

No:531-32/ Inquiry/Shabir Ahmad.

Dated: 01/10/2014.

From:

The Inquiry Officer,
(Prof. Muhammad Nafis)
GPGC, Lakki Marwat.

To:

The Director Higher Education,
Govt; of Khyber Pakhtunkhwa,
Higher Education Department.
Peshawar.

Subject; INQUIRY REPORT- AGAINST MR. SHABIR AHMAD
LECTURER IN COMPUTER SCIENCE, GDC TANK.

Memo;

The undersigned was assigned the fact finding inquiry against Mr. Shabir Ahmad, Lecturer, GDC, Tank, for his alleged absence from duty, vide DHE, letter No. 20387/CA-II/Estt: Branch A-12/Shabir Ahmad/Comp: Science, dated: 12/9/2014 (Annex-A). Terms of Reference (TOR) were to probe and conduct fact finding inquiry into the matter of 'alleged absence from duty of the officer. Time period was given only week time for the probe and report.

1. Proceedings:

i. The undersigned tried to find out the whereabouts of the alleged absent officer for communication. I obtained his phone number which was set on a preset messaging service that "caller phone has not sufficient balane to call", although my phone had quite enough amount which I checked from the telephone carrier company. Ensuring from both the Principals of GDC Tank and Ama Khel that the officer would not respond to correspondence and calls, I sent him a letter, vide I.O letter No. 501-3/inquiry, dated; 22-9-2014 (Annexure- B) and asked him to reply in his defense to the allegations leveled against him. He replied that on previous complaint of former Principal DC Tank (Mr. Nasrullah Khan) he has been declared regular on duty by another Principal. This defense is illegal because the so called Principal (Mir Sahib Khan Burki) who wrote (Annex- C) to exonerate Mr. Shabir from charges was not Principal of GDC Tank at all. His second defense was on the premises that Principal GDC Ama khel is personal to him. This seems to be exaggeration and baseless.

ii. I, as inquiry officer visited, on 24.9.2014, the Principal, GDC Ama Khel and interviewed the Principal, Dr. Yahya Ahmad. Statement of the Principal is at Annex-D) which was given to me on 22-9-2014. I checked the Attendance Register for the current month September 2014, which contained no entry of Mr. Shabir ahmad name or signatures. Statement of the Principal says that when Joint Management Council D.I.Khan issued transfer orders of Mr. Shabir Ahmad from GDC Ama Khel to Tank, Mr. Shabir didn't obtained Relieving certificate, not joined GDC Tank as record suggests, and remained absent from Tank for nine months.

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Principal GDC Tank Mr. Nasrullah also reported his absence to Directorate Higher Education. When Shabir didn't performed duty at Tank, He (Principal GDC Ama khel) reported his absence in January, June and July 2014. His only duty was from 1st to 6 Sept.

iii. I also visited GDC Tank on 24-9-2014. Principal GDC tank admitted in his written statement that the officer is absent from duty since start of the current educational year in September 2014, and they have no entry in the Attendance Register of the College and his absence is separately being reported to Directorate Higher Education (Annex E). College Record shows no arrival or joining report of duty of Mr. Shabir Ahmad.

Findings:

1. When Mr. Nasrullah Khan, Principal, GDC Tank reported absence of Mr. Shabir Ahmad and Directorate H/E asked for reply from Principal GDC Tank, the reply given from the office of GDC Tank (letter No. 320/GDC Tank, dated 02/8/2014) (Annex-C) was signed not (NOT) signed by the actual Principal Mr. Wali Muhammad who took charge of college on 1st June 2014. The letter was reported signed by one Mir Sahib khan Burki who was neither Principal nor incharge nor authorized to do so. The accused officer was neither consulted nor called for explanation but certificate for good performance of Shabir was issued, ignoring report of actual Principal Mr. Nasrullah. Hence the charges of absence leveled against Mr. Shabir Ahmad exists, to be explained by the accused and yet to be decided by the Directorate.
2. The sitting Principal, GDC Tank, in his statement has categorically declared that the officer is absent from duty from 01-09-2014 till the date of inquiry 24-9-2014. The Principal didn't verify presence of the accused officer from 1st June 2014 when he took charge of the college.
3. Even on day of inquiry the officer was absent, with no leave application, or any other intimation.
4. There is sufficient truth in the reports of the three (3) Principals i.e. two of Tank (Mr. Nasrullah khan now transferred and Mr. Wali Muhammad incumbent) and Principal GDC Ama Khel -Dr. Yahya Ahmad that Mr. Shabir is absconder from duty since his early days.

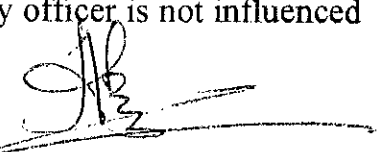
Additional Remarks:

I was informed by few of the colleagues of the accused officer that Mr. Shabir is pursuing Ph.D course from some university in Peshawar and has a lucrative job in Peshawar University.

If this additional charges are true, then it needs a thorough probe.

Recommendations:

The case needs a thorough and full-fledged inquiry, to be conducted by an officer not belonging to South region so that inquiry officer is not influenced by any party.


(Prof. Muhammad Nafis)

Inquiry officer, C345 5559554
GPGC Lakki Marwat

INQUIRY REPORT

On the basis of Charge Sheet and Statement of Allegation issued by the Chief Secretary Khyber Pakhtunkhwa to Mr. Shabir Ahmed, Lecturer in Computer Science, Government Degree College, Ama Khel District Tank

INTRODUCTION

The Establishment Department entrusted an Inquiry to the following Committee on the basis of Charge Sheet (Flag-A) and Statement of Allegation (Flag-B) for conducting an Inquiry:

1. Mr. Muhammad Asghar Khan, Dy: Secretary, Zakat & Ushr Department
2. Prof. Sharif Gul, Principal, Govt. Superior Science College, Peshawar

The purpose of the constitution of the Committee was to conduct an Inquiry against the wilful absence of Mr. Shabir Ahmed, Lecturer in Computer Science GC Ama Khal, Tank reported through a written statement of Principal of the college submitted to the Director, Higher Education, (Flag-C) and Fact Finding Inquiry Report (Flag-D) conducted by Prof. Muhammad Nafis, Principal (Rtd), GPGC, Lakki Marwat.

The Secretary, Higher Education Department vide letter No-SO(C-III) HED/12-6/2013/ShabirAhmad/Comp:Sc/5380-83, dated 27.09.2017 of the Section Officer, Higher Education Department (Flag-E) forwarded the copies of above mentioned Charge Sheet and Statement of Allegation to Inquiry Committee requesting for conducting an Inquiry on the basis of the Charge Sheet and Statement of Allegation issued to Mr. Shabir Ahmed, Lecturer, in Computer Science GC Ama Khal, Tank.

PRELIMINARY FINDINGS OF THE INQUIRY COMMITTEE FROM THE DOCUMENTS PROVIDED BY THE DIRECTORATE OF HIGHER EDUCATION

1. Mr. Shabir Ahmad was posted initially at GDC Amakhel as Lecturer in Computer Science
2. His services were placed by Joint Management Committee, DIKhan at the disposal of Principal, GDC Tank on 14.09.2013 to meet the staff deficiency (Flag-F)
3. Principal, GDC Ama Khel informed the Director Higher Education (Flag-G) on 09.04.2014 that as the officer was not performing duty in any of the two colleges, (GDC Ama Khel and GDC Tank), he may be posted in GDC Tank on permanent basis, which shows that he was not performing his duty
4. The Directorate of Higher Education vide their letter No. 118511 dated 01.09.2014 (Flag-H) with reference to letter No.100 dated 23.06.2014 of Principal (Flag-I) with a copy to the Principal, GDC Tank asked the Principal, GDC Ama Khel as to why he did not sent his (Mr. Shabir Ahmad) absence report being absent for such a long time. In response to this letter, Principal, GDC Ama Khel reported on 12.09.2014 (Flag-J) that the concerned officer remained absent for a long time. He further added that the officer concerned arrived in the college in the 1st week of September,

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KHYBER PAKHTUNKHWA

2014 and remained absent from the college till date (12.09.2014) for which he called his Explanation on 12.09.2014 (Flag-K)

5. Mr. Shabir Ahmad was again directed on 21.09.2014 (Flag-L) to produce his Medical Certificate otherwise his absence would be considered for deduction of pay for the period from 08.09.2014 to 26.09.2014.

6. As per documents provided by the Directorate of Higher Education, an Inquiry was conducted by Prof. (Rtd) M. Nafis, the then Principal, Govt. Post Graduate College, Lakki Marwat on the direction of the Director, Higher Education. In his fact finding Inquiry in the instant case, Prof. Muhammad Nafees, (Flag-D) enlisted the following findings:

a) When Mr. Nasrullah Khan, Principal, GDC, Tank reported the absence of Mr. Shabir Ahmed and Directorate H/E asked for reply from the Principal, GDC Tank, the reply given was signed by one Mr. Mir Sahib Jan Burki (A college teacher) instead of the then Principal of the college, Mr. Wali Muhammad, who took over charge of the Principal on 1st June 2014. The accused Mr. Shabir Ahmed was neither consulted nor asked to explain his position but a certificate of good performance was issued, ignoring the report of the Principal of the college. Prof. Nafis (Inquiry Officer) therefore, pointed out in his Fact Finding Report that the charges of absence level against Mr. Shabir Ahmed still existed and to be explained by the accused Mr. Shabir Ahmed

b) Prof. Nafis in para-2 of the FINDINGS of Inquiry report further states that *"The sitting Principal GDC Tank, in his statement has categorically declared that the officer is absent from duty from 01.09.2014 till the date of Inquiry dated 24.09.2014. The Principal did not verify the presence of the accused officer from 1st June, 2014, when he took over charge in the college."*

c) Prof. Nafees in para-3 of the findings of the Inquiry report further states that *"Even on the day of Inquiry, the officer was absent with no leave application or any intimation"*

d) Para-4 of the findings of the Inquiry Report conducted by Prof. Nafis states that *"There is sufficient truth in the report of the three Principals i.e. two Principals of GDC Tank (Mr. Nasrullah Khan and the present Principal Mr. Wali Muhammad) and the Principal, GDC Ama Khel-Dr. Yahya Ahmad that Mr. Shabir is absconder from duty since his early days"*

e) Prof. Nafis in his report further remarked that he was informed by a few colleagues of the accused officer, Mr. Shabir Ahmed that he was pursuing Ph.D course from some University in Peshawar and had some lucrative job there. He therefore, suggested that if the additional charges were true, then a thorough probe in the matter would be required.

7. At the end of the Inquiry report, Prof. Nafis has recommended that *"The case needs to be further investigated through a full-fledged Inquiry to be conducted by an officer not belonging to south region of the Province so that the Inquiry Officer would not be influenced by any party."*

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8. Mr. Shabir Ahmad has been served with a **Charge Sheet and Statement of Allegation** by the Chief Secretary, Khyber Pakhtunkhwa and directed him for submission of written statement in his defence on the basis of Inquiry conducted by Mr. Muhammad Nafis, the then Principal, GPGC, Lakki Marwat

1. PROCEEDINGS of the Inquiry dated 31.10.2017

The Directorate of Higher Education vide letter No.29293-97 dated 30.10.2017, with a copy to Inquiry Committee, directed Mr. Shabir Ahmed Lecturer in Computer Science GDC Ama Khel District Tank (The accused) to appear before the Inquiry Committee on 31.10.2017 at 10.00AM in the Office of the Dy: Director (Admn) Social Welfare, Special Education & Women Empowerment Department.

1. Detailed meeting with Mr. Shabir Ahmad, Lecturer in Computer Science dated 31.10.2017

The Inquiry Committee had a detailed meeting with the accused Mr. Shabir Ahmad on 31.10.2017 in the office of Dy. Secretary, Zakat & Ushr Department to discuss different aspects and also get his written statement and supporting documents. (Flag-M)

Mr. Shabir Ahmad submitted a written statement of two pages duly supported by 16 Annexures comprising of 32 pages. In his verbal as well as written statement, Mr. Shabir Ahmad stated that:

- a) He was appointed as Lecturer on 12.12.2012 in newly established GDC, Ama Khel, District Tank
- b) As the building of GDC Ama Khel was occupied by Pak Army, he took over charge at GDC Tank, as GDC Ama Khel was functioning in the building of GDC Tank
- c) Dr. Yahya, (who registered complaint against Mr. Shabir Ahmad) was appointed as Principal, GDC Ama Khel in the month of January, 2013
- d) After shifting of GDC Ama Khel to its own building, Dr. Yahya wanted to appoint his son. As he (the accused) was against it, he (Dr. Yahya) became personal to him (the accused) and placed his services at the disposal of GDC Tank, though there were only four staff members in the GDC, Ama Khel
- e) During this period of detailment, Dr. Yahya wrote a letter to the Director, Higher Education on 14.09.2014 and again on 23.06.2014 wherein he registered a complaint against him (Mr. Shabir) that he was not performing his duty in any of the two colleges. He further adds that the report of the Principal was not based on facts as there had been no complaint against him (Mr. Shabir) in GDC Tank as he had been regular and did not receive even a single absence notice
- f) Mr. Shabir received a letter from Directorate of Higher Education for explaining the reasons for his (Mr. Shabir) wilful absence from duty issued on 18.07.2014.
- g) Mr. Shabir in his reply submitted that he was performing his duties in GDC Tank as he was on detailment basis there on the orders of the Joint

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- Management Committee, DIKhan and the report of the Principal was biased and not based on facts
- h) Mr. Shabir in his written statement mentioned that the report of GDC Tank was also in his favour saying that he is performing his duties regularly and punctually
 - i) Mr. Shabir further states that Mr. Yahya brought him in front of Director Higher Education, who believed in false accusation against him. (Mr. Shabir) and subsequently an Inquiry was launched.
 - j) The Inquiry Officer, Mr. M. Nafis was approached by Dr. Yahya, who wrote the report against him (Mr. Shabir) and stated that he was seeking Ph.D in a university at Peshawar, which was again not true
 - k) Mr. Shabir came to know through a *Notice* in Daily Mashriq on 14.12.2015 regarding his absence from duty, which he responded accordingly
 - l) In support of his claim being regular and punctual, he has attached copies of attendance Register with his written statement

2. PROCEEDINGS-FURTHER COURSE OF ACTION:

The Inquiry Committee for further clarification and to reach to a conclusion and make the Inquiry more transparent, decided to call the Principal, GDC Ama Khel and few other staff members to record their statements as well.

In view of the above decision of the Inquiry Committee, the following were called to appear before the Inquiry Committee on 08.11.2017 with their written statements.

S.No	Name of Officer	Written Statement at
1	Dr. Yahya, Principal GDC Ama Khel	F/N
2	Mr. Wali Muhammad, Associate Professor, GDC Tank	F/O
3	Mr. Mir Sahib Khan, Associate Professor, GDC Tank	F/P
4	Mr. Shakil Abdul Jabbar Lecturer, GDC Tank	F/Q
5	Mr. Taj Muhammad Junior Clerk GDC Ama Khel to come up with the attendance Registers to verify the attendance of Mr. Shabir Ahmad.	Copy of Attendance Register at F/R

2. PROCEEDINGS of the Inquiry dated 08.11.2017

As per written reports of three Respondents at S.No-2, 3 and 4 above placed at F/N, F/O & F/P respectively, Mr. Shabir Ahmed is a regular, punctual and dutiful Officer and they have received no complaint from the students as well as Principal during the period, he remained in GDC, Tank. However, the respondent at S.No-1 above Dr. Yahya, Principal, GDC Ama Khel in his written statement at, F/N states that Mr. Shabir Ahmed did not perform his duty during the period from 15.01.2013 to 15.06.2013. Later on he was detailed to GDC Tank. The students of GDC Amakhel

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were shifted back to its own building. In the month of March, 2014, report was received from GDC, Tank that Mr. Shabir Ahmed was not performing his duty there, which was instantly reported to the Director, Higher Education. On the basis of this report, Prof. Muhammad Nafis was appointed as Inquiry Officer, who submitted his report that the said Mr. Shabir Ahmed was absent from duty. The report as he says was based on fact. Dr. Yahya (the Principal) in his verbal statement told the Inquiry Committee that Mr. Shabir Ahmed used to come to the college once in a week and marked his attendance in the Register for the whole week. Mr Shabir Ahmed regularly threatened him (Dr. Yahya) if he take any action against him (Mr. Shabir). The Principal in his verbal statement again reiterated that Mr. Shabir Ahmed was seeking some Higher Education in Peshawar.

3. PROCEEDINGS of the Inquiry dated 14.11.2017

On the basis of the Inquiry Report of Prof. (Rtd) Muhammad Nafis and verbal statement of Dr. Yahya, Principal, the Inquiry Committee kept on investigating, whether Mr. Shabir Ahmed is seeking some higher Education at a university in Peshawar and has a job here or otherwise. For this purpose University of Peshawar, Islamia College University and Institute of Management Science were visited by the Inquiry Committee on 14.11.2017 and contacted the authorities there. The following facts about Mr. Shabir Ahmed were found:

1. Mr. Shabir Ahmed was student of M.Phil at University of Peshawar during 2008-09, which he left incomplete for some reasons (This is a period before he joined Education Department)
2. He is a regular student of "MS-Project Management" in the Institute of Management Sciences, Hayatabad Peshawar. (Session 2016-18). He has completed his course work of two Semesters during 2016-17 and attended all his classes.
3. One of the his colleagues with a commitment from Inquiry Committee not to disclose his name, informed the Inquiry Committee that Mr. Shabir Ahmed had a job in an NGO in Afghanistan

The IMS authorities were therefore, requested in writing (Flag-S) instantly i.e on 14.11.2017 for providing details about Mr. Shabir Ahmed "MS-Project Management". Letter from IMS sciences was received on 19.11.2016 (Flag-T), which shows that he attended all his classes in two Semesters

In view of the above, the Inquiry Committee called Mr. Shabir Ahmed as well as Principal, GDC Tank and Principal, GDC Ama Khel on 24.11.2017. Mr. Shabir Ahmed was also directed to bring his Passport as well to check if he had gone to Afghanistan for his job with the NGO or otherwise.

4. PROCEEDINGS of the Inquiry dated 24.11.2017

Mr. Shabir Ahmed and Prof. Munawar Khan, Principal GDC Tank appeared before the Inquiry Committee, whereas Principal, GDC, Ama Khel did not come.

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Mr. Shabir Ahmed was asked if he was seeking Higher Education in any institute at Peshawar and was directed to show his passport. He replied that he has lost his passport and added that he has not been seeking higher Education in any institute in Peshawar. Prof. Munawar Khan Principal was also asked about the punctuality of Mr. Shabir Ahmed. He informed the Inquiry Committee that Mr. Shabir was a regular and punctual officer and performed his duties perfectly. Both the officers were asked to give in writing all what they said in their verbal statements. After submission of written Statements by both the Officers, (F/U, F/V) the Admission documents obtained from IMSciences were shown to them and Mr Shabir Ahmed was asked to show "No objection Certificate" of the Department, if he had obtained it. Prof. Munawar Khan immediately changed his statement saying that his written statement was for his tenure as Principal of the college, whereas Mr. Shabir had nothing to say. However, he replied that he has not obtained NOC from the Department and his attendance were marked as proxies by his friends. When asked if he had appeared in his two Semester Exams, he admitted that he appeared in the Examination in person. Using the word "proxies" for marking attendance is an attempt to malign the good name of IM Sciences.

FINDINGS OF THE INQUIRY COMMITTEE

The allegations given in the "Statement of Allegations" are true for the following reasons:

1. As per report of Dr. Yahya in his written statement the said Mr. Shabir Ahmed remained absent from GDC Ama Khel from 15.01.2013 to 15.06.2013. Afterward, he was detailed to GDC Tank and the Principal GDC Ama Khel received a report of his absence from GDC Tank in the month of March, 2014. Again he (Mr. Shabir Ahmed) disappeared for which he was directed to explain reason for his absence by Dr. Yahya. The absence was also reported to the Director on the basis of which Prof. Nafis was asked to conduct a Fact Finding Inquiry against Mr. Shabir Ahmed, in which he was not only found guilty but it was also revealed that the accused was not only seeking Higher Education in Peshawar but also had some lucrative job. All these show that he had never been regular in performing his duties.
2. It has been stated by the three teachers of GDC that there has been no report against the said Mr. Shabir Ahmed from students as well as Principal in GDC, Tank, however they failed to produce the attendance registers of the period both of the teachers as well as students, he spent in that college. It means that he had never been to that college that is why, his name has never been entered in the attendance registers, he had not taken any class with the students, and therefore, no record of that is also available. No complaint means he has not been allotted any class. If a teacher does not have any class in the Time Table of the college, no student would ask about him and no complaint would be registered. This has been mentioned by Prof. M. Nafis in his fact finding Inquiry as well
3. The written statements of the three college teachers placed at F/O, F/P and F/Q, wherein they have, in writing, said that he was regular and punctual are totally

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biased and not based on facts as the Inquiry proceedings suggest that the said accused remained absent from his duty

4. Mr. Shabir Ahmed in his verbal as well written statements tried his best to conceal facts like he says:
 - a. He was regular in his duty, which is not true
 - b. He is not seeking any Higher Education, which has again been proved false as he is a regular student of "MS-Project Management" at IMSciences Peshawar
 - c. He did not have any job in Peshawar or somewhere else. This also seems to be false as (as the Inquiry Committee has been told by one of the colleagues of the accused) he had some jobs in Afghanistan. For this very reason, he did not produce his Passport before the Inquiry Committee as this would confirm the claim of Prof. Nafis in his fact finding Inquiry against the accused of having some lucrative job in Peshawar (which was in fact in Afghanistan and not Peshawar)
5. As reported by the authorities of University of Peshawar, Mr. Shabir Ahmed was the student of M.Phil (Computer Science), which he left incomplete even though he had completed his course work there. This also gives a clue that as he had a lucrative job, somewhere outside Pakistan, he could not manage to do his research work and left the M.Phil incomplete. His job remained continued till the time he was selected as lecturer. In presence of a job with handsome salary, he did not care for his lecturer job and kept on working with the NGO or in a certain university in Pakistan or Afghanistan.
6. The selection of Higher Qualification (MS-Project Management) other than his field of computer science also suggests that he had a job in some NGO dealing with projects management due to which his interest was developed in the Project Management and he selected MS-project management for his future career

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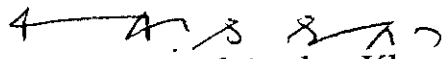
1. Mr. Shabir Ahmad failed to establish his presence in the college. This has been authenticated by the sources that he was serving abroad during the said period. His services abroad are further supported by the fact that the accused did not produce his passport before the Inquiry Committee, which confirms the claim of Prof. (Rtd) Muhammad Nafis, who had conducted an Inquiry earlier in the instant case.
2. On the basis of the Inquiry Report of Prof. Nafis, the committee tried to dig out whether Mr. Shabir was seeking Higher Education or otherwise. During this field Inquiry, it was found that he (Mr. Shabir) has been a regular student of Institute of Management Sciences, Hayatabad during 2016-17 and attended two Semester as regular student, whereas, he declared in writing (Flag-V) before the committee that he was not seeking any higher education anywhere. This proves that Mr. Shabir Ahmad is a liar and tried to conceal facts from the Inquiry


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- Committee. On the basis of his this falsehood, the Committee assume that he must have lied before 1st Inquiry Committee as well.
3. It is a matter of serious concern that the Principal of the college remained ignorant of the fact during 2016-17 that the said Mr. Shabir Ahmad was attending his classes at IMSciences Peshawar as regular student, which was his basic and utmost responsibility being Head of the Institute. Instead he (The Principal) tried to conceal facts from the Inquiry Committee. It is further added that the Principal in his written statement has reported that the accused is regular and punctual in his duties. It might be so because at the moment the accused has completed his course work and during research work, (i.e September 2017 to June 2018) there is no need to visit the Institute on regular basis but it is established fact that he has taken his classes regularly from September 2016 to January 2017 as evident from IM Sciences letter. The Researcher attends the Institute on and off to meet the Supervisor.
 4. The Principal Govt. Degree College, Amakhel produced copies of the attendance Register whereas the Principal, Govt. College Tank and staff tried their best to conceal facts and did not produce the attendance registers of the said period. Even they have given in writing that these registers are not available in the college.

From the above established facts,

- a) It is proved that the charges levelled against the accused given in the charge sheet regarding his absence from duty are correct.
- b) He is still a regular student of IMSciences, Peshawar without any NOC from the Higher Education Department.
- c) As it is not conclusive that Mr. Shabir Ahmed was working abroad, hence it is proposed that an Inquiry for initiating disciplinary proceedings may be carried out accordingly.


Mr. Muhammad Asghar Khan
Dy. Secretary
Zakat & Ushar Department


Prof. Sharif Gul
Principal
Govt Superior Science College
Peshawar



Annex H/1

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**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 9211803

No. 29299 / CA-II/ Estt: Branch/A-12/Shabir Ahmad/ Comp: Sci:

Dated Peshawar the 30/10/2017

To

Mr. Shabir Ahmad
Lecturer in Computer Science
Govt; Degree College, Ama Khel (Tank).

SUBJECT

DISCIPLINARY PROCEEDINGS AGAINST MR. SHABIR AHMAD,
LECTURER IN COMPUTER SCIENCE, GOVT; DEGREE COLLEGE,
AMA KHEL (TANK).

Memo:

Reference letter No. SO (Colleges-II)HED/12-6/2013/Shabir Ahmad/ Computer Science dated 27.10.2017 received from the Section Officer (Colleges-II) Govt; of Khyber Pakhtunkhwa, Higher Education Department, Peshawar wherein date of inquiry proceedings has been fixed by the Competent Authority as 31.10.2017 at 10:00 (Noon).

In view of the same, you are directed to attend the office of Deputy Secretary (Admin), Social Welfare, Special Education & Women Empowerment Department on **31.10.2017 at 10:00 A.M** sharp and appear before Inquiry Committee.

Endst; No. 292993-97

30/10/17
DY: DIRECTOR (ESTABLISHMENT)

Copy of the above is forwarded to the;-

1. Deputy Secretary, (Admin), Govt: of Khyber Pakhtunkhwa, Social Welfare, Special Education & Women Empowerment Department.
2. Prof: Sharif Gul, Principal, Govt; Superior Science College, Peshawar/ Member of Inquiry Committee with the request to attend the office of Deputy Secretary (Admin), Social Welfare, Special Education & Women Empowerment Department on the above-mentioned date, time and venue.
3. Section Officer (Colleges-II) Govt; of Khyber Pakhtunkhwa, Higher Education Department Peshawar with reference to his letter No. referred above.
4. Principal, Govt; Degree College, Ama Khel (Tank) with the remarks to inform the lecturer concerned to attend the office of Deputy Secretary (Admin), Social Welfare, Special Education & Women Empowerment Department for Inquiry on the afore-mentioned date.
5. Mr. Khurshid Hussain, Dealing Assistant, local Directorate with the direction to attend the inquiry proceedings on the above-mentioned date, time and venue alongwith all relevant record.

30/10/17
DY: DIRECTOR (ESTABLISHMENT)



DIRECTORATE OF HIGHER EDUCATION (20) (14)
KHYBER PAKHTUNKHWA, Annex H/4
KHYBER ROAD PESHAWAR

Phone # 091-9210242, 9211025/Fax # 9210215
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Twitter.com:- [dhekpakeshwar1](https://twitter.com/dhekpakeshwar1)

No. 16061 / CA-II/ Estt: Branch/A-12/Shabir Ahmad/Comp: Sci:

Dated Peshawar the 24/5 /2018

To

Mr. Shabir Ahmad,
Lecturer in Computer Science
Govt: Degree College, Ama Khel (Tank).

SUBJECT INQUIRY REPORT AGAINST MR. SHABIR AHMAD, LECTURER IN COMPUTER SCIENCE, GOVT; DEGREE COLLEGE, AMA KHEL (TANK).

Memo:

Reference letter No. SO(Colleges-II)/12-6/2012/Shabir Ahmad/ Comp: Science/ 3552 dated 17.05.2018 received from the Section Officer (Colleges-II) Govt; of Khyber Pakhtunkhwa, Higher Education Department, Peshawar wherein your personal hearing has been fixed by the Competent Authority on 29.05.2018 at 12:00 (Noon).

In view of the same, you are directed to appear before the Secretary Establishment, Govt; of Khyber Pakhtunkhwa in his office on 29.05.2018 at 12:00 (Noon) for your defence.

Endst; No. 16061-21

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DY: DIRECTOR (ESTABLISHMENT)

Copy of the above is forwarded to the;-

1. Principal Govt: Degree College, Ama Khel (Tank) with the remarks to inform the lecturer concerned to attend the office of Secretary Establishment, Govt; of Khyber Pakhtunkhwa for personal hearing on the afore-mentioned date.
2. Section Officer (Colleges-II) Govt; of Khyber Pakhtunkhwa, Higher Education Department Peshawar with reference to his letter No. SO (Colleges-II)/12-6/2012/Shabir Ahmad/ Comp: Science/ 3552 dated 17.05.2018.
3. Mr. Mohammad Bashir, Deputy Director (Establishment), Local Directorate, with the remarks to represent the Department on the above-mentioned date & venue.

M m/s/18
DY: DIRECTOR (ESTABLISHMENT)

Annex H₃

MOST IMMEDIATE
THROUGH FAX

162
24



GOVERNMENT OF KHYBER PAKHTUNKHWA
SOCIAL WELFARE, SPECIAL EDUCATION & WOMEN
EMPOWERMENT DEPARTMENT

No. SOG (SWD)/M.Asghar Khan/DS/ No.995/2017
Dated Peshawar, the 27-10-2017

To

The Section Officer (Colleges-II),
Higher Education, Archives & Libraries Deptt:
Government of Khyber Pakhtunkhwa
Peshawar.

Subject:

DISCIPLINARY PROCEEDINGS AGAINST MR. SHABIR AHMAD,
LECTURER IN COMPUTER SCIENCE, GOVT. DEGREE COLLEGE
AMA KHEL, TANK

Please refer to your letter No. SO(C-II)/HED/12-6/2013/Shabir Ahmad/Comp:Sci Dated 27-10-2017 and to state that kindly inform Mr. Sharif Gul, Principal, Govt Degree College, Pabbi Nowshera (Inquiry Officer/Member of the Inquiry Committee) along with Mr. Shabir Ahmad Lecturer in Computer Science Govt. Degree College Ama Khel, Tank to attend (the office of Deputy Secretary (Admn) on 31-10-2017 at 10:00 AM regarding formal Inquiry in the subject case.

2. It is further requested that relevant officer of Higher Education department may also be deputed to bring the relevant record of fact finding inquiry.

ZAHID MASOOD
Section Officer (General)

Ends: of even No. and date.

Copy to the:-

1. P.S, to Secretary Higher Education, Archives & Libraries Department.
2. P.A, to Deputy Secretary (Colleges), Higher Education, Archives & Libraries Department.

Section Officer (General)

28 Sep 2017 03:32PM PT

FAX NO.: 0919213258

FROM: SECY ZUSSEMBD

Pakhtunkhwa, Peshawar.

SECTION OFFICER (COLLEGES-II)

/ (L) 32

OFFICE OF THE PRINCIPAL
GOVERNMENT DEGREE COLLEGE AMA KHEL (TANK)

No. 165 /
Dated 21/10 /2014.

To

Mr. Shabir Ahmad
Lecturer in Computer Science
GDC Amakhel Tank.

SUBJECT: WILLFULL ABSENSE REPORT

Memo:

Reference this office letter No. 126 dated: 12/09/2014 and your reply dated: nil, you are directed to produce Medical certificate from authorized hospital by the department w.e. from 08/09/2014 to 26/09/2014.

This will enable us to sanction your long leave without pay because you have no leave account according to your service record.

You are again absent from duty from 09/10/2014 to till now. Why disciplinary action may not be taken against you.

ye by
Principal
Govt Degree College
Amakhel Tank.

Encls No. _____

Dated _____

Copy for information to:

1. Director Higher Education KPK Peshawar.

Principal
Govt Degree College
Amakhel Tank.

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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 1368 / 2018

Shabir Ahmad

versus

Secretary & Others

REPLICATION:**Respectfully Sheweth,****PRELIMINARY OBJECTIONS:**

All the 05 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action or locus standi, he has not come to the hon'ble Tribunal with clean hands, not hit by any limitation, estoppel and divide of merit.

ON FACTS:

1. Admitted correct by the respondents.
2. Admitted correct by the respondents regarding Military Operation and occupation of the college by Pak Army. As for as absence from duty with effect from 15-01-2013 to 27-09-2013, 08 months and 12 days is concerned, is totally false and absolutely incorrect. The colleges were closed for Summer Vacations since 15th June till 31 August. Appellant was on duty during the remaining period of 05 months and 12 days as is evident from the letter of the Principal of the college dated 31-07-2018. (Copy as annex "R")
3. Not correct. The para of the appeal is correct and at the same time, Government Degree College Amma Khel and Govt. Degree College Tank functioning simultaneously in building of Govt. Degree College Tank. The aforesaid certificate of the principal Govt. Degree College Tank is ample proof of duties of appellant.

As for as annexure "A" to annexure "F" of reply is concerned, this was the inter-se correspondence between the authorities without any copy to appellant even for information.

4. May be to the extent of issuance of Charge Sheet but it was not clarified that the same was served upon appellant. The Charge Sheet was addressed to him as is evident from the same.
5. Needs no comments, already replied in para 03 of the facts.
6. Being crucial para of the case, the same was admitted correct by the respondents regarding 2nd enquiry where appellant was not recommended for any punishment.
7. Not correct. The enquiry was not conducted as per the mandate of law by the Enquiry Committee as no statement of any concerned was recorded in presence of appellant nor he was afforded opportunity of cross examination what to speak of self defense. Even in this enquiry report it was also proposed that being formal enquiry, fresh / proper enquiry be conducted in the matter.
8. Not correct. Annexure "H1-H3" nowhere suggests that it was the enquiry as per the mandate of law but only letter for attendance etc. This para is without proof regarding mandated enquiry.
9. Not correct. The para of the appeal is correct regarding Show Cause Notice and its reply without mentioning therein period of absence from duty.
10. Not correct. The para of the appeal is correct and when the period of absence was treated as un-authorized absence from duty then there was no need for removal of appellant from service as period of absence was regularized by them.
11. Admitted correct by the respondents.

GROUND S:

All the grounds of the appeal are legal and correct, while that of the reply are illegal and incorrect. The same are relied upon once again.

It is, therefore, most humbly requested that the appeal be accepted as prayed for.

Shabir Ahmad

Appellant

Through

Saadullah Khan Marwat

Saadullah Khan Marwat

Advocate,

Dated: 11-06-2019

AFFIDAVIT

I, Shabir Ahmad, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

Shabir Ahmad

DEPONENT

R 7

**OFFICE OF THE PRINCIPAL
GOVT: DEGREE COLLEGE (M) TANK**

Phone& Fax#0963510816 email address pr.gdctank@gmail.com

No. 129/-

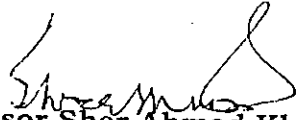
Dated: July 31, 2018

To Whom It May Concern

It is certified that Mr. Shabir Ahmad Lecturer in Computer Science took charge of the office of the Lecturer at Govt: Degree College Ama Khel Tank under the supervision of the undersigned w.e.f 12.12.2012.

Being lecturer on strength of GDC Amakhel Tank he took his classes as Lecturer at GDC Tank for the undersigned has dual charge of the office of the principal of GDC Tank and GDC Ama Khel Tank and that the GDC Amakhel and GDC Tank both were simultaneously functioning in the building of the GDC Tank.

I found him one among the most regular and responsible teacher till my tenure i.e. 15.05.2013.


Professor Sher Ahmad Khan
Ex-Principal
Govt: Degree College Tank.

Govt: Capt Asimq Shabir
Degree College Tank

Attests


BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 1368 / 2018

Shabir Ahmad

versus

Secretary & Others

REPLICATION:

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All the 05 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action or locus standi, he has not come to the hon'ble Tribunal with clean hands, not hit by any limitation, estoppel and divide of merit.

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GRUNDS:

All the grounds of the appeal are legal and correct, while that of the reply are illegal and incorrect. The same are relied upon once again.

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Shabir Ahmad
Appellant

Through

Saadullah Khan Marwat
Saadullah Khan Marwat
Advocate,

Dated: 11-06-2019

AFFIDAVIT

I, Shabir Ahmad, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

Shabir Ahmad
DEPONENT

"R" 4

**OFFICE OF THE PRINCIPAL
GOVT: DEGREE COLLEGE (M) TANK**

Phone& Fax#0963510816 email address pr.gdctank@gmail.com

No. 129/-

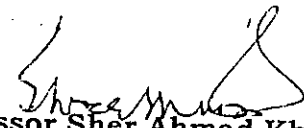
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Being lecturer on strength of GDC Amakhel Tank he took his classes as Lecturer at GDC Tank for the undersigned has dual charge of the office of the principal of GDC Tank and GDC Ama Khel Tank and that the GDC Amakhel and GDC Tank both were simultaneously functioning in the building of the GDC Tank.

I found him one among the most regular and responsible teacher till my tenure i.e. 15.05.2013.


Professor Sher Ahmad Khan
Ex-Principal
Govt: Degree College Tank.

Govt. Capt Ashfaq Shabbir
Degree College Tank

Attest


15/10

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

/ C.A.No.1661 of 2019

[Against the judgment dated 26.05.2017, passed by the Federal Service Tribunal, Islamabad in Appeal No.2094(R)CS/2015]

Kafayat Ullah Khan. ...Appellant (s)
Versus
Inspector General of Police, Islamabad and another. ...Respondent(s)

For the Appellant (s) : Malik Mateer Ullah, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : Mr. Sajid Ilyas Bhatti, Addl.
Attorney General.
Sajid Abbas, Inspector (Legal).

Date of Hearing : 10.02.2020

ORDER

Gulzar Ahmed, CJ:- The issue raised in the present case that after awarding of penalty, the treatment of the absence period as leave without pay, will amount to a double punishment. This issue has already been dealt with by a judgment of three member Bench of this Court dated 06.01.2020, passed in Civil Appeal No.1618/2019, titled NAB through its Chairman vs. Muhammad Shafique, where it has clearly been held that after imposition of penalty, the treatment of absence period as leave without pay or extraordinary leave, is not a punishment, rather the treatment of the absence period, which in any case has to be considered by the Competent Authority. The law in this regard having been settled by this judgment, thus, the matter stands

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

clinched and the submission of the learned counsel for the appellant in this regard is also dealt with by the said judgment.

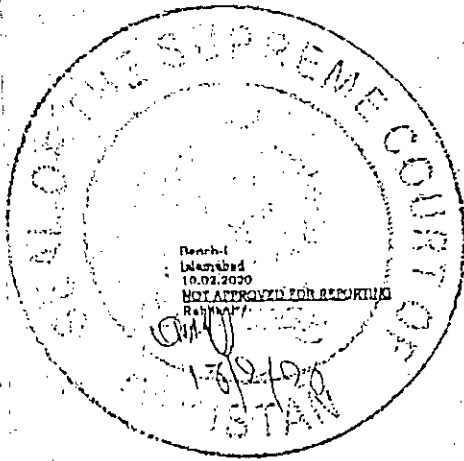
The appeal, thus, is dismissed with no order as to costs.

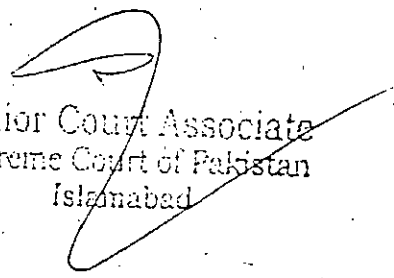
Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy




 Senior Court Associate
 Supreme Court of Pakistan
 Islamabad

GR No: 10190/20 Civil Criminal
 Date of presentation: 13-07-20
 No of Parties: 600
 No of Issues: 6
 Registration Fee: 5-00
 Copy Fee: 3-72
 Court Fee: 8-72
 Date of Court: 14/7/20
 Date of delivery: 15/7/2020
 Compared by: [Signature]
 Received by: Bast

Settle conclusively

Shahir Ahmad appointed on 12-12-2012.

- (1) First inquiry by Prof Nafees - 1-10-2014
(Absence proved)
- (2) 2nd inquiry by Prof Syed
Abid Hussain _____ 1-2-2017
(Absence partially
proved)
- (3) 3rd inquiry by
inquiry committee -
Mehd Asghar Syed
Prof Sharif Gul - _____ 26/12/2017
(Absence proved)
on the basis of charge sheet
& statement of allegations
issued to Shahir:
- (4) Show cause Notice - _____ 13-02-18
- (5) Reply to show cause - _____ 6-3-18
- (6) Removal from service - _____ 13-6-18
- (7) Departmental appeal - _____ 3-8-18

applied, would be discriminatory and tantamount to arbitrary denial of right of an unmarried daughter, which was neither intended nor prescribed.

5. In these circumstances, I declare that clarification suggested is erroneous, contrary to the mandate of liberalization of family pension rules and inherently flawed. And in terms of conditions prescribed through Letter of 22.07.1989, until respondent, either marries or acquires regular source of income, whichever is earlier [other than receiving two family pensions concurrently], her entitlement cannot be denied. The notices issued for seeking return of the pension amounts received is declared void and no legal effect. I endorse the conclusion that appeal is without merit and same is, therefore, dismissed.

KMZ/P-3/L

Appeal dismissed.

2020 P L C (C.S.) 448

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J.,
Ijaz ul Ahsan and Sajjad Ali Shah, JJ

NATIONAL ACCOUNTABILITY BUREAU
through Chairman

versus

MUHAMMAD SHAFIQUE

Civil Appeal No. 1618 of 2019, decided on 6th January, 2020.

(Against the order dated 18.7.2017 passed by the Islamabad High Court in W.P. No. 3793 of 2016)

(a) Revised Leave Rules, 1980---

---R. 9(3)---Extraordinary leave without pay---Scope---Unauthorized absence from duty for a continuous period of 66 days---Compulsory retirement---Office order imposed major penalty of compulsory retirement on the respondent and treated his unauthorised absence from duty as extraordinary leave without pay---Interpretation---Plea on behalf of respondent that since his unauthorised absence from duty was treated as extraordinary leave without pay, therefore, the major penalty of compulsory retirement could not be sustained---Held, that perusal of the office order reflected that the competent authority in the first paragraph of office order had expressed its mind explicitly on the unauthorised absence of the respondent by imposing the major penalty

of compulsory retirement from service with immediate effect---So far as the second portion of the office order treating absence of respondent as extraordinary leave without pay was concerned, since the penalty imposed by the competent authority was of compulsory retirement which followed the payment of salaries and other dues till the date of imposing such penalty, therefore, it was necessary to give finding as to how such absence was to be treated---Office order categorically provided for consequences of unauthorised absence in the form of compulsory retirement---Appeal was allowed. [p. 452] A

(b) Revised Leave Rules, 1980---

---R. 9(3)---Extraordinary leave without pay---Scope---Rule 9(3) of Revised Leave Rules, 1980 empowered the authorized officer to treat the unauthorised absence of an employee as extraordinary leave without pay but such treatment was not to be automatically allowed in every case---Such power was to be exercised in very genuine cases where the authorized officer found that imposing of major penalty on account of unauthorised absence of an employee would be too harsh or was not warranted under the circumstances---However, where the authorized officer after due application of mind upon examining/adjudging the misconduct had imposed one of the major penalties and thereafter keeping in mind that the gap between the un-authorized absence of the employee and the imposition of major penalty was to be provided with some kind of treatment provided for accordingly, then such treatment would undo the major penalty. [p. 452] B

Lahore Development Authority v. Muhammad Nadeem Kachloo
2006 SCMR 434; Director General Intelligence Bureau v. Muhammad Javed 2012 SCMR 165 and Muhammad Sharif Abbasi v. Member, Water, WAPDA Lahore 2013 SCMR 903 distinguished.

Imran ul Haq Khan, DPG NAB for Appellant.

Raja Muhammad Aleem Khan Abbasi, Advocate Supreme Court
and Ahmed Nawaz Ch., Advocate-on-Record for Respondent.

Date of hearing: 6th January, 2020.

JUDGMENT

SAJJAD ALI SHAH, J.---The respondent in the year 1990 was appointed as Upper Division Clerk in the Ministry of Food, Agriculture and Live Stock, Islamabad and thereafter was placed in surplus pool. The respondent ultimately on 18.12.2002 was absorbed in the appellant-NAB as UDC. He absented himself from duty for a continuous period of 66 days from 23.11.2009 giving rise to disciplinary proceedings which

10
Per
Judged

resulted in his compulsory retirement. The respondent against such major penalty invoked constitutional jurisdiction of the Islamabad High Court by pleading *inter alia* that since the office order dated 12.3.2010 through which major penalty of compulsory retirement from service was imposed also directs the treatment of his un-authorized absence from duty of 66 days from 23.11.2009 to 27.1.2010 as extraordinary leave (EOL) without pay, therefore, the major penalty of compulsory retirement could not be sustained. The High Court, through the impugned judgment, while accepting such plea allowed the petition by setting aside the major penalty of compulsory retirement and directed the reinstatement of the respondent with all back benefits.

2. Leave was granted by this Court vide order dated 30.9.2019 to examine as to whether in the circumstances, penalty of compulsory retirement could not be imposed upon the respondent.

3. The learned Deputy Prosecutor General NAB contends that during 7 years of service with the appellant, the respondent remained absent for a total period of 1627 days and in this respect various warning letters were issued to him but he did not improve his behaviour rather once again on 23.11.2009 absented himself which absence continued for 66 days. Show cause notice in the meanwhile was accordingly issued on 18.12.2009. It was responded by the respondent on 29.12.2009 requesting the adjustment of his casual leave against his absence. However, the response submitted by the respondent did not find favour with the competent authority, consequently, vide order dated 12.3.2010 the competent authority while imposing major penalty directed the compulsory retirement of the respondent. So far as the conversion of the un-authorized absence from duty as extraordinary leave, it was submitted that this was only for the purpose of settlement of respondent's dues. In the circumstances, it was submitted that the impugned judgment lacks legal sanctity and could not be sustained.

4. On the other hand, learned counsel for the respondent contended from 9(3) of the Revised Leave Rules, 1980 empowers the competent authority as extra-ordinary extraordinary leave retrospectively in lieu of absence penalty of placed reliance the competent authority has exercised such Development Au. 434), Director General, SCMR 165) and Muhs. Lahore (2013 SCMR 90), there was no occasion to impose major counsel, in support of his contention, part in the case titled *Lahore v. Anchoo* (2006 SCMR 1000), *Muhammad Javed* (2012 SCMR 1000), *Water, WAPDA*

PLC (Service)

5. We have heard the contentions of learned counsel for the parties and have perused the record as well as the case law cited at bar.

6. It appears from the record that the respondent not only absented himself from duty but during his absence, he received a show cause notice, responded it and still continued with his absence. The show cause notice seeking explanation of the respondent for his un-authorized absence was issued on 18.12.2009 containing the following charge:-

"You are absent from duty since 23rd November, 2009 without any intimation/prior approval of your office incharge as reported by Ops Division. You were served an explanation on 1st December, 2009 with the direction to explain your position within three days followed by 2 x reminders dated 10th and 14th December, 2009, but you did not reply so far. You were also directed to report for duty immediately, but you are still absent from duty".

Therefore, you Mr. Muhammad Shafique, UDC, NAB (HQ), Islamabad are called upon to show cause within period of 10 (Ten days) from the date of receipt of this notice as to why one of the penalties as defined in para 11.03(1) of NAB's TCS should not be imposed upon you on account of misconduct".

7. The respondent on 29.12.2009, almost within the prescribed period, responded to the show cause notice, the relevant portion of the said response, which is very relevant to resolve the controversy, is reproduced as follows:-

"In the mean time I had been suffering from severe back-ache and getting some formal treatment but in vain and the pain was increasing day by day. It is worth of mention here that I had been attending the office during those days. So I decided to be treated from some specialist and I did so. In the result of detailed check up by the doctor I was advised complete bed-rest (Doctor's advice will be submitted in couple of days) and because of that I submitted casual leave applications one after another, w.e.f. 1st December, 2009 onward. It is humbly requested to treat my absent days as leave. I shall be highly obliged".

8. The response submitted by the respondent did not find favour with the competent authority which vide office order dated 12.3.2010 directed the respondent's compulsory retirement by imposing one of the major penalties. Since this office order also directed the treatment of respondent's un-authorized absence as extraordinary leave without pay and the entire controversy, as projected before us, revolves around the

PLC (Service)

treatment of respondent's such un-authorized absence from duty as extraordinary leave, therefore, it would be proper to reproduce the office order dated 12.3.2010 imposing major penalty of compulsory retirement which reads as under:-

"In pursuance of Show Cause Notice issued vide this Bureau's letter of even number dated 18th December, 2009 the competent authority i.e. Director General HR & Fin has imposed a major penalty i.e. 'compulsory retirement from service' upon Mr. Muhammad Shafique, UDC, NAB, Islamabad under section 11.03(1)(b)(ii) of NAB's TCS with immediate effect.

The un-authorized absence from duty for a period of 66 days from 23rd November, 2009 to 27th January, 2010 is hereby treated as EOL (without pay)."

9. Perusal of this office order would reflect that the competent authority in the first paragraph of office order has expressed its mind explicitly on the unauthorized absence of the respondent by imposing the major penalty of compulsory retirement from service with immediate effect. So far as the second portion of the office order is concerned, since the penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, in our opinion, it was necessary to give finding as to how such absence is to be treated, therefore, to say that since the un-authorized absence of the respondent was treated as extraordinary leave in term of rule 9(3) of the Revised Leave Rules, 1980 does not appeal to our mind. If this would have been the case then the first paragraph of the office order would be redundant, on the contrary it categorically provides for the consequences of the un-authorized absence.

10. No doubt sub-Rule (3) of Rule 9 of "The Revised Leave Rules, 1980" empowers the authorized officer to treat the un-authorized absence of an employee as extraordinary leave without pay but such treatment is not to be automatically allowed in every case. In our opinion, such powers are to be exercised in very genuine cases where the authorized officer finds that imposing of major penalty on account of unauthorized absence of an employee would be too harsh or is not warranted under the circumstances. However, where the authorized officer after due application of mind upon examining/adjudging the misconduct has imposed one of the major penalties and thereafter keeping in mind that the gap between the un-authorized absence of the employee and the imposition of major penalty is to be provided with some kind of treatment provides for accordingly, then such treatment would not undo the major penalty.

11. So far as the case law relied upon by the learned counsel for the respondent is concerned, in the cases of Lahore Development Authority v. Muhammad Nadeem Kachloo and Director General Intelligence Bureau v. Muhammad Javed (supra), the competent authority after awarding major penalty of dismissal from service had directed the petitioner's un-authorized absence as leave without pay. The cases can be differentiated as after imposing the penalty of dismissal from service, an employee may not be found entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of their un-authorized absence as leave without pay. Beside in our view this was not a good interpretation of the office order imposing major penalty for the simple reason that the subsequent portion of the office order whereby the treatment of the un-authorized leave was provided as extraordinary leave without pay, at the most could be superfluous and redundant but could not be treated to nullify the major penalty which of course is imposed after adjudging the conduct of an employee. In case where the competent authority wanted to condone the absence of an employee by directing its treatment as one kind of leave, then the competent authority would have shown its intention by providing reasons for condoning such absence or at least would not have in the same breath imposed major penalty of dismissal or compulsory retirement. The benefit of such naïve drafting cannot be given to an employee who otherwise by his conduct deserved one of the major penalties. Additionally, it is not disputed that the conversion of unauthorized absence as EOL without pay is not a penalty/punishment so that one can say that such treat cannot co-exist with the major penalty/minor penalties. It is very obvious that if a man has absented himself from work without the permission of his employer, he of course is not entitled as of a right for payment of salary for such period.

12. So far as the case of Muhammad Sharif Abbasi v. Member, Water, WAPDA Lahore (supra) is concerned, in that case on account of unauthorized absence, after awarding major penalty of compulsory retirement the un-authorized absence was treated as EOL without pay. However, in the said case the Court's opinion was mainly swayed on account of the fact that the petitioner in that case was an employee of the WAPDA and admittedly was hospitalized in WAPDA's own hospital, therefore, the major penalty of compulsory retirement was not found sustainable.

13. These are the reasons of our short order of even date which was in the following terms:-

"We have heard the learned counsel for the parties and have also gone through the record of the case. For reasons to be recorded, this appeal is allowed and the impugned judgment passed by the High Court dated 18.7.2017 is set aside resulting

in dismissing of Writ Petition No. 3793/2016, filed by the respondent against the petitioner".

MWA/N-3/SC

Appeal allowed.

2020 P-L C (C.S.) 454

[Subordinate Judiciary Service Tribunal
Khyber Pakhtunkhwa]

Before Lal Jan Khattak, Chairman and
Ijaz Anwar, Member

Syed ASGHAR SHAH

versus

The REGISTRAR, PESHAWAR HIGH COURT, PESHAWAR

Service Appeals Nos.60, 61, 62, 63 of 2011, decided on 19th October, 2019.

(On Appeal from the orders dated 23.12.2010, of Registrar, Peshawar High Court, Peshawar, whereby, adverse remarks recorded by Hon'ble the Administration Committee of Peshawar High Court, Peshawar, in the Annual Confidential Reports for the years, 2006, 2007, 2008 and 2009, were communicated to the appellant).

Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act (VIII of 1991)---

---S.5---Additional District and Sessions Judge---Adverse remarks recorded in the Annual Confidential Report---Impugned adverse remarks recorded in Annual Confidential Report were stereo type words which were conveyed after a considerable delay---High Court observed that Performance Evaluation Reports should be filled and dispatched to the Reporting Officer not later than 15th of January---Reporting Officers should forward the report to the Countersigning Officers within two weeks of receipt after recording their views---Countersigning Officers should finalize their comments within two weeks of receipt of Performance Evaluation Reports---Second Countersigning Officers, if any, should also complete their assessment within a period of two weeks---Adverse remarks must be communicated to persons concerned well before the end of June, each year without fail---In the present case, no allegation was on record with regard to judicial work of the officer---Conduct of judicial officer could not change at the spur

of the moment---Opinion with regard to conduct of a judicial officer could be formed keeping in view his overall service career---Delay in timely communication of remarks was to be considered as misconduct on the part of reporting channel---Officer in question had already been compulsory retired from service---Performance Evaluation Reports were to give a clear picture with regard to work and conduct of officer reported upon---Adverse remarks were not supported by overall service career of the officer which could not sustain---Adverse remarks were expunged by High Court---Appeal was allowed accordingly. [pp. 457, 458, 459] A, B, C, D, E & F.

Ch. Shabbir Hussain and others v. Registrar, Lahore High Court, Lahore and others 2004 PLC (C.S.) 236 and Zahid Mehmood v. Peshawar High Court through Registrar 2013 PLC (C.S.) 570 rel.

Appellant in person.

Khalid Rehman for Respondent.

Date of hearing: 19th October, 2019.

JUDGMENT

IJAZ ANWAR, MEMBER ---Through this single judgment, this Court shall dispose of all the four appeals filed by the appellant, Syed Asghar Shah, Additional District and Sessions Judge for setting aside/expunging the adverse remarks recorded by Honourable the Administration Committee of Peshawar High Court, Peshawar in appellant's Annual Confidential Reports, for the years 2006, 2007, 2008 and 2009.

2. Brief facts leading to filing these appeals are that Appellant was initially appointed as Civil Judge-cum-Judicial Magistrate in the year, 1998. Subsequently, he was promoted as Senior Civil Judge and then as Additional District and Sessions Judge. The respondent communicated adverse remarks recorded in appellant's Annual Confidential Reports for the years 2006 to 2009 vide separate letters/orders dated 23.12.2010. The appellant at the relevant time of communication of adverse remarks had already been compulsory retired from service vide Notification dated 29.10.2010. The appellant filed representation before the respondent but it could not be decided within the statutory period of ninety days. As such, the appellant challenged the said remarks by filing appeal before this Tribunal. The respondent submitted their separate comments/reply to the appeals in hand.

4. Arguments heard and record perused.

5. Perusal of the record reveals that four consecutive ACRs for the period 2006 to 2009 were conveyed to the appellant on 23.12.2010,

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	18.09.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 28/2016</p> <p style="text-align: center;">Date of Institution ... 11.12.2015 Date of Decision ... 18.09.2017</p> <p>Dr. Farman Ullah S/O Muhammad Altaf Hussain, R/O Village Masti Khan Bandda P/O Kojaki Kalay Tehsil Takht Nasrati District Karak-----Appellant</p> <p style="text-align: center;">Versus</p> <p>1. Government of Khyber Pakhtunkhwa, Through Secretary Health, Civil Secretariat Peshawar.</p> <p>2. Chief Secretary Govt. of Khyber Pakhtunkhwa Civil Secretariat, Peshawar----- Respondents</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant</p> <p>with counsel and Mr. Muhammad Jan, Deputy District Attorney on behalf of the official respondents present.</p> <p>2. The appellant Farman Ullah has been filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents wherein he has made impugned order dated 09.02.2015 of the respondents No. 1 whereby he was awarded of major penalty of removal from service with immediate effect on the</p>

ground of willful absence from duty w.e.f 05.01.2014.

3. Learned counsel for the appellant has argued that initially the appellant was appointed as Dental Surgeon (BPS-17) through Public Service Commission on contract basis and later on his services were regularized vide order dated 19.07.2008; that due to enmity and involvement of the appellant in the criminal case the appellant was constrained to apply for Extra Ordinary Leave which was granted by the sanctioning authority w.e.f 06.01.2012 to 04.01.2014. Further argued that before the expiry of the afore mentioned sanctioned leave the appellant again submitted an application for grant of 18 months leave and he was under the legitimate expectancy that he would be allowed further leave, however instead the appellant was removed from service vide impugned order dated 09.02.2015 on the ground of willful absence. While assailing the impugned order the learned counsel for the appellant contended that the appellant has not been treated in accordance with law and that the prescribed procedure as well as requisite codal formalities were not complied with prior to the issuance of the impugned order. Further argued that the absence of appellant from his duty cannot be termed as a willful absence or even absence in as much as the appellant duly applied for the grant of further leave as sufficient leaves were available in his leave account. Learned counsel for the appellant vehemently stressed that the impugned order is not tenable and is liable to be set aside.

4. Learned Deputy District Attorney while opposing the present

appeal argued that the present appeal is incompetent and barred by limitation. Further argued that the appellant remained absent from his duties for a period of more than one year without any permission and as such was rightly removed from service. Further argued that the respondent department adopted the proper procedure and completed all the codal formalities before issuance of the impugned order. Further argued that application of the appellant for the grant of further leave was rejected and mere submitting leave application is not sufficient for the accrual of right of leave.

5. Arguments heard. File perused.

6. Instant case is a case simplicitor of unauthorized absence from duty w.e.f 05.01.2014 till the issuance of impugned order dated 09.02.2015.

7. Vide impugned order not only the appellant but fourteen other medical doctors too were removed from service on the ground of willful absence from duty, after issuance of notices to resume duty within the stipulated period.

8. It may be mentioned that the representation/appeal of the appellant before the appellate authority against the impugned order dated 09.02.2015 was filed on the 13.04.2015 i.e after more than sixty days of the issuance of impugned order and as such the representation/appeal of the appellant was not entertained being not filed within the prescribed timeline. It is settled principle of law that when appeal of the employee was time barred before the appellate authority then the appeal before the tribunal is also not competent.

Similarly, the appellant has not filed the present appeal within 120 days of passing of the order dated 09.02.2015 made impugned in the present appeal, hence the learned Deputy District Attorney correctly pointed out that the present appeal filed on 11.12.2015 against the impugned order dated 09.02.2015 was not filed within the prescribed period of limitation.

9. Perusal of file would show that the appellant already earned his acquittal in the criminal case in the year 2008 vide judgment/order dated 02.08.2008 passed by learned Additional Sessions Judge Karak at Takht-e-Nusrati while the appellant was sanctioned extraordinary leave w.e.f 06.01.2012 till 04.01.2014 and no further leave was sanctioned to the appellant.

10. The appellant has not bothered to contact his department himself or through his agent to know as to whether leave has been sanctioned or not. The august Supreme Court of Pakistan in the judgment titled ZIA UR RAHMAN-----Petitioner Vs Divisional Superintendent Postal Services Abbottabad and other respondents (2009 SCMR 1121) held that mere submission of application for leave by an employee to his department would not mean that leave has been granted in his favor and he is duty bound to enquire from the department himself about the fate of his request for grant of leave.

11. In the light of above, the appellant has not been able to make out his case on limitation as well as on merits. Consequently, the present appeal is hereby dismissed. Parties are left to bear their own

costs. File be consigned to the record room after its completion.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
18.09.2017

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these circumstances, we have no option but to believe the Respondents when they say that they personally collected their letters of appointment on the dates mentioned thereon and hence we are of the view that in such circumstances, there could not be any act of inefficiency on the part of the Respondents so as to merit their dismissal.

6. As to the objection of limitation, again there is nothing on record to establish as to when the dismissal orders were dispatched to the Respondents, therefore, once again, we have to believe the Respondents that they have personally collected their dismissal orders in the middle of June, 2014 and thereafter they filed the Constitution Petition on 03.07.2014 before the learned High Court, which was treated as an appeal by the learned High Court and sent as such to the learned Service Tribunal. Hence, the same would be treated by us to be filed within 30 days time from the date when the Respondents received their dismissal orders and as such not beyond limitation.

7. For the foregoing reasons, we do not see any merit in this Petition as such the same is dismissed accordingly. Leave to appeal is declined. The respondents shall be taken back in service on the terms set forth in the impugned judgment.

8. Civil Petition No.317-K of 2015.--In this case, as according to the learned Additional Advocate General, Respondents Nos.1 and 2 have been given fresh appointments consequent upon their fresh applications, etc., therefore, this Petition to their extent has become infructuous and dismissed accordingly. Insofar as respondent No.3 is concerned, in view of the discussion made herein above this petition is dismissed and leave to appeal is refused.

MWA/P-7/SC

Petition dismissed.

2016 P L C (C.S.) 682

[Supreme Court of Pakistan]

Present: Sarmad Jalal Osmany and Umar Ata Bandial, JJ

PROVINCE OF SINDH and another

Versus

MUHAMMAD ILYAS and others

Civil Petitions Nos.316-K and 317-K of 2015, decided on 30th July, 2015.

(On appeal from the judgment/order dated 26-3-2015 passed by Sindh Service Tribunal Karachi in Service Appeals Nos.328 and 339 of 2015)

(a) Constitution of Pakistan---

---Art. 212(3)---Civil service---Dismissal from service---Grounds---Joining service belatedly---Inefficiency---Proof---Respondents were appointed as Constables (BS-5) in police department, however their appointment letters were never sent to them by registered post, nor were they ever informed about the same by telephone or verbally---Respondents collected their appointment letters from the police department through their own efforts, and immediately joined service---Dismissal of respondents in such circumstances on grounds of belatedly joining service and inefficiency was not justified---Even the letters of dismissal from service were never sent to the respondents through registered post and they were only informed about their dismissal verbally--- Supreme Court directed that respondents be reinstated in service--- Petition for leave to appeal was dismissed accordingly.

(b) Sindh Service Tribunal Act (XV of 1973)---

---S. 4---Constitution of Pakistan, Art. 212(3)---Appeal against dismissal from service filed before the Service Tribunal---Limitation period, commencement of---Letter of dismissal from service not sent to civil servants---Limitation period commencing from date when letter of dismissal received---Contention of appointing authority that respondents/civil servants were dismissed from service on 9-9-2013, but they filed their appeal before the Service Tribunal in July 2014, which was well beyond the 30 days' period allowed for filing an appeal before the Tribunal---Validity---Dismissal from service letters dated 9-9-2013, were never sent to the respondents/civil servants---Respondents through their own efforts found out about their dismissal and personally collected their dismissal letters around middle of June, 2014---Subsequently respondents filed Constitutional petition before the High Court on 3-7-2014 i.e. within 30 days of collecting/receiving their dismissal letters---Said petition was treated by the High Court as an appeal and sent to the Service Tribunal---Appeal before the Service Tribunal, in such circumstances, would be treated as having been filed within 30 days from the date when respondents received their dismissal orders and as such not beyond the limitation period---Petition for leave to appeal was dismissed accordingly.

Mukesh Kumar, Additional AG Sindh, Mazhar Ali, AIG Legal and Intezar Hussain Qureshi, PDSP Hyderabad for Petitioners.

Respondents in person (in C.P. 316-K of 2015).

Respondents in person (in C.P. 317-K of 2015).

Date of hearing: 30th July, 2015.

ORDER

SARMAD JALAL OSMANY, J.--- Civil Petition No.316-K of 2015.---Briefly stated the facts of the case are that the respondents in both petitions were appointed on different dates in December, 2012 and April, 2013 as Constables (BS-5) for a period of three years. It was the case of the respondents that in fact their appointment letters were never posted to them nor were they intimated about the same through any means i.e. telephonically or otherwise but they themselves kept on enquiring and finally on various dates between the month of June to August, 2013, when they went to the Police authorities, they were handed over their appointment letters. Ultimately, on joining the police service, the Respondents were dismissed on the ground that they have joined belatedly. The Respondents impugned their letter of dismissal dated 09.09.2013 (which is common to all) before the learned High Court by filing Constitution Petition No.D.1282 of 2014 on 03.07.2014. It was the case of the Respondents before the learned High Court that in fact they were verbally informed about their dismissal and they could only obtain copies of their dismissal order in the middle of June, 2014 and hence without any waste of time, they filed the Petition before the High Court in the 1st week of July, 2014. The learned High Court vide order dated 26.03.2015 directed that as the Respondents were civil servants therefore, their cases have to be adjudicated before the Sindh Service Tribunal and hence transferred the same there. Vide impugned judgment the learned Service Tribunal reinstated the Respondents. Hence the present petition.

2. Mr. Mukesh Kumar, learned Additional Advocate General Sindh has firstly assailed the impugned judgment of the Service Tribunal on the ground of limitation, as according to him, all the Respondents were dismissed on 09.09.2013 and they had 30 days time within which to approach the learned Tribunal but instead they approached the learned High Court on 03.07.2014. In this regard, he has cited Rule 12.21 of the Police Rules, 1934 whereby no appeal is provided against an Order of dismissal of temporary Constables. Consequently, according to him their cases would be covered by section 4(1) of Sindh Service Tribunals Act, 1973.

3. On merits, the learned Additional Advocate General submitted that under Rule 12.21 of the Police Rules, 1934 a Constable who is unlikely to be an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment and there is no appeal against an order of discharge under this rule. Consequently, according to him, as the Respondents joined their service belatedly, they were inefficient and accordingly rightly dismissed from service.

4. On the other hand, the Respondents present in-person maintained that in fact they had never been sent their letters of appointment through any postal means nor were they informed of the same through any other means but they collected the same through their own efforts through Police department after undertaking many hardships on the dates mentioned thereon under their signatures and they immediately joined the service. So also they maintained that even their letters of dismissal from service were not sent to them by registered post AD and they were verbally informed about the same. According to them, they received their dismissal orders in the 2nd week of June, 2014 and they approached the learned High Court by filing Constitution Petition and ultimately their cases were transferred to the Service Tribunal.

5. We have heard the learned Additional Advocate General as well as the Respondents and have also perused the record carefully. We have queried the learned Additional Advocate General whether either the Respondents' letters of appointment or their dismissal orders were ever sent to them by registered post AD or were they ever informed about them by any means either telephonically or verbally, to which he replied in the negative after consulting the Police Officers present in Court. In

FOY Appellant

2004 S C M R 316

[Supreme Court of Pakistan]

Present: Sh. Riaz Ahmad, C.J., Qazi Muhammad Farooq and Abdul Hameed Dogar, JJ

**PAKISTAN INTERNATIONAL AIRLINES CORPORATION through Managing Director,
PIAC, Head Office, Karachi Airport, Karachi---Petitioner**

versus

Ms. SHAISTA NAHEED---Respondent

Civil Petition No.918 of 2003, decided on 3rd November, 2003.

(On appeal from the judgment dated 17-3-2003 of the Federal Service Tribunal, Islamabad, passed in Appeal NoA11 (R)CE/2002).

**Pakistan International Airlines Corporation Employees (Service and Discipline) Regulations,
1985---**

---S.II, C1.75 (h), (ah) & (aj)---Removal from Service (Special Powers) Ordinance (XVII of 2000), Ss.3, 5 & 8 [as amended by Removal from Service (Special Powers) Ordinance (V of 2001)]---Constitution of Pakistan (1973), Art.212(3)---Removal from service---Proper inquiry, non-conducting of---Employee was exonerated in departmental inquiry conducted against her under Pakistan International Airlines Corporation Employees (Service and Discipline) Regulations, 1985---Second inquiry was conducted under the provisions of Removal from Service (Special Powers) Ordinance, 2000, and the employee was dismissed from service---Service Tribunal allowed the appeal filed by the employee and reinstated her in service with back benefits---Plea raised by the Pakistan International Airlines Corporation was that the employee was rightly dismissed from service as there was no bar on conducting the second inquiry under the provisions of Removal from Service (Special Powers) Ordinance, 2000---Validity---On failure of first inquiry, second inquiry was initiated under the Removal from Service (Special Powers) Ordinance, 2000---Such action was unjustified and it showed that the employer was bent upon to remove the employee from service in any case---In case of charge of misconduct, under S.5 of Removal from Service (Special Powers) Ordinance, 2000, a full-fledged inquiry was to be conducted, which had not been done in the case---In case of awarding major penalty, a proper inquiry was to be conducted in accordance with law wherein a full opportunity of defence was to be provided---Judgment passed by Service Tribunal was based on valid and sound, reasons and was in consonance with the law laid down by Supreme Court---Neither there was misreading or non-reading of material evidence nor misconstruction of facts and law---No question of general public importance, as contemplated under Art.212(3) of the Constitution was involved in the case---Leave to appeal was refused.

Inspector-General of Police, Police Headquarters Office, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 207 ref.

Qalb-e-Hussain Shah, Advocate Supreme Court and Imtiaz Muhammad Khan, Advocate-on-Record for Petitioner.

Respondent in person.

Date of hearing: 3rd November, 2003

JUDGMENT

ABDUL HAMEED DOGAR, J.---Leave to appeal is sought against the judgment dated 17-3-2003 of the learned Federal Service Tribunal, Islamabad (hereinafter referred to as 'the Tribunal'), whereby Appeal No.411 (R)CE of 2002 filed by the respondent was accepted and she was reinstated in service with all back benefits.

2. Briefly stated, the facts of the instant petition are that the respondent joined the petitioner-Corporation as Airhostess on 24-7-1995. She had been performing her duties with dedication and was awarded with the letter of appreciation. It was on 11-9-2000, she was served with show-cause notice/charge-sheet under PIAC Employees (Service and Discipline) Regulations, 1985 (hereinafter referred to as 'the Regulations'), containing the allegations that she had remained absent from duty with effect from 30-5-2000 to 3-6-2000 and from 9-6-2000 to 23-6-2000 and that she had left the place of her duty without permission 'by the Competent Authorities and had also given false statement about the expiry of her emergency card, which acts on her part constituted misconduct within the purview of section II, clauses 75(h), 4(ah) and (aj) of the Regulation. The respondent denied the allegations in her reply to the notice and also filed a petition under section 22-A(8)(g) of Industrial Relations Ordinance, 1969 before the N.I.R.C. which was abated. Since her defence in the reply was found unsatisfactory, therefore, disciplinary proceedings under the Regulation were initiated against her and an inquiry was conducted in which she was exonerated. However, the Competent Authority did not agree with the findings of the Inquiry Officer and decided that the second inquiry should be held against the respondent under the Removal from Service (Special Powers) Ordinance, 2000 (hereinafter referred to as 'the Ordinance 2000'). Consequently, 'a full-fledged inquiry was held under the Ordinance, 2000, wherein she was found guilty of the charges and was dismissed from service vide order dated 7-1-2002.

3. Feeling aggrieved, she filed departmental representation to the Chief Executive which remained unresponded, whereupon she filed the above mentioned service appeal before the Tribunal.

4. Mr. Qalb-e-Hussain Shah, learned Advocate Supreme Court for the petitioner, seriously attacked the impugned judgment and contended that is not sustainable in the eye of law as there was no bar under the Ordinance; 2000 to initiate a fresh inquiry. According to him, the respondent joined the inquiry proceedings and was afforded full opportunity of cross-examining the witnesses produced by the petitioner, led evidence in defence and was also heard in person, thus the order of dismissal was passed quite in accordance with law.

5. On the other side, the respondent, who is present in person, vehemently controverted the contentions and argued that she was exonerated from the charges in the 1st inquiry conducted departmentally the findings of which were based on sound reasonings and the charges of unauthorized absence from 30-5-2000 to 3-6-2000 and from 9-6-2000 to 23-6-2000 and leaving station without permission and giving false statement were not established. She urged that neither the copies of inquiry proceedings and findings thereof were supplied to her nor she was afforded an opportunity of full hearing and allowing evidence in defence, thus was seriously prejudiced and was dismissed from service under the Ordinance, 2000 without any legal justification.

6. As per record, the inquiry was conducted against the respondent under two different sets of law. In the inquiry conducted under Regulation, 1985 of the petitioner-Corporation, she was exonerated by the Inquiry Officer and was not found guilty of any of the charges. However, Competent Authority ordered second inquiry under the provisions of Ordinance, 2000 as amended by Ordinance V of 2001 in which she was found guilty and was dismissed from service. It would be pertinent to note that show-cause notice was issued against the respondent on 11-9-2000 under the Regulation while the Ordinance, 2000 was very much inexistence which was promulgated on 27-5-2000 and no inquiry of

whatsoever nature was ordered under this Ordinance. It was apparently on the failure of the first inquiry, second inquiry was initiated under the Ordinance as amended by Ordinance No. V of 2001. This action on the face of it was unjustified and transpires that the petitioner was bent upon to remove the respondent from service in any case. It has been contemplated under section 5 of the Ordinance that in case or charge of misconduct as stipulated in section 3 of the Ordinance a full-fledged inquiry is to be conducted which admittedly has not been done in this case.

7. Even otherwise, it is by now well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law wherein a full opportunity of defence is to be provided. In this context, reference can be made to the case of Inspector General of Police, Police Headquarters Office, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 207, in which it has been held by this Court that in the case of imposing a major penalty, the principle of natural justice requires that a regular inquiry is to be conducted in accordance with Rule 6 of the Government Servants (Efficiency and Discipline) Rules, 1973, and an opportunity of defence and personal hearing is to be provided to civil servant proceeded against.

8. For what has been discussed above, we are of the considered opinion that the impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither, there is misreading, or non-reading of material evidence, nor misconstruction of facts and law. Moreover, the question of general public importance as contemplated under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is not involved in this case.

9. Resultantly, the appeal fails and is thus dismissed with no order as to costs.

M.H./P-115/S

Petition dismissed.

Successive Injuries.

*For Appellant***2006 S C M R 434****[Supreme Court of Pakistan]****Present: Iftikhar Muhammad Chaudhry, C. J. and Tassadduq Hussain Jilani, J****LAHORE DEVELOPMENT AUTHORITY and others---Petitioners****Versus****MUHAMMAD NADEEM KACHLOO and another---Respondents**

Civil Petition No.1282-L of 2004, decided on 23rd January, 2006.

(On appeal from the judgment, dated 30-12-2003 passed by Punjab Service Tribunal in Appeal No.823 of 2003).

Constitution of Pakistan (1973)---

---Art. 212 (3)---Dismissal from service---Converting absence without leave into leave of the kind due---Frivolous litigation---Absence of civil servant was initially converted into the leave of kind due but later on he was dismissed from service on the charge of being absent without leave---Service Tribunal set aside the dismissal order and his absence was treated as a leave of the kind due---Validity---Authority had itself condoned the period of absence by allowing him leave without pay---Leave was due to the civil servant and he had been making applications' time and again accompanied by medical certificates for the purpose of extending the period of his leave---Authority did not have any justification to institute the present petition because of the fact that absence of the civil servant had been regularized---Supreme Court issued notice to the authorities to explain as to why costs be not imposed upon them for filing frivolous petition, knowing well that the competent authority had treated the period during which the civil servant remained absent, as leave without pay---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Leave to appeal was refused.

Muhammad Rashid Ahmad, Advocate Supreme Court and Tanvir Ahmad, Advocate-on-Record for Petitioners.

Nemo for Respondents.

Date of hearing: 23rd January, 2006.

ORDER**IFTIKHAR MUHAMMAD CHAUDHRY, C.J.**---Petitioner seeks leave to appeal against the judgment, dated 30th December, 2003 passed by Punjab Service Tribunal, Lahore.

2. Precisely stating facts of the case are that respondent was proceeded departmentally on account of absence for 260 days from his duty. Director, Administration L.D.A., Lahore awarded him major penalty of dismissal from service vide order, dated 27th May, 2002. Contents of the order are reproduced hereinbelow:--

Petition dismissed.

Fox Appellant

2012 S C M R 165**[Supreme Court of Pakistan]****Present: Anwar Zaheer Jamali and Amir Hani Muslim, JJ****DIRECTOR-GENERAL, INTELLIGENCE BUREAU, ISLAMABAD---Appellant****Versus****MUHAMMAD JAVED and others---Respondents**

Civil Appeal No. 180-K of 2010, decided on 21st July, 2011.

(On appeal from judgment of Federal Service Tribunal, Karachi dated 30-3-2010 passed in Appeal No. 56(K) (CS) of 2008).

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---S. 5---Penal Code (XLV of 1860), Ss. 302 & 310---Criminal Procedure Code (V of 1898), S. 345---Constitution of Pakistan, Art.212(3)---Reinstatement in service---Civil servant was acquitted from murder charge, on the basis of compromise effected upon payment of Diyat---Civil servant was dismissed from service as he remained absent from duty during the period in detention but Service Tribunal allowed the appeal and reinstated him in service---Plea raised by authorities was that payment of Diyat was equated with conviction in crime---Validity---Period of absence of civil servant was treated by competent authority as extraordinary leave, therefore, ground of his illegal absence was no more available for awarding any punishment to him---Offence was lawfully compromised and disposed of whereby civil servant was acquitted---Such acquittal of civil servant could not be taken as his disqualification, coming in the way of his reinstatement in service---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed.

Ashiq Raza, Deputy Attorney-General and Abdul Saeed Khan Ghori, Advocate-on-Record for Appellant.

Abdul Latif Ansari, Advocate Supreme Court and Mazhar Ali B. Chohan, Advocate-on-Record for Respondent No.1.

Respondents Nos. 2 and 3, Pro forma Respondents.

Date of hearing: 21st July, 2011.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---By leave of the court, this civil appeal, at the instance of Director General, Intelligence Bureau, Islamabad, is directed against the judgment dated 30-3-2010, in Appeal No.56(K)(CS) of 2008, passed by Federal Service Tribunal, Karachi (in short the Tribunal), whereby the said appeal, preferred by respondent Muhammad Javed against his dismissal from service under the Removal from Service (Special Powers) Ordinance 2000, vide order dated 12-3-2008, after, no response of his departmental appeal dated

27-3-2008, was allowed, consequently order dated 12-3-2008 was set aside and his reinstatement in service was ordered, treating the intervening period of his absence as leave of the kind due.

2. Mr. Ashiq Raza, learned Deputy Attorney-General for the appellant, after brief narration of relevant facts, contended that respondent was involved in a murder case arising out of F.I.R. No.76 of 2004, Police Station Gharibabad Cantt. Hyderabad, which was subsequently compromised upon payment of diyat amount to the opposite party, therefore, it shall be equated as his conviction in the said crime, but the Tribunal ignoring this material aspect of the case, has ordered his reinstatement in service. He, however, did not dispute that the period of his absence from duty with effect from 3-9-2004 to 6-3-2005, which basically formed basis of such departmental action, was treated by the competent authority as extraordinary leave.

3. In reply, Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent contended that the Tribunal, in its impugned judgment, has aptly discussed the fact of compromise in the criminal case between the respondent and the opposite party, and rightly held that such compromise and consequent acquittal of the respondent in the said criminal case cannot be labeled as his conviction so as to entail consequences of his disqualification from service.

4. We have carefully considered the submissions made before us by the parties' counsel and also perused the material placed on record, which reveals that the period of absence of the respondent was treated by the competent authority as extraordinary leave, therefore, the ground of his illegal absence was no more available for awarding any punishment to him. Moreover, admittedly the offence arising out of F.I.R. No. 74 of 2006, Police Station Gharibabad, Cantt. Hyderabad was lawfully compromised and disposed of, whereby the respondent was acquitted. This being the position, a rightly urged by Mr. Abdul Latif Ansari, learned Advocate Supreme Court for the respondent, such acquittal of respondent cannot be taken as his disqualification, coming in the way of his reinstatement in service.

5. In view of the above, the impugned judgment of the Tribunal calls for no interference. This appeal is, therefore, dismissed.

M.H./D-11/SC

Appeal dismissed.

1 show cause with inquiry report
For Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD

Service Appeal No. 1014/2012

Date of Institution... 17.09.2012

Date of decision... 23.11.2017

Saqib Gul (Ex-No.789 and new No. 599 of Mansehra Police) s/o Gul Muhammad,
R/O Village Dharyal, Tehsil and District Mansehra.
... (Appellant)

Versus

1. District Police Officer (DPO) Mansehra, Tehsil and District Mansehra and
another.
.... (Respondents)

MR. SHAFQAT IQBAL KHAN SWATI,
Advocate

MR. KABIR ULLAH KHATTAK
Additional Advocate General

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... For appellant.

... For respondents.

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was dismissed from service vide an order dated 21.04.2012 against which he filed departmental appeal on 30.04.2012 which was decided on 16.08.2012. The departmental appeal was partially accepted and the dismissal from service was converted into reduction in time scale. The charge against the appellant is that he produced fake certificate of Master Degree in the department from Hazara University.

ARGUMENTS

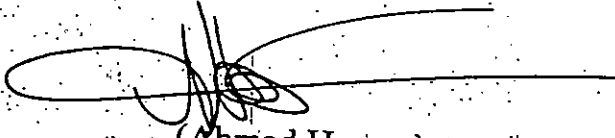
3. The learned counsel for the appellant argued that the appellant had not produced any fake degree. That the final show cause notice alongwith enquiry report has not been issued to the appellant. Leaned counsel for the appellant next contended that the certificate was duly verified in the first place by the concerned university.

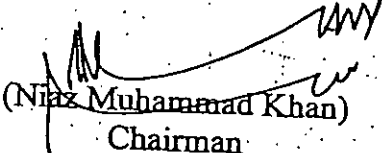
4. On the other hand, the learned Addl: AG argued that the appellant was issued charge sheet and statement of allegations. The enquiry officer was appointed who recorded the statements of the concerned witnesses and then he submitted his report to the Authority. The Authority after giving the appellant personal hearing passed the impugned order. That no illegality was committed.

CONCLUSION.

5. Without discussing the merits of the appeal this Tribunal reaches the conclusion that admittedly final show cause notice alongwith enquiry report was not given to the appellant. To this the learned AAG argued that there was no requirement of final show cause notice alongwith enquiry report under the Khyber Pakhtunkhwa Police Rules 1975. But this Tribunal has already delivered a judgment in appeal bearing no. 1040/2014 entitled "*Gulab Khan-vs- Provincial Police Officer*" decided on 26.09.2017 wherein it has been decided that the issuance of final show cause notice alongwith enquiry report is must under these rules. Reliance is also placed on the famous case of Syed Mir Muhammad Shah delivered by august Supreme Court of Pakistan (PLD 1981-Suprme Court-176) in which it was held that the rules devoid of provision of final show cause notice alongwith enquiry report ^{were} ~~are~~ not valid rules.

6. In view of the above, this appeal is accepted and the department is at liberty to conduct de-novo proceedings in accordance with law. Parties are left to bear their own costs. File be consigned to the record room.


(Ahmad Hassan)
Member,


(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED

28.11.2017

No Imping Report with
about the cause.

1 show cause with inquiry report
FOR APPELLANT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 1014/2012

Date of Institution... 17.09.2012

Date of decision... 23.11.2017

Saqib Gul (Ex-No. 789 and new No. 599 of Mansehra Police) s/o Gul Muhammad,
R/O Village Dharyal, Tehsil and District Mansehra.

... (Appellant)

Versus

1. District Police Officer (DPO) Mansehra, Tehsil and District Mansehra and
another. (Respondents)

MR. SHAFQAT IQBAL KHAN SWATI,
Advocate

... For appellant.

MR. KABIR ULLAH KHATTAK
Additional Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was dismissed from service vide an order dated 21.04.2012 against which
he filed departmental appeal on 30.04.2012 which was decided on 16.08.2012. The departmental
appeal was partially accepted and the dismissal from service was converted into reduction in
time scale. The charge against the appellant is that he produced fake certificate of Master Degree
in the department from Hazara University.

ARGUMENTS


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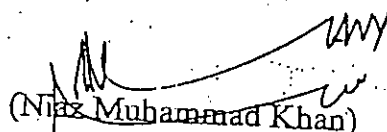
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(Ahmad Hassan)
Member


(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED
23.11.2017