wala, Sera-e-Saleh, Tehsil & District Haripur

Appellant

VERSUS

1. Inspector General of Prisons Khyber Paktunkhwa, Peshawar
2. Superintendent, Circle Headquarters Prison Peshawar.
3. Superintendent, Circle Headquarters Prison Haripur.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever
been filed in this or any other court prior to the instant one.

Asad
APPELLANT

Dated: 24-08-2018

9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Asad Rehman S/O Nazakat Khan R/O Mohallah Pathanan-
Wala, Sera-e-Saleh, Tehsil & District Haripur

Appellant

VERSUS

1. Inspector General of Prisons Khyber Paktunkhwa, Peshawar
2. Superintendent, Circle Headquarters Prison Peshawar.
3. Superintendent, Circle Headquarters Prison Haripur.

Respondents

SERVICE APPEAL

APPLICATION FOR CONDONATION OF DELAY IN FILING THE
APPEAL BEFORE THIS HONOUR SERVICE TRIBUNAL.

Respectfully Sheweth:

1. That the Applicant/Appellant has today filed the Service Appeal, which may be considered as part and parcel of this application, against the order dated 12-06-2017 whereby the Respondents have retired the appellant from service on medical grounds.
2. That as the above said impugned order of the respondents has become infructuous on regaining his health by the appellant after medical treatment. The appellant, under law, departmental rules and regulations has become entitled to be re-instated in his service after medical examination from an authorized medical officer.
3. That under law, departmental rules and regulations, and terms and conditions of appellant service the respondents are under legal obligations to get the appellant re-examined from an authorized medical officer and re-instate him in his service. The respondents have no justification and reason to keep the appellant out of service in violation of law.

- 4. That Applicant/appellant for aforesaid illegal acts of the respondents submitted a departmental appeal to the appellant authority explaining all facts and circumstances of his grievance but the appellant authority till to date despite of lapse of statutory period of time has not reverted back to set aside impugned order and reinstate the appellant in his service, which has been causing a recurrence loss of un-employment to the appellant.
- 5. That the applicant/appellant has been rigorously been pursuing his case but the delay is due lethargic attitude of respondents. However, the instant application is being filed as an abundant caution for the condonation of delay, if any.
- 6. That the impugned order dated 12-06-2017 of respondent No.3 is illegal, void ab-initio, a nullity in the eyes of law thus liable to be set aside in the interest of justice.

It is therefore respectfully prayed that on acceptance of the instant application the delay, if any, in the filing of the above titled appeal may graciously be condoned.

Through:

Asad
 Applicant/Appellant
M. Aslam
 (Mohammad Aslam Tanoli)
 Advocate High Court
 At District Bar Haripur

Dated: 24-08-2018

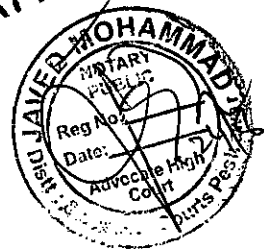
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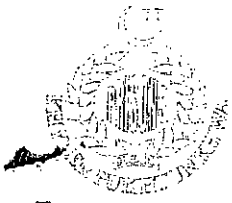
It is solemnly declare and affirm on oath that the contents of the instant application/appeal are true and correct to the best of my knowledge and belief.

Dated: -08-2018

Asad
 Applicant/Appellant

ATTESTED





11

Annex-A

OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No. 5857 P.B. Dt: 27/01/2015

To: Mr. ASAD RAHMAN S/O NAZAKAT KHAN
R/o Moh: Patanan Wala, Saray Saleh Tehsil & Distt: Haripur

Subject: APPOINTMENT AS WARDER (BPS-05)

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warden in BPS-05 (5400-260-13200) and all other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the Jails/ Judicial Lockups/ Internment Centers of Khyber Pakhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & medical attendance etc, you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of our appointment as Warden (BPS-05) will be those as laid down in the Khyber Pakhtunkhwa Prison Rules 1985, Prisons Department (Recruitment, Promotion & Transfer) rules 1980 and aliother rules and regulations prescribed for Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your medical fitness and prescribed physical standard
- 6- No TAV/DA will be admissible to you on joining your first appointment.
- 7- ~~You cannot resign from the service immediately but will have to put in writing at least one~~ month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the service rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- Your appointment will be subject to verification of your antecedents/ character.
- 11- If you report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, it will be presumed that you have declined to accept this offer, hence this order of appointment shall stand canceled/ withdrawn.
- 12- You are directed to report to the Superintendent District Jail Manshera for duties.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: 5857-561

- Copy of the above is forwarded to the: -
- 1- Superintendent District Jail Manshera. The above named newly appointed Warden is attached with his jail for all purposes. He may be got medically examined by the Medical Superintendent concerned and a copy of his Medical Examination Certificate may be sent to this office for record. His SSC certificate may also be verified from the concerned board within one month and the result be communicated to this Headquarters.
 - 2- District Accounts Officer, Manshera.

SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Musawer/-

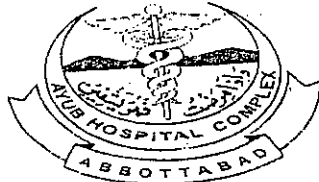
Attested

Asad

12

Annex - B

DISCHARGE SLIP

AYUB TEACHING HOSPITAL ABBOTTABAD  DEPARTMENT OF NEUROSURGERY	Date of Admission	Patient's Name <u>Asad Rehman</u>	DISCHARGE
	Date of Discharge	Age <u>20y</u>	
	Bed No. <u>14 ICU</u>	Gender <u>M</u>	
	Admission No. <u>315123438/89</u>	INCHARGE PROF: DR. SAJID NAZIR BHATTI.	

SUMMARY: 0 Ht & RTA
 Head injury -
 C.T shows Deep seated contusion
 Prognosis very grave for fatal consequence.
 6/8-7/15

Home Treatment: - گھ کیلئے علاج

Tab. Granisetron - (20)
1-21

Tab. Beta-I - (20)
1-21

Tab. Mometasone - (20)
1-21

Follow Up:-

8/11 Mometasone - (2)
2+2

Ref. to physiotherapy

اوپنی ڈی کے دن -

پیر، جمعرات -

Do daily dressing.

نوٹ: اگر مسلسل اٹھی ہو، بے ہوشی طاری ہو، جسم کے کسی حصہ میں کمزوری محسوس ہو چھٹکے لگیں یا ناک سے پانی آئے تو فوراً ہسپتال تشریف لائیں۔

Attested
Asad

Kindly give a sheet
Bed rest for 14 days

DOCTOR:

Dr. Ehtisham Ahmed
Senior Registrar Neurosurgery
Ayub Teaching Hospital
Abbottabad

Resident Medical Officer
 Ayub Teaching Hospital
 Abbottabad
 20/12/15

13

Annet - C

**OFFICE OF THE MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING HOSPITAL MANSEHRA**

Tel: 0997-920096, Fax: 0997-540211; email: mskathmansehra@gmail.com
Website: www.kathmansehra.com

No. 9326/SMB
Dated 27/122016

To: -

The Superintendent
Central Prison Haripur.

Subject: - **STANDING MEDICAL BOARD**

With reference to your letter No.3354/WE dated 07.12.2016.

Standing Medical Board of King Abdullah Teaching Hospital Mansehra comprising of following doctors assembled in the office of undersigned on 21.12.2016 (Wednesday) at 10.00 AM to examine Warder Asad Rehman of your department.

1. Medical Superintendent King Abdullah Teaching Hospital Mansehra: (Chairman)
2. Medical Specialist, King Abdullah Teaching Hospital Mansehra : (Member)
3. Surgical Specialist, King Abdullah Teaching Hospital Mansehra : (Member)
4. Orthopedic surgeon, King Abdullah Teaching Hospital Mansehra : (Member)

OPINION OF THE MEDICAL BOARD IS AS UNDER:-

Patient was examined along with record, which shows "Road Traffic Accident", then comatosed, septicemia, treated by Neurosurgeon. He has persistent Neurological deficit in terms of Brachial-plexus injury and limping. He is hereby referred to Neurosurgeon Ayub Teaching Hospital Abbottabad, since Neurosurgeon is not available at KATH Mansehra, for final opinion as to fitness or otherwise.

Medical Superintendent
King Abdullah Teaching
Hospital Mansehra
(Chairman)

MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING
HOSPITAL MANSEHRA

Medical Superintendent
King Abdullah Teaching
Hospital Mansehra

MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING
HOSPITAL MANSEHRA

Medical Specialist
King Abdullah Teaching
Hospital Mansehra
(Member)

Surgical Specialist
King Abdullah Teaching
Hospital Mansehra
(Member)

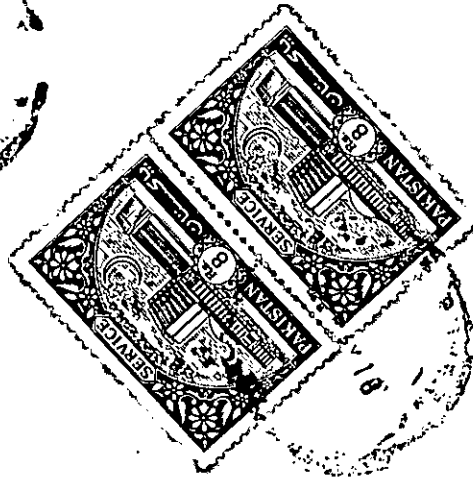
Orthopedic Surgeon
King Abdullah Teaching
Hospital Mansehra
(Member)

cc. Supdt. Distt. Jail Heshing.

4628
30/12/2016
30/12
PB
Superintendent
30/12/16

Attested
Asad

OPSS



DEPT. OF CLERK
D.G.H.S. (MAY 1963) K.P.

Attention to 19 Jaddat Khan

Annex-D

**OFFICE OF THE MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING HOSPITAL MANSEHRA**

Tel: 0997-920096, Fax: 0997-540211; email: mskathmansehra@gmail.com
Website: www.kathmansehra.com

3036
No. /SMB
Dated 13/5/2017

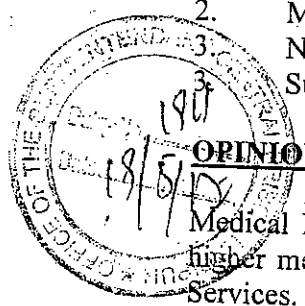
To: -
The Superintendent
Circle HQs Prison Hairpur

Subject: - **STANDING MEDICAL BOARD**

With reference to your letter No.1052 dated 03.04.2017.

Standing Medical Board of King Abdullah Teaching Hospital Mansehra comprising of following doctors assembled in the office of undersigned on 26.04.2017 (Wednesday) at 10.00 AM to examine Warder Asad Rehman of District Jail Mansehra.

1. Medical Superintendent King Abdullah Teaching Hospital Mansehra: (Chairman)
2. Medical Specialist, King Abdullah Teaching Hospital Mansehra : (Member)
3. Neurosurgeon, King Abdullah Teaching Hospital Mansehra : (Member)
- Surgical Specialist, King Abdullah Teaching Hospital Mansehra : (Member)



OPINION OF THE MEDICAL BOARD IS AS UNDER

Medical Board is of opinion that Warder Asad Rehman is suffering from "Impairment of higher mental functions & executive functions are not optimum. He is not fit for sensitive Services.

Syeda
Medical Superintendent
King Abdullah Teaching
Hospital Mansehra
(Chairman)

M
Medical Superintendent
King Abdullah Teaching
Hospital Mansehra

Muhammad
Medical Specialist
King Abdullah Teaching
Hospital Mansehra
(Member)

Zol
Surgical Specialist
King Abdullah Teaching
Hospital Mansehra
(Member)

Mir
Neurosurgeon
King Abdullah Teaching
Hospital Mansehra
(Member)

Attesteeel
Asad



(15)

Amex-E

**OFFICE OF THE SUPERINTENDENT
CIRCLE (EASTERN) HQs PRISON HARIPUR**
Ph/Fax: 0995-611196-612402

No. 1884- / Dated 2/06/2017

OFFICE ORDER.

Upon the conduction and completion of proceedings of the standing medical board regarding Warder Assad Rehman attached to District Jail Mansehra & its decision arrived vide the Medical Superintendent King Abdullah Teaching Hospital Mansehra office Memo No. 3036 dated 13-05-2017, warder concerned is hereby retired from service suffering from "Impairment of Higher mental functions & executive function are not optimum" unfit for further Government Service, Invalid out of service with disability not attributable to sensitive service,

**SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR**

Endst: No: 1285-871

Copy of the above is forwarded to:-

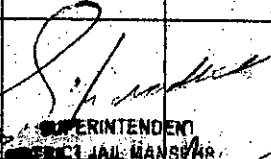
1. The Medical Superintendent King Abdullah Teaching Hospital Mansehra for information with reference to above please.
2. The Superintendent District Jail Mansehra for information and further necessary action with reference to his memo: No. 2452-WE dated 26-10-2015.
3. The District Accounts Officer Mansehra for information and necessary action please.

**SUPERINTENDENT
CIRCLE H.Qs. PRISON HARIPUR**

ub

Attested
Asad

DAO
Copy

9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
		Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Period	Government to Which debitable	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servent
06 2012							
	<p>Upon the conduction and completion of proceedings of the Standing Medical Board regarding warden Asad Rehman, he is hereby retired from service due to suffering from a Impairment of Higher mental functions and executive function are not optimum" Unlit for further govt service vide the supdnt. H.A. Haripur order No 1984 dated 12-06-2012</p>						
						 SUPERINTENDENT PRINCIPAL JAIL, HARIPUR	
							<p>Attested</p> <p>Asad</p>

17

Annex-G



**DIRECTORATE
GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 1545 /Medical

Dated 14-5 /2018.

To

Mr. Asad Rehman S/O Nizakat Khan
Mohallah Pathanwala P.O Sraye Salih
Tehsil District Haripur.
Cell No.0311-5857266

Subject: REQUEST FOR MEDICAL BOARD

Referent to your application dated 10/05/2018, on the subject noted above and to inform you that the request may be submitted to this Directorate through your parent Department.

M. Shalizi

DEPUTY DIRECTOR (MEDICAL)
DIRECTORATE GENERAL HEALTH
SERVICES, KHYBER PAKHTUNKHWA,
PESHAWAR.

Attested
Asad

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.

E-Mail Address: nwfpdghs@yahoo.com
Office Ph# 091-9210269
Exchange# 091-9210187, 9210196
Fax # 091-9210230

درخواست گزار صاحبہ اور حکیم بابت مقرر کردہ ایک میڈیکل بورڈ میں سائل
جیل آفیس جانی ملازمت میں سائل
جناب عمالی :-

گزارش ہے کہ میں سائل ماسٹریہ جیل میں بطور وارڈن ملازم
تعمالہ مورخہ 15/12/2003ء کو میں سائل کاروٹی ایکسٹرنٹ دوران ملازمت
پوگیا گیا تھا کہ میں سائل تقریباً 3 ماہ قعود رہا تھا بعد میں ماہ کے بعد
میں سائل کو پوسٹ آئی جی اور میں سائل تقریباً 2 سال تک ایسا علاج
سعالیہ کروانا تھا بعد اس دوران میں سائل کی فٹنس کے لیے کنگ ملکہ اللہ
ہسپتال ماسٹریہ میں دو مرتبہ میڈیکل بورڈ مقرر کروائے گئے تھے
اور اس کے بعد میڈیکل بورڈ میں شمولیت اختیار کرنے والے ڈاکٹرز
صاحبان نے مجھے زہنی طور پر ان فٹ قرار دیا تھا۔ اور اس کے بعد
میں سائل کو محکمہ جی اے ملازمت سے فارغ کر دیا گیا تھا۔
یہ کہ درخواست کنندگان بالا میں میں سائل نے ایسا مکمل ٹریٹمنٹ کروایا
ہے کہ مکمل طور پر میں سائل فٹ ہو گیا ہوں۔
یہ کہ درخواست کنندگان بالا میں میں سائل نہایت گھرانے سے تعلق رکھتا

Attest
Isaiah

17/12/2003

رکعتوں اور ہر روز ہو چکا ہوں
 یہ کہ درخواست عنوان بالا میں من سائل اب ایسا مہیہ بیکل چیک
 اب ہر روز ہو چکا ہے اور کمر و اس کا خواہاں ہوں
 یہ کہ من سائل اگر مہیہ بیکل اور ڈسٹ ثابت ہو جاتا ہوں تو من
 سائل اپنی ملازمت بیکل کمر و اس کا خواہاں ہوں
 اس کے لئے کہ درخواست عنوان بالا میں من سائل کا
 مہیہ بیکل اور ڈسٹ مقرر کیے جانے کے حکامات ہمارے فرمائش جائیں
 کہ من سائل کی اپنی ملازمت بیکل کمر و اس کا مہیہ بیکل فرمایا جائے
 (مختم) ۲۶

امیر العمان ولد نزاریت خان سکنہ محلہ پٹھانان والا
 سرائے صالح تحصیل رملہ پورہ

Asad

Attested

Asad

ATTESTED

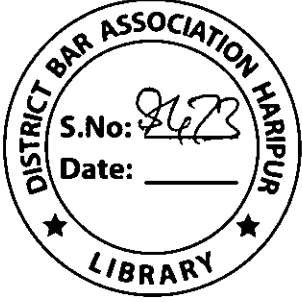
DBA No: 206
BC No:

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Name of Advocate: محمد اسماعیل شاہ

S.No: 8473

وکالت نامہ



بعدالت: صاحب مکمل سروس ٹریڈنگ سٹار
عنوان: محمد اسماعیل شاہ
مخانب: اسماعیل شاہ
نوعیت مقدمہ: سروس ٹریڈنگ سٹار
باعث تحریر آنکھ: سروس ٹریڈنگ سٹار

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصنیف مقدمہ بمقام سروس ٹریڈنگ سٹار کے لیے

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو بروعدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ پکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا بختانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر ذاتہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس کے ثالثی و راضی نامہ و فیصلہ برحلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے پیر و نجات از پکھری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از گرفتاری و اجراء ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ محتانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مزکور یا اس کے کسی جزو کی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

M. A. Shah

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ مورخہ: 24 دن 8 ماہ 2018 سال

Accepted by

Asad

23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1406/2015

Date of Institution... 07.12.2015

Date of decision... 19.02.2018



Bashir Ahmad son of Samandar Khan, ex-Forest Guard, resident of village
Tendkai, Tehsil Oghi District Manshra. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary, Forests &
Environment Department, Peshawar and 4 others. ... (Respondents)

Mr. Muhammad Arshad Khan Tanoli,
Advocate

... For appellant.

Mr. Ziaullah,
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was invalidated out of service on 18.12.2000 being permanently
incapacitated. Then again in the year, 2014 and 2015 he moved different applications to
the department to the effect that his incapacity was removed and he was fit for service.
But his request was not acceded to by the department. The appellant then knocked the

Attested
Muhammad Arshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Distt Bar Abbottabad

ATTESTED
[Signature]
Chairman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

24

jurisdiction of Worthy Peshawar High Court and the Worthy Peshawar Peshawar vide judgment dated 01.04.2015 dismissed the Writ Petition for want of jurisdiction.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant had moved so many applications to the department for his reinstatement as his incapacity was removed. That the department did not respond to any of the applications. That the appellant was then forced to approach the Worthy High Court but their lordships of the High Court rejected the Writ in limine for want of jurisdiction. The learned counsel for the appellant argued that in the order of rejection, the Worthy High Court gave observations that a civil servant could apply for reinstatement in service pursuant to Para-519 of CSR and for that matter he had to undergo prescribed procedure before proper forum. That thereafter, the appellant had no option but to seek the indulgence of this Tribunal as the matter fell within the terms and conditions of service of a civil servant. The learned counsel for the appellant relied upon two judgments reported as 2005-PLC(C.S)1230 and PLD-1994-Supreme Court-647 in order to augment his arguments qua the benefit of CSR 519.

4. On the other hand, the learned Deputy District Attorney argued that the present appeal was not maintainable for the reason that there was no original or appellate order within the meanings of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. That the appellant did not file any appeal before the appellate authority. That whatever was pressed into service on the file by the appellant was no more than just applications which could not be considered as appeal. That the present appeal was time barred for the reason that the appellant was invalidated out of service in the year, 2000. That he was to have challenged that decision within one week of that order. That the appellant sought relief before a wrong forum and in view of many judgments of Superior Courts no condonation could be granted for pursuing remedy before a wrong forum. That

Allotted
Muhammad Arshad Khan Tanoli
 Advocate High Court
 Office No. 33 Adjacent to
 Dist. for Abbottabad

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

25

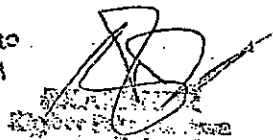
no application for condonation of delay was moved by the appellant. That the Establishment Department Government of Khyber Pakhtunkhwa on the application of the appellant had written a letter wherein it was opined that the appellant could not challenge the opinion of the Standing Medical Board after 7 days.

CONCLUSION.

5. This Tribunal is to see whether it can assume jurisdiction, in peculiar circumstances of the present appeal without original or appellate order within the meanings of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 as discussed above in the facts. The appellant while relying on CSR 519 had been moving applications to the department but no response was given by the department. The question is whether in such situation when the department is not replying to applications of a civil servant who otherwise refers to a particular rule or section can be denied relief on the ground of non-maintainability under Section 4 mentioned above. This situation has already been discussed by this Tribunal in service appeal bearing No. 528/2014 decided on 17.1.2018 entitled "Zahir Shah Vs. Government of Khyber Pakhtunkhwa and others". This Tribunal has elaborately discussed all the contours involved in such situation and has held that in exercise of the inherent powers such appeal could be entertained. The circumstances of the present appeal are almost similar to the service appeal mentioned above rather the present appeal stands at a higher pedestal than the one mentioned above as in this appeal the Worthy High Court had already held that it had no jurisdiction. In the case of Zahir Shah there was no such specific order of the High Court and this Tribunal assumed that the appellant could not approach the High Court under Article 212 of the Constitution of Islamic Republic of Pakistan. In such situation when a civil servant (rightly or wrongly) submitting applications to the department then the department is bound to respond to his requests. No citizen can be denied response by any department when a citizen (including a civil servant) seeks any indulgence by any authority as all the

ATTESTED

Advocate High Court
Office No 33 Adjacent to
Jail, Peshawar



institutions are meant to serve the masses and are bound to, at least, respond to the applications of citizens including civil servants. No civil servant can be made a football to be rolled between the institutions on the basis of technical grounds. The law while visualizing such situation has conferred inherent powers on courts and Tribunals to interfere. This is a pure technicality and the law has no specific answer to this question. Therefore, this Tribunal is under legal obligations to exercise inherent powers as discussed in *Zahir Shah's* case. The appellant also cannot be non-suited on the ground that he moved applications and not appeal. In the circumstances, he has rightly moved applications as he did not challenge the opinion of standing medical board but his case is that his incapacity has ceased. There is no limitation for this cause of action.

6. At present this Tribunal without commenting on the merits of the case is of the view that the department should have responded to the applications of the appellant. This Tribunal, therefore, by accepting this appeal refers the matter to the departmental authority/appellate authority to consider the request of the appellant within a period of 90 days of the receipt of this judgment and decide the same through a speaking order. Parties are left to bear their own costs. File be consigned to the record room.

SD/- *Miaz Muhammad Khan*
 Chairman
 Appellate Court
 SD/- *M. Hammad Nughul*
 Member

ANN
 19.02

Certified to be true copy


E. A. ANSARI
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Attested

Muhammad Arshad Khan Tanoli
 Advocate High Court
 Office No 33 Adjacent to
 Court for Abbottabad.

Date of Presentation of Application: *01-03-18*
 Number of Pages: *1600*
 Copying Fee: *10*
 Urgent: *✓*
 Total: *17*
 Name of Copy: *MS*
 Date of Completion of Copy: *01-03-18*
 Date of Delivery of Copy: *01-03-18*

27

Murad Ali Shah Divisional Forest Officer		Agror Tanawal Forest Division Oghi Phone # 0997-321244
No. 813 IGE		Dated 15/08/2018

Mr. Bashir Ahmad Ex-Forest Guard
s/o Sumandar Khan of Village Thandki (Ramkot)
P.O Oghi Tehsil Oghi and District Mansehra


Annex "C"

Subject: TO APPEAR BEFORE MEDICAL BOARD

Enclosed please find herewith Chairman Standing Medical Board Medical Superintendent Police/ Service Hospital Peshawar letter No. 4125-26 dated 11-7-2018 alongwith its enclosures which is self contained for information and necessary action.

You are directed to attend office of the Director General Health Services Khyber Pakhtunkhwa for appellat medical board for further course of action and intimate this offica about the medical board, so that further action could be taken in the matter accordingly.

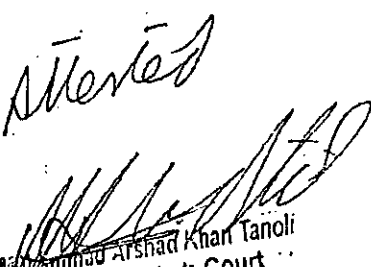
Encl: As Above:


Divisional Forest Officer
Agror Tanawal Forest Division
Oghi

No. _____ IGB

Copy forwarded to Chairman Standing Medical Board Medical Superintendent Police/ Service Hospital Peshawar for favour of information with reference to his office letter No. 4125-26 dated 11-7-2018 please.

Divisional Forest Officer
Agror Tanawal Forest Division
Oghi


Muhammad Afshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Dist Bar Abbottabad

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL CAMP COURT ABBOTTABAD**

In the matter of
Service Appeal No.1055/2018
Asad Rehman S/O Nizakat Khan

.....Appellant.

VERSUS

1. Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar.
2. Superintendent
Circle Headquarters, Prison Peshawar.
3. Superintendent
Circle Headquarters, Prison Haripur.

.....Respondents

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	Annex	Page No.
1-	Para-wise Comments/ Reply	-	1-2
2-	Affidavit	-	3
3-	Photocopy of Service Book Page	A	4
4-	Photocopy of relevant Rule of Pension	B	5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL CAMP COURT ABBOTTABAD**

in the matter of
Service Appeal No.1055/2018
Asad Rehman S/O Nizakat Khan

.....Appellant.

VERSUS

1. Inspector General of Prisons
Khyber PukhtunKhwa Peshawar.
2. Superintendent
Circle Headquarters, Prison Peshawar.
3. Superintendent
Circle Headquarters, Prison Haripur.

.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

PRELIMINARY OBJECTIONS.

- i. That the appellant has got no cause of action.
- ii. That the appeal is incompetent and is not maintainable in its present form.
- iii. That the appellant is estopped by his own conduct to bring the present appeal.
- iv. That the appellant has no locus standi.
- v. That the appeal is time barred.

FACTS

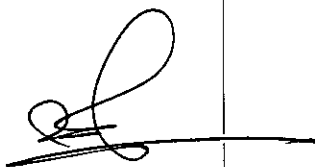
1. Admitted Correct.
2. Incorrect, just after few months of his induction into service, the appellant was awarded warning against his negligence/ misconduct **(Annex-A)**
3. Admitted Correct on the basis of available record as provided by the appellant.
4. In compliance/ practice of available rules and regulation medical board was requisitioned under intimation to all concerned.
5. It was unanimous decision of the Medical Board in respect of appellant.
6. Admitted correct, same was necessary to comply the relevant provisions of law.
7. The appellant wasn't entitled for pension/ gratuity except his G.P fund and encashment for leave due kind **(Annex-B)**.
8. No Comments.
9. After affording the opinion of medical board, there is no legal provision for re-instatement into service when opinion is not in the favour of employee/ patient. Authorities of Health department can comprehensively explain the situation of this phenomenon or availability of relevant rules in the instant case as well.
10. The appellant was also treated by the Respondent # 01 according to the rule.

GROUND.

- A- Referred No. 09 in the above Para, with further addition that appellant linked the authorities after expiry of statutory provision for filing an appeal before competent authority i.e. of 30 days.

- B- Incorrect. As replied above.
- C- Incorrect. Same remarks as given in Para-10 above.
11. Incorrect. After affording the opinion of medical board, there is no legal provision for re-instatement into service when opinion is not in the favour of employee/ patient. Authorities of Health department can comprehensively explain the situation of this phenomenon or availability of relevant rules in the instant case as well.
- D- Referred to ground "C" as above.
- E- As per above Para.
- F- Not admitted correct as appeal was not considerable under the available Rules & Regulations.
- G- Intersecting the self-explanatory opinion of appellant wherein he is with the opinion that he is completely fit for service.
- H- As replied in preceding Paras.

In wake of above submissions, we the following respondents unanimously recommend the dismissal of appeal of said appellant being unjustified, unlawful, time barred and without any substance, with cost.



- 1- **INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDENT NO.01)**



- 2- **SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
PESHAWAR
(RESPONDANT NO. 02)**



- 3- **SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
HARIPUR
(RESPONDANT NO. 03)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL CAMP COURT ABBOTTABAD**

In the matter of
Service Appeal No.1055/2018
Asad Rehman S/O Nizakat Khan

.....Appellant.

VERSUS

1. Inspector General of Prisons
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.....Respondents

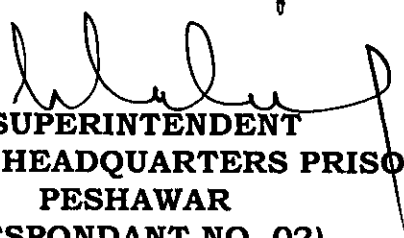
COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS No. 1 to 3.

We, the undersigned respondents do hereby solemnly affirm and declare that the contents of the Para-wise Comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this Honorable Tribunal.


1-


**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDENT NO.01)**

2-


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
PESHAWAR
(RESPONDANT NO. 02)**

3-


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
HARIPUR
(RESPONDANT NO. 03)**

(4)

10	11	12	13 Leave		14	15
Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government	Signature of the head of the office or other attesting officer.	Reference to any recorded punishment or censure, or reward or praise of the Government Servant
			Period	Government to which debitable.		
						<p>Consequent upon completion of all legal & other formalities under K.P.K. Govt. Servant Rule-2001 (F. 201) is "Awarded" to be careful in future in disciplinary case.</p>
<p><i>MP</i> SUPERINTENDENT DISTRICT JAIL, LAMPEDHA</p>					<p><i>TB</i></p>	

(8)

Conditions of Qualifying Service

Sl. No. 5

Unless it be otherwise provided by special rule or contract, the service of an officer begins to qualify for pension from the date he takes charge of the office to which he is first appointed.

[Article 358 of the C.S.Rs as introduced *vide* Finance Division Note No. D.F. 1 (15)-Reg. (6)/72, dated 31-1-1973.]

The service must be under Government. A Government servant does not qualify his service for pension unless he is appointed and his duties and pay are regulated by the Government. (Arts. 361, 362 C.S.Rs).

The employment must be substantive and permanent. (Arts. 361, 368 C.S.Rs).

A Government servant not employed in a substantive permanent capacity who has rendered more than 5 years continuous temporary service counts such service for the purpose of pension or gratuity excluding broken periods of service, if any, rendered previously. *[Continuous temporary and officiating service of less than five years immediately followed by confirmation shall also count for gratuity or pension, as the case may be]. (Art. 371-A C.S.Rs).

Only the service paid from the General Revenues qualifies for pension. Foreign service also counts for pension provided the pension contribution was paid as required under the rules. The effective service rendered by a Government servant in an autonomous or semi-autonomous body, in a post appointment to which is, by law, required to be made, and the salary of which is required to be fixed by the Federal Government or a Provincial Government is treated as effective service rendered in a post in Government service.

[Art. 385, 386 C.S.Rs.—Finance Division O.M. No. OB-2/12/63-Imp. (I), dated 15-11-1969]

The continuous service rendered by contingency paid staff prior to their being brought on the regular establishment, from 1st October, 1957, will count in full and continuous service before that date to count in half for purpose of pension.

[Finance Division O.M. No. F-3(12) Reg. 6/72, dated 2-4-1975.]

Civil employees who, prior to their civil employment, have rendered whole time satisfactory paid, enlisted or commissioned service including service rendered

*Substituted *vide* Finance Division Notification No. 5(1) R 6/77-II, dated 22-10-1985.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S.A

Writ Petition No. 1055/2018
Asad Rehman S/o Nizakat Khan

.....Appellant

VS

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
- 2- The Superintendent Circle Headquarters, Prison Peshawar.
- 3- The Superintendent Circle Headquarters, Prison Haripur.

..... Respondents

INDEX

S NO	DESCRIPTION OF DOCUMENTS	PAGES/ANNEXURE
01	Para wise comments	02
02	Affidavit	01
03	Photocopy of Service Book Page	01
04	Photocopy of relevant Rule of Pension	01


SUPERINTENDENT
CIRCLE H.Q. PRISON HARIPUR


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

S.A Writ Petition No. 1055/2018
Asad Rehman S/o Nizakat Khan

.....Appellant

VS

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
- 2- The Superintendent Circle Headquarters, Prison Peshawar.
- 3- The Superintendent Circle Headquarters, Prison Haripur

Paraphrase comments on behalf of Respondents. Respondents

Preliminary Objections:

- (i) That the appellant has got no cause of action.
- (ii) That the appeal is incompetent & not maintainable in its present form.
- (iii) That the appellant is estopped by his own conduct to bring the present appeal.
- (iv) That the appellant has no *locus Standi*.
- (v) That the appeal is badly time barred.

Facts:

- 1) Admitted Correct. *incorrect*
- 2) ~~Not admitted correct~~, just after few months of his induction into service, the appellant was awarded warning against his negligence/ misconduct (Annex-A).
- 3) Admitted Correct on the basis of available record as provided by the appellant.
- 4) In compliance/practice of available rules and regulation a medical board was requisitioned under intimation to all concerned.
- 5) It was unanimous decision of the Medical Board in respect of appellant.
- 6) Admitted correct, same was necessary to comply the relevant provisions of law.
- 7) The appellant wasn't entitled for pension/ gratuity except his G.P fund and encashment for leave due kind (Annex-B).
- 8) No Comment.
- 9) After affording the opinion of medical board, there is no legal provision for re-instatement into service when opinion is not in the favour of employee/patient. Authorities of Health department can comprehensively explain the situation of this phenomenon or availability of relevant rules in the instant case as well.
- 10) The appellant was also treated by the Respondent#01 according to the rule.

Grounds:

- a) Referred No. 9 in the above Para, with further addition that appellant linked the authorities after expiry of statutory provision for filing an appeal before competent authority i.e. of 30 days.
- b) ~~Not admitted correct~~ *incorrect. As replied above.*
- c) ~~After affording the opinion of medical board, there is no legal provision for re-instatement into service when opinion is not in the favour of employee/patient. Authorities of Health department can comprehensively explain the situation of this phenomenon or availability of relevant rules in the instant case as well.~~
- d) Referred to ground "C" as above.
- e) ~~Appellant was completely as per available Rules & Regulations.~~ *As per above para.*
- f) Not admitted correct as appeal was not considerable under the available Rules & Regulations.



g) Intersecting the self-explanatory opinion of appellant wherein he is with the opinion that he is completely fit for service.

h) Not-admitted correct. *As replied in preceding paras.*

In wake of above submissions, we the following respondents unanimously recommend the ^{all manner} rejection of appeal of said appellant being unjustified, unlawful, time barred and without any substance, with cost.

1-



INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDENT # 1)

2-

SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
PESHAWAR.
(RESPONDENT # 2)

3-

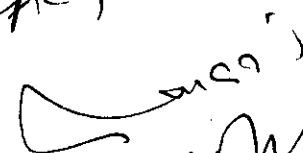

SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
HARIPUR. *MS*
(RESPONDENT # 3)

Agreed as above
Please vet
DAI


15/3/19

Additional Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

vetted subject to correction;
attachment of all annexes,
affidavit and approval
of AAL,


15/3/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S.A
Writ Petition No. 1055/2018
Aşad Rehman S/o Nizakat Khan

.....Appellant

VS

- 1- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
- 2- The Superintendent Circle Headquarters, Prison Peshawar.
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..... Respondents

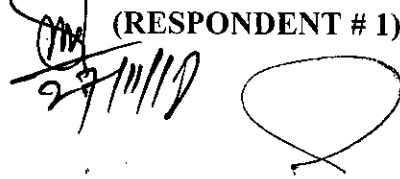
COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 TO 3.

We, the undersigned respondents do hereby solemnly affirm that the contents of the Para-wise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts have been kept secret/concealed from this honourable court.


1


**INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR
(RESPONDENT # 1)**

2-


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
PESHAWAR.
(RESPONDENT # 2)**

3-


**SUPERINTENDENT
CIRCLE HEADQUARTERS PRISON
HARIPUR.
(RESPONDENT # 3)**

Conditions of Qualifying Service

Sl. No. 5

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[Article 358 of the C.S.Rs as introduced *vide* Finance Division Note No. D.F. 1 (15)-Reg. (6)/72, dated 31-1-1973.]

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*Substituted *vide* Finance Division Notification No. 5(1) R. 6/77-II, dated 22-10-1985.

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1055/2018

Asad RehmanV/S.....IGP & Others
(Appellant) **(Respondents)**

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

The appellant submits his rejoinder as under:-

Preliminary Objections:

1. Contents incorrect and misleading, appellant has illegally been deprived of his reinstatement in service after recovery of health; hence he has got every cause of action and locus standi to file the instant appeal.
2. Contents incorrect and misleading; the appellant has filed instant appeal according to procedure prescribed by law and rules governing the terms and conditions of appellant's service thus maintainable.
3. Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.
4. Contents incorrect and misleading, appellant has illegally been deprived of his reinstatement in service after recovery of health; hence he has got every cause of action and locus standi to file the instant appeal.
5. Contents incorrect and misleading, appellant has filed instant appeal well within prescribed period of time limitation.

ON FACTS:

Contents of para No.1 to 10 of the appeal are correct and the reply submitted to these paras by respondents in para-1 to 10 is incorrect and misleading hence denied.

GROUND:

All the grounds "A" to "H" taken in the memo of appeal are legal and will be substantiated at the time of hearing of appeal and reply submitted to these paras by respondents from "A" to "H" is incorrect and misleading hence vehemently denied.

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

THROUGH

Asad
APPELLANT

M A Tanoli
(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT HARIPUR

Dated: 19-08-2019

AFFIDAVIT:

Asad Rehman s/o Nizakat Khan do hereby solemnly declare that contents of this rejoinder as well as that of titled appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Dated: 19-08-2019

Asad
Deponent/Appellant



19-08-2019