

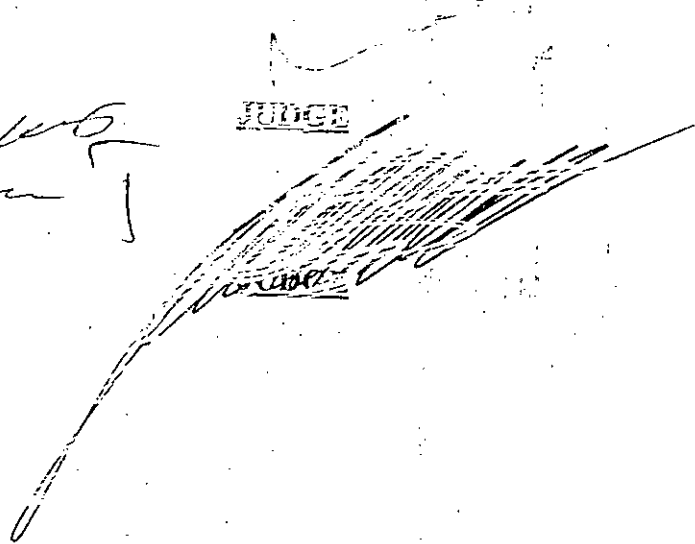
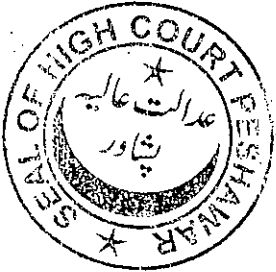
42

by examining the prosecution witnesses.  
 Appellants are directed to submit bail bonds to  
 the tune of Rs.2,00,000/- (two lac) each with  
 two sureties each in the like amount to the  
 satisfaction of the learned trial Court when  
 they are summoned by the learned trial Court.  
 Needless to mention that the trial Court shall  
 conclude the trial as early as possible.

Announced  
19.12.2017

*SAI Iqbal Khan*  
*SAI Iqbal Khan*

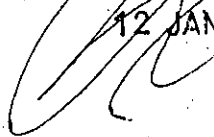
JUDGE

CERTIFIED TO BE TRUE COPY

Examiner  
 Peshawar High Court, Peshawar  
 Authorised Under Article 87 of  
 The Qanun-e-Shahadat Order 1984

12 JAN 2018



4257

09/11/17

Date of Presentation of Application 22/12/17

No of Trials 11/8

Case No. 44-05

12/1/18

12/1/18

Tajam/PS\*

DB Mr. Justice Ikramullah Khan  
 Mr. Justice Ishtiaq Ibrahim

Eh. Cr.A No. 46-P of 2011 Ajmal Khan Vs. State

ATTESTED

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH LAKKI MARWAT.

OFFICE ORDER:

After completing all codal formalities, the services of Mr. Taj Ali Khan S/O Haji Sardar Ali Khan Junior Clerk attached to DHQ Hospital Lakki Marwat are hereby terminated with effect from 17-03-2006, being absent from Govt. duty, under the NWFP Removal from Service (Special Power) ordinance 2000.

Executive District Officer  
Health Lakki Marwat.

No. 4687-92 /EOD(H)/PF

Dated: 26/9 /2006.

Copy to:

1. The Director General Health Services NWFP, Peshavar for information with reference to his letter No. 8429/Personnal Dated: 14-09-2006.
  2. District Coordination Officer Lakki Marwat for information please.
  3. M S DHQ Hospital Lakki Marwat.
  4. District Accounts Officer Lakki Marwat.
  5. Head Clerk EDO (H) Office Lakki Marwat.
  6. Official concerned.
- For information & necessary action.

Executive District Officer  
Health Lakki Marwat.

ATTESTED

D - No 3835

2  
844

30/11/18

To

The Director General Health Services  
Kpk Peshawar.

Subject:

Departmental Appeal Against Order Dated:  
26/09/2006.

Respected Sir,

It Is Respectfully Stated That I Was Junior Clerk in The Office of District Health Officer Lakki Marwat .I Served the Department for 10 Long Years and Have Unblemished Service Record. In The Year 2006 I Was Falsely Implicated In Corruption Charges and Was Arrested By the NAB Authorities.

Respected Sir,

During ~~My~~ <sup>The</sup> Period the DHO Lakki Marwat Illegally Terminated My Service on 26/09/2006.

The NAB Court Kpk Convicted Me. against Which I Filed Appeal In The High Court Peshawar Wide Appeal No: 50/2011. The Honorable High Court Peshawar Accepted My Appeal And Judgment Of NAB Court Is Set Aside Wide Judgment No: 19/12/2017.

Respected Sir,

As High Court Peshawar Accepted My Appeal And Judgment Of NAB Court Has Been Struck Down, Therefore It Is Requested That I May Very Graciously Be Re-Instated On Service As Junior Clerk With All Service Back Benefits And My Termination Order Dated. 26/09/2006 May Kindly Be Declared Illegal, Unlawful and Without Lawful Authorities.





Taj Ali Khan  
Ex-Junior Clerk  
Lakki Marwat

Copy Forwarded To the District Health Officer  
Lakki Marwat for Necessary Action As Requested  
Above Please.



Taj Ali Khan  
Ex- Junior Clerk  
Lakki Marwat

doc: 3008/-  
free: 40000/-

قیمت 50 روپے	 	34496
ایڈوکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:		
رابطہ نمبر:		

بعدالت جناب: سروس ٹریبونل پشاور

مخانب:	دعوی:
<p>ناج علی خان بنام حکومت</p>	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
	<b>بابت تحریر آگہ</b>

اسد محمود ایڈووکیٹ اور پشاور میں  
سال

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و چواب دہی کاروائی متعلقہ  
آن مقام پشاور کیلئے محمد آصف یوسف زئی ایڈووکیٹ کیلئے مقرر  
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جو اب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق  
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

محمد آصف یوسف زئی  
ایڈووکیٹ  
پشاور  
0314755155-155155

محمد آصف

محمد آصف یوسف زئی  
ایڈووکیٹ  
پشاور  
0314755155-155155

محمد آصف

Accepted  
Shm S  
[Signature]

المرقوم: \_\_\_\_\_  
المقام: پشاور

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No: 846/2018

Taj Ali Khan

VS

Health Department

**INDEX**

<b>S.No.</b>	<b>Documents</b>	<b>Pages</b>	<b>Annexure</b>
1.	Comments & Affidavit		--
2.	copies of 1 <sup>st</sup> Explanations		"R-1 & 2"
3.	Reply of Appellant		"R-3"
4.	Copies of 2 <sup>nd</sup> Explanations		"R-4 & 5"
5.	Show Cause & Dak receipt		"R-6 & 7"
6.	Letter for publication in newspaper		"R-8"
7.	Newspaper cuttings		"R-9"
8.	Termination order & Dak receipt		"R-10 & 11"

  
District Health Officer Lakki Marwat

District Health Officer  
Lakki Marwat

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No: 846/2018

Taj Ali Khan

VS

Health Department

Respectfully Sheweth;

The respondents submit the following comments in the above appeal:

**Preliminary Objections;**

- I. That Appellant has got no cause of action.
- II. That the appeal is not maintainable as no departmental appeal was filed by the Appellants.
- III. That the instant appeal is badly time barred.
- IV. That the appellants willfully remained absent from duties from 17/03/2006.
- V. That the said absence is proved from the findings of Accountability Court IV, Peshawar in Reference No.06/2006 decided on 16/09/2011 against the Appellant, where he remained absconder and were declared proclaimed offender by the Honourable Court. Later on Appellant was arrested by NAB.
- VI. That notices were issued to Appellant vide letter No.177 dated 01/04/2006 and No. 217-218 dated: 17/04/2006. **Annexed as R-1 & 2.** The Appellant submitted reply on 05/05/2006. **Annexed as R-3.**
- VII. That the appellant again remained absent, so again explanation was asked from the appellant vide letter No. 468/E-1 dated: 30/06/2006 and letter No. 614-16 dated; 22/08/2006. The same was sent at appellant home address. **Annexed as R-4 & 5.**
- VIII. That on 31/08/2006 show-cause notice was issued and was sent at home Address vide registered post. **Annexed as R-6& 7.** The same was also sent for publication on 01/09/2006. **Annexed as**

**R-8.** The same was advertised on 08/09/2006 in Daily "Express" and Daily "Subha". **Annexed as R-9.**

IX. That the appellant was terminated on 26/09/2006 and order was sent vide registered post at appellant home address. **Annexed as R-10 & 11.**

**FACTS;**

1. Correct to the extent of JC in Health department. Rest of the para is incorrect.
2. Correct to the extent of NAB inquiry and reference. However no comments regarding merit of NAB inquiry and reference.
3. Pertains to record.
4. In correct. The Appellant was treated according to law as reflected from R-1 to 11. The Appellant had not adopted the procedure provided by the law as no departmental Appeal was filed. Thus the Appeal is not maintainable and is badly time barred.
5. In correct. The appellant has got no cause of action.

**GROUNDSD;**

- A. In correct. Detail reply is submitted in preliminary objections and documents are annexed with.
- B. In correct. Explanation and show cause were sent at his home address via registered post. The appellant admit the same while submitted reply to the explanation R-3.
- C. In correct. As replied above.
- D. In correct. The Appellant was terminated from service due to absence from duties, which is proved from NAB court case.
- E. In correct. The Appellant remained fugitive from law and the court declared him PO.
- F. In correct. As above.

G. In correct. As per preliminary objections.


H. In correct. As replied above.

I. In correct. He was treated according to law.

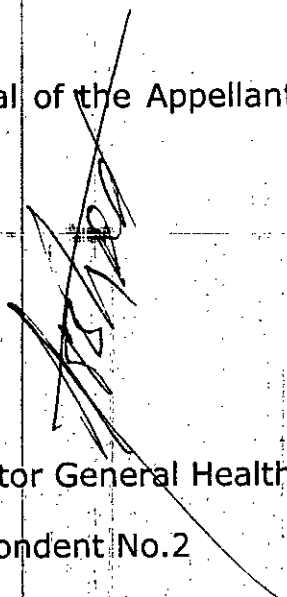
J. In correct. The Appellant taken contradictory pleas for his absence, as in reply to explanation R- 1 & 2, he asserted medical reason R-3.

K. The respondents also seek permission to raise additional grounds at the time of arguments.

It is, therefore, most humbly prayed that the Appeal of the Appellant may be dismissed with cost.

  
Secretary Health

Respondent No.1

  
Director General Health  
Respondent No.2

  
District Health Officer Lakki Marwat

Respondent No. 3

District Health Officer  
Lakki Marwat

**Affidavit;**

Solemnly affirm on oath that the contents of comments are correct to the best of my knowledge.

  
District Health Officer Lakki Marwat

District Health Officer  
Lakki Marwat



NO. \_\_\_\_\_ / Dated Lakki the 1-4 / 2006.

From

The Medical Superintendent,  
D.H.Q. Hospital, Lakki Marwat.

To

Mr. Taj Ali Khan, *J/c desk*  
S/O H. Sardar Ali Khan,  
MOR: Mian Khan,  
Teh: & Distt: Lakki Marwat.

SUBJECT: EXPLANATION.

Memo:

It has been reported that you are absent from duty since 17/3/2006 without sending any leave application or intimation.

You are, therefore asked to resume your duty at once and also explain the causes of your absence.

In case you fail to resume your duty within 07 day of the receipt of this letter, action will be taken against you under N.W.F.S. Govt: servants/ (Efficiency & Discipline) Rules, 1973.

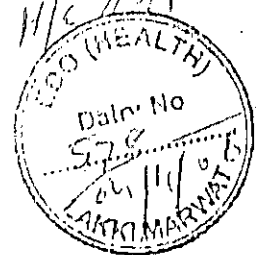
Medical Superintendent,  
Distt: Headquarter Hospital,  
Lakki Marwat.

No. 177

Copy forwarded to:

The Executive District Officer, Health Lakki Marwat for information and stop his pay till further order.

*Office H.C.*  
*for info to follow the case.*  
*M/c 23/4/06*  
*04.4.06*



*S. H. M. D.*  
Medical Superintendent,  
Distt: Headquarter Hospital,  
Lakki Marwat.

No. \_\_\_\_\_

Dated Lakki Marwat D.P. 12/1/2006.

From \_\_\_\_\_

The Medical Superintendent,  
D.H.Q. Hospital, Lakki Marwat.

To \_\_\_\_\_

Mr. Taj Ali Khan, Jr. Clerk,  
S/O H. Sardar Ali Khan,  
Mowallah Mian Khan  
District Lakki Marwat.

SUBJECT: ABSENCE FROM DUTY.

Ref: \_\_\_\_\_

A Letter No. 176 dated 01/4/2006

was sent to you at your home address in which you were asked that you are absent from duty since 17/3/2006 and were directed to resume duty within a week of the receipt of notice. But it is a matter of great concern that till now you have not taken any response nor any thing has been heard from you.

It is, therefore, once again finally asked you to report for duty at once and also state the causes of your willful absence.

In case if you fail to resume duty upto 22/4/2006, you will be declared as absconder and action will be taken against you straight away without assigning any reason.

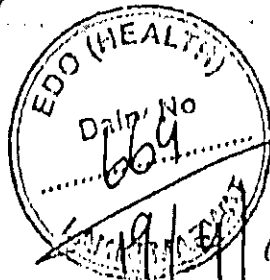
Medical Superintendent,  
D.H.Q. Hospital, Lakki Marwat.

No. 217-218 IE-I

Copy forwarded to:

1. The Executive District Officer, Health, Lakki Marwat for information with reference to this Office Endat: No. 177 dated 01/4/2006.

*Office H.C.  
not to release his pay.*



*E-13*

*06-*

*[Signature]*  
Medical Superintendent,  
D.H.Q. Hospital, Lakki Marwat.

خدمت افتاب مشرفی سروسز ڈیپارٹمنٹ ڈی ایچ ڈی اسپتال کراچی

عنوان: جواب طلبی / حاضر کا رپورٹ

جناب عالی:

گزارش کے ذریعے اسائل (Fanoor) میں مبتلا ہو گیا۔ اور اسائل باقاعدگی سے سول اسپتال سرانے ڈاکٹر سے علاج کرا رہا تھا۔

- 1) آپ کے ڈاکٹر (No. 176/E-13 dt. 1/9/06)
- 2) (No. 176/E dt. 1/9/06)

کے ذریعے اسائل کو غیر حاضر دیکھا گیا ہے۔ اسائل کو صحت مند دیکھا گیا ہے۔

اور آج مورخہ 05/5/06 کو ڈاکٹر کا رپورٹ حاضر ہوا۔

اسائل باقاعدگی سے ڈاکٹر سے علاج دے رہا ہے۔

اسائل کا صحت مند رہنا سیکھ گیا ہے۔

اسائل اسٹریٹ کے کچھ کھانا کھا رہے ہیں۔

اسٹریٹ کے صاحبان سے انعام ہے۔ کہ اسائل کو کھانا دینے کا

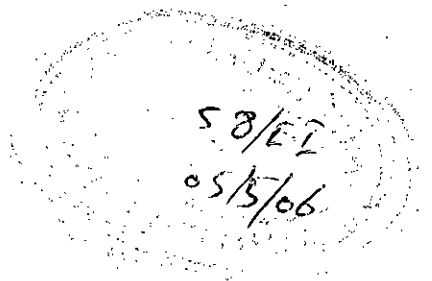
کلم صادر فرمائی۔

عین نواز شہزاد

مورخہ 05/5/06

الغرض

تاج علی خان جوینر کلرک ڈی ایچ ڈی اسپتال کراچی



NO 267 /E.I

Dated the 10/05/2006.

Forwarded to Executive Distt:Officer Health Lakki Marwat for information and further n/action please. with r/o No,1665/E.13 dt;09/4/05.



*Illium*  
MEDICAL SUPERINTENDENT  
DHQ: HOSPITAL LAKKI MARWA

OFFICE OF THE MEDICAL SUPERINTENDENT DISTRICT HOSPITAL LAKKI MARWAT

No. 468 /E-1

Dated: 30 /06/2006

To

Mr. Taj Ali Khan J/Clerk  
S/O Sardar Ali Khan  
Moh: Michan Khel Lakki Marwat.

Subject: Explanation

Memo:

As directed by Executive District Officer Health Lakki Marwat vide his letter No.3111/E-13 dated 27/06/2006, that you are willful absent from your duty w.e.f. 08/06/2006 up till now.

Explain your position as to why disciplinary action should not be taken against you. Your written reply should reach this office with in 7- days of the receipt of this letter.

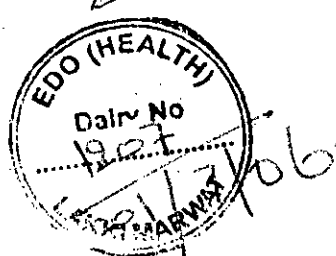
Medical Superintendent  
DHQ Hospital Lakki Marwat.

No. 468 /E-I

Copy to the:

1. Director General Health Services NWFP Peshawar for information please.
2. Executive District Officer Health Lakki for information w/r to his letter number m/above.

*See  
you should follow the  
case  
01-7-06*



*Chas*  
Medical Superintendent  
DHQ Hospital Lakki Marwat

NO \_\_\_\_\_/E.1 Dated Lakki the 22/8/2006.

From:

Medical Superintendent  
DHQ:Hospital Lakki Marwat.

To,

Mr. Taj Ali Khan J/Clerk  
S/O Sardar Ali Khan r/o Mohallah  
Mechen Khel Distt:Lakki Marwat.

Subject: ABSENCE FROM DUTY.

Memo:

Explanation was called from you vide this Office letter NO:468/E.1 dt:30.6.2006 regarding willful absence w,e,f,8.6.2006, but your reply is still awaited nor you submitted his arrival for duty.

Therefore you are once again directed to attend this office and explain your position regarding willful absence from duty, In case of failure your services will be recommended to high authority under the removal from service(Special Power) Ordinance-2000.

Medical Superintendent  
DHQ:Hospital Lakki Marwat.

NO 614-16 /E.1

Copy to:-

1. Director General Health Services NWFP Peshawar.
2. Executive District Officer Health Lakki Marwat.  
for information please.

*M.S.D.H.Q. L*

*Follow the case personally  
under instruction to this office  
other wise you will be held  
responsible for con. reference.*

*2  
13.8.06*

*S. H. Mir*  
Medical Superintendent  
DHQ:Hospital Lakki Marwat.



*PP*

*6*

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH LAKKI MARWAT.

SHOW CAUSE NOTICE

I Dr. Muhammad Iqbal EDO (Health) Lakki Marwat as the competent authority serve you, Mr. Taj Ali Khan Junior Clerk attached to DHQ Hospital Lakki with the following show cause notice:

Where you were contravened Section-22 & 34 of the NWFP, Govt: servant (conduct) Rule 1987.

1. You were absent from duty since 17-03-2006 vide MS DHQ Hospital Lakki Marwat explanation No. 176 and endst: No. 177 Dated: 01-04-2006 and No. 217-218 /E-1 Dated: 17-04-2006.
2. You have submitted explanation reply along with medical certificate of 50 days w.e.f 16-03-2006 to 04-05-2006 but your medical leave has not been sanctioned.
3. You were directed and advice to perform your duty regularly but in spite of repeated directions / advice of MS DHQ Hospital Lakki vide his letter No.

No. 176 /PF Dated: 01-04-2006

No. 217/E-1 Dated: 17-04-2006

No. 467/E-1 Dated: 30-06-2006

No. 614/E-1 Dated: 12-08-2006

But you are not complying the order and constantly absenting yourself from duty.

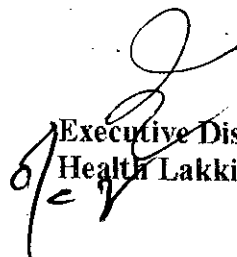
4. You are finally directed to resume your duty on your home address by MS DHQ Hospital Lakki Marwat vide his letter No. 468/E-1 Dated: 30-06-2006, but all in vain.

Thus you are guilty of miss conduct under Section-3 (b) of NWFP Govt: Servant (E&D) Rules 1973.

You are therefore called to show cause as to why all or one of the penalties under Section-4 of the Rules ibid may not be imposed on you which may lead to tantamount to termination of your services under Special Power Ordinance 2000.

You are advised to submit your explanation in your defense within a period of 15 days, also indicate if you wish to be heard in person.

Mr. Taj Ali Khan Junior Clerk  
S/O Sardar Ali Khan R/O Moh:  
Michan Khel Lakki Marwat.

  
Executive District Officer  
Health Lakki Marwat.

EDO (Health)  
Lakki Marwat.

No. 4392 /EDO(H)/PF  
Dated: 31/8 /2006.

To

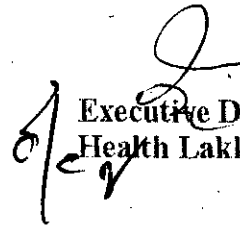
The Medical Superintendent  
DHQ Hospital Lakki Marwat.

SUBJECT: SHOW CAUSE NOTICE.

Memo: Reference your letter No. 658/PF Dated: 24-08-2006 addressed to this office and copy endorsed to DG Health Services NWFP, Peshawar.

Enclosed please find herewith two copies of show cause notice with request to be served upon Mr. Taj Ali Khan Junior Clerk, ~~attached~~ attached to your hospital and one copy of the same may be returned to this office duly signed by the official concerned as token to ~~received~~ <sup>receipt</sup>.

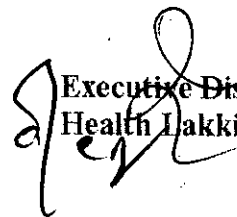
Encl: 02

  
Executive District Officer  
Health Lakki Marwat.

No. 4393 /EDO(H)/PF

Copy along with a copy of show cause notice is forwarded to the:

1. Director General Health Service NWFP, Peshawar for information please.

  
Executive District Officer  
Health Lakki Marwat.



No. 884

For Insurance Notices see reverse.  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgment is due

Rs. Ps.

Received a registered  
addressed to

Date Stamp

Initials of Receiving Office

Write here "letter", "postcard", "packet" or "parcel"  
with the word "insured" before it when necessary  
(in words)

Insured by Rs. (in figures)

(in words)

If insured.

Insured fee Rs.

Rs.

(in words)

Grams

Name and  
address  
of sender

PF  
Jat 2/6  
SPH?

2/9/06

REGISTERED

EDO (Health)  
Lakki Marwat.

No. 4426 /EDO(H)/PF  
Dated: 01/9/2006.

To

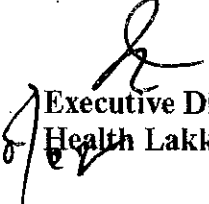
The Director Information  
NWFP, Peshawar.

SUBJECT: SHOW CAUSE NOTICE.

Memo:

I have the honor to enclose herewith 07 copies of show cause notice in respect of Mr. Taj Ali Khan Junior Clerk attached to DHQ Hospital Lakki Marwat may please be published in National Newspaper.

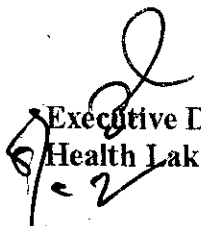
Further more sufficient budget is available for advertisement.

  
Executive District Officer  
Health Lakki Marwat.

No. 4427-28 /EDO(H)/PF

Copy along with a copy of show cause notice is forwarded to the:

1. Director General Health Services NWFP, Peshawar.
  2. District Coordination Officer Lakki Marwat.
- For information please.

  
Executive District Officer  
Health Lakki Marwat.

## نوٹس غیر حاضری / شوکاز نوٹس

آپ مسمی تاج علی خان جو محیر کلرک ولد سردار علی خان محلہ مچن خیل لکی مروت ڈسٹرکٹ ہیڈ کوارٹرز ہسپتال لکی مروت طویل عرصے سے اپنی ڈیوٹی سے غیر حاضر ہے۔ آپ کو گھر کے پتہ پر کئی بار خطوط اور Explanation ارسال کئے گئے جو دفتر ریکارڈ میں موجود ہیں۔ پھر آپ کو گھر کے پتہ پر DHQ ہسپتال لکی مروت کے وساطت سے نوٹس اظہار وجوہ گھر کے پتہ پر ارسال کیا گیا مگر نہ ہی آپ نے کوئی جواب دیا اور نہ اپنی ڈیوٹی پر حاضر ہوئے لہذا آپ کو اس اشتہار کے ذریعے آخری بار مطلع کیا جاتا ہے کہ اس اشاعت کے 15 دن کے اندر اندر دفتر ہذا میں حاضر ہو کر اپنی بلا جواز غیر حاضری کی وضاحت پیش کریں۔ بصورت دیگر آپ کے خلاف سپنشل پاور آرڈیننس 2000 کے تحت ایک طرفہ کارروائی عمل میں لائی جائے گی جو ملازمت سے برخاستگی پر منتج ہوگی۔ جو بعد میں کوئی عذر قابل قبول نہیں ہوگا۔

بحکم (ڈاکٹر محمد اقبال)

ضلعی افسر محکمہ صحت لکی مروت۔  
Executive District Officer  
Health Larki Marwat

روزنامہ ایکسپریس  
 مورخہ 08/09/2006

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FRIDAY, SEPTEMBER 08, 2006

**نوٹس غیر حاضری / شوکانہ نوٹس**

آپ سہی تاج علی خان جو تیز کلرک و لدر سردار علی خان محلہ بچن شیل گی مردت ڈسٹرکٹ ہیڈ کوارٹر ہسپتال  
 لگی مردت طویل عرصے سے اپنی ذیوبی سے غیر حاضر ہے آپ کو گھر کے پتہ پر لگی بار خطوط اور  
 Explanation ارسال کئے گئے جو دفتر ریکارڈ میں موجود ہیں۔ پھر آپ کو گھر کے پتہ پر DHQ  
 ہسپتال لگی مردت کے وساطت سے نوٹس اظہار دیا جو گھر کے پتہ پر ارسال کیا گیا مگر ہی آپ نے کوئی  
 جواب دیا اور نہ اپنی ذیوبی پر حاضر ہوئے لہذا آپ کو اس اشتہار کے ذریعے آخری بار مطلع کیا جا رہا ہے کہ  
 اس اشاعت کے 15 دن کے اندر اندر دفتر ہڈا میں حاضر ہو کر اپنی بلا جواز غیر حاضری کی وضاحت پیش  
 کریں۔ بصورت دیگر آپ کے خلاف سبیش پاور آرڈیننس 2000 کے تحت یکطرفہ کارروائی عمل میں  
 لائی جائے گی جو ملازمت سے برخاستگی پر منتج ہوگی۔ جو بعد میں کوئی عذر قابل قبول نہیں ہوگا۔

بحکم (ڈاکٹر محمد اقبال) ضلعی انسپکشنر محکمہ صحت  
 Also available on www.nwfp.gov.pk INF(P)2827

نوٹس  
 08/09/2006  
 ڈاکٹر محمد اقبال  
 ضلعی انسپکشنر محکمہ صحت  
 فیصل آباد

روزنامہ

روزنامہ سپر رسالیت 8/9/2020

آپ کی تاج علی خان جوینگر کلرک ولد سردار علی خان خانم محمد حسن خیل کی مروت ڈسٹرکٹ ہیڈ کوارٹر  
ہسپتال کی مروت طویل عرصے سے اپنی ڈیوٹی سے غیر حاضر ہے۔ آپ کو گھر کے پتے پر کسی بار خطوط  
اور Explanation ارسال کئے گئے جو دفتر ریکارڈ میں موجود ہیں۔ پھر آپ کو گھر کے پتے  
پر DHQ ہسپتال کی مروت کے وسالمت سے لوٹس اظہار وجوہ گھر کے پتے پر ارسال کیا گیا مگر نہ  
ہی آپ نے کوئی جواب دیا اور نہ اپنی ڈیوٹی پر حاضر ہونے لہذا آپ کو اس اشتہار کے ذریعے  
آخری بار مطلع کیا جاتا ہے کہ اس اشاعت کے 15 دن کے اندر اندر دفتر ذہدا میں حاضر ہو کر اپنی  
بلا جواز غیر حاضری کی وضاحت پیش کریں۔ بسورت ویر آپ کے خلاف سیکٹل پاور  
آرڈیننس 2000ء کے تحت یکطرفہ کارروائی عمل میں لائی جائے گی جو ملازمت سے برخواستگی پر  
منج ہوگی۔ جو بعد میں کوئی عذر قابل قبول نہیں  
INF(P)2827  
Also Available on www.nwfp.gov.pk

REGISTERED

OFFICE OF THE EXECUTIVE DISTRICT OFFICER HEALTH LAKKI MARWAT.

OFFICE ORDER:

After completing all codal formalities, the services of Mr. Taj Ali Khan S/O Haji Sardar Ali Khan Junior Clerk attached to DHQ Hospital Lakki Marwat are hereby terminated with effect from 17-03-2006, being absent from Govt: duty, under the NWFP Removal from Service (Special Power) ordinance 2000.

  
Executive District Officer  
Health Lakki Marwat.

No. 4687-92/EOD(H)/PF

Dated: 26 / 9 /2006.

Copy to:

1. The Director General Health Services NWFP, Peshawar for information with reference to his letter No. 8429/Personnal Dated: 14-09-2006.
  2. District Coordination Officer Lakki Marwat for information please.
  3. M S DHQ Hospital Lakki Marwat.
  4. District Accounts Officer Lakki Marwat.
  5. Head Clerk EDO (H) Office Lakki Marwat.
  6. Official concerned.
- For information & necessary action.

  
Executive District Officer  
Health Lakki Marwat.

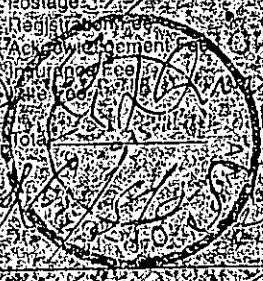
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**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 152 /ST

Dated: 24/01 /2022

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

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


To

The District Health Officer,  
Government of Khyber Pakhtunkhwa,  
Lakki Marwat.

Subject: JUDGMENT IN APPEAL NO. 846/2018 MR. TAJ ALI KHAN.

I am directed to forward herewith a certified copy of Judgement dated  
07.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR



**2018 P L C (C.S.) Note 67****[Sindh High Court]****Before Naimatullah Phulpoto and Abdul Maalik Gaddi, JJ****INAYATULLAH****Versus****DISTRICT AND SESSIONS JUDGE, MIRPUR KHAS (SINDH) and another**

Service Appeal No.9 of 2005, decided on 20th May, 2017.

**Sindh Civil Servants (Efficiency and Discipline) Rules, 1973---**

----R. 4(1)(b)(iii)---Absence from duty--- Removal from service---Scope---Contention of employee was that he was confined in jail and no opportunity of hearing was provided to him---Validity--- Employee was confined in jail in criminal case for the entire period during which disciplinary proceedings were initiated/ pending against him---Absence of employee was neither deliberate nor willful---Circumstances were beyond the control of employee and non-reply of explanation or show cause notice was not due to his negligent conduct of employee---Nothing was on record that explanation or show-cause notice issued against the employee through newspaper was provided in prison to the under trial prisoners at relevant time---No show cause notice was served upon the employee in circumstances---Employee was not heard during departmental proceedings---Principles of natural justice that no one should be condemned unheard had been violated in the case--- Employee was not heard before passing adverse order of inflicting major penalty of removal from service---Impugned orders were not sustainable in circumstances---Major penalty of removal from service was converted into withholding of annual increments for five years by the High Court--- Employee was reinstated into service---Intervening period from the date of removal from service till the employee resumed his duty was directed to be considered towards his extraordinary leave without pay---Appeal was disposed of in circumstances. [paras.7, 8 & 9 of the judgment]

Noor Muhammad v. The Members Election Commission, Punjab and others 1985 SCMR 1178; Rashid Mehmood v. Additional Inspector General of Police and 2 others 2002 SCMR 57; Muhammad Haleem and others v. General Manager (Operation) Pakistan Railways Headquarters Lahore, and others 2009 SCMR 339; Naseeb Khan v. Divisional Superintendent, Pakistan Railways Lahore and another 2009 PLC (C.S.) 19 and Tasleem Akhtar v. Pakistan through Secretary Revenue, Islamabad and 3 others 2010 PLC (C.S.) 795 ref.

Mrs. Anisa Rehman v. P.I.A.C. and another 1994 SCMR 2232; Pakistan International Airline Corporation through Chairman and others v. Nasir Jamal Malik and others 2001 SCMR 934 and Hazara (Hill Tract) Improvement Trust through Chairman and others v. Mst. Qaisra Elahi and others 2005 SCMR 678 rel.

Ghulam Sarwar Chandio for Appellant.

S. Qamil Shah, A.A.G. for Respondents.

Date of hearing: 15th April, 2017.

**ORDER****ABDUL MAALIK GADDI, J.---** Appellant, Inayatullah has filed instant service appeal

*For Appellant*  
*Noor Nawaz*

against the impugned order dated 12.11.2005, passed by the respondent No.2, whereby his appeal against the order dated 14.07.2003, passed by the learned District and Sessions Judge, Mirpurkhas imposing on him major penalty of removal from service was dismissed.

2. Relevant facts in brief are that the appellant was serving as Sweeper in the Court of Civil Judge and First Class Magistrate, Kunri, when on 11.04.2003, the Presiding Officer of the said Court made a report against him to the then District and Sessions Judge, Mirpurkhas for his unauthorized absence from duty with effect from 02.04.2003 to 11.04.2003 without sanctioned leave or any intimation, as such, his explanation was called, which could not serve upon him, the same was repeated, but any result. The complete report regarding unauthorized absence of the appellant was again called by the District Judge from the Civil Judge and F.C.M, Kunri, who again reported that the appellant continuously remained absent from 02.04.2003 to 04.06.2003, unauthorizedly, and during the said absence period, no intimation was received from him and due to his continuous absence from duties with effect from 02.04.2003 to 30.06.2003 and non-service of notice upon the appellant, the show-cause notice was got published in daily newspaper "Jurrat" dated 02.07.2003, requiring the appellant to appear before the District Judge, Mirpurkhas within seven days to explain his position but the appellant did not appear. Consequently, the appellant was removed from service vide order dated 14.07.2003 under Rule 4(b)(iii) of the Sindh Civil Servants (E&D) Rules, 1973.

3. The impugned order dated 14.07.2003 was assailed by the appellant through departmental representation to the Registrar of this Court dated 25.07.2005 alleging therein that he was never served with any show-cause notice, charge sheet nor he was heard before passing his removal order from service. The appellant in the said representation has also taken the plea that he was falsely involved in Criminal Case No.59 of 2002 of police station Town Mirpurkhas and was confined in Central Prison, Hyderabad, where no newspaper was supplied/provided to him. Even otherwise, the alleged notice was published in Urdu newspaper, whereas, his relatives have Sindhi mother tongue and there was no evidence that Urdu newspaper was read by his relatives; therefore, appellant had no knowledge about any notice published in Urdu newspaper. As such, according to him, his absence from the duty was neither willful nor deliberate but was beyond his control. However, according to him, he had been acquitted from the said case vide Judgment dated 21.10.2004. Thereafter, he made applications for his re-instatement in service to the District and Sessions Judge, Mirpurkhas and then filed departmental appeal which was dismissed. Hence, this service appeal along with application under Section 5 of the Limitation Act, on the basis of almost on same facts and grounds, which he had been urged in the departmental appeal, with the prayer to reinstate him in service.

4. Learned counsel for the appellant while relying the facts and grounds mentioned in this appeal has also argued that imposing of major penalty without holding a regular inquiry was in violation of relevant rules and law and was also against the principle of natural justice; that the appellant was not afforded an opportunity of hearing and defend him in rebuttal of allegations against him, which seriously prejudiced the appellant and resulted into miscarriage of justice; that on the relevant dates of alleged absence period, the appellant was confined in jail in Criminal Case No.59 of 2002 and no show-cause notice was served upon him issued by District Judge, Mirpurkhas, therefore, his absence from the duty was beyond of his control and after acquittal of the appellant, he preferred departmental appeal, but the same was dismissed without considering his pleas/stance without assigning any good reason. However, learned counsel in support of his arguments has relied upon the following case laws with prayer to allow this appeal:-

- (i) Noor Muhammad v. The Members Election Commission, Punjab and others reported as 1985 SCMR 1178;
- (ii) Rashid Mehmood v. Additional Inspector General of Police and 02 others reported as 2002 SCMR 57;
- (iii) Muhammad Haleem and others v. General Manager (Operation) Pakistan Railways

Headquarters Lahore, and others reported as 2009 SCMR 339;

- (iv) Naseeb Khan v. Divisional Superintendent, Pakistan Railways Lahore and another reported as 2009 PLC (C.S.) 19.
- (v) Tasleem Akhtar v. Pakistan through Secretary Revenue, Islamabad and 3 others reported as 2010 PLC (C.S.) 795.

3. Conversely, learned A.A.G. though supported the impugned orders passed by the District and Sessions Judge, Mirpurkhas as well as in departmental appeal, but failed to controvert the point as raised by the appellant in this appeal and has reiterated that the appellant remained absent from his duty for the relevant period without prior permission, thus, he was of the view that the appellant was habitual in remaining absence from his duty; therefore, was not entitled for any relief and this appeal is liable to be dismissed.

6. We have heard the learned counsel for the parties at a considerable length and perused the record with their able assistance.

7. It reveals from the record that the appellant was confined in jail in Criminal Case No.59 of 2002 for the entire period during which disciplinary proceedings were initiated/pending against him before the District and Sessions Judge, Mirpurkhas. Thus, it is evident that absence of appellant from his duty was neither deliberate nor willful. The circumstances were beyond the control of the appellant and non-reply of the explanation or show-cause notice was not due to negligent conduct of the appellant, but owing to his ignorance about his initiation of the proceedings against him. This fact has not been sufficiently controverted by the learned A.A.G. The publication of the show-cause notice in daily Urdu newspaper "Jurrat" dated 02.07.2003 has not been of much aid for informing the appellant as he was confined in jail. There is absolutely nothing on record that the explanation or show-cause notice issued against the appellant through newspaper was provided in the prison to the U.T.Ps. at the relevant time. When confronted with the learned A.A.G. that alleged show-cause notice was published in Urdu newspaper and the mother tongue of the appellant and his relatives is Sindhi and no Urdu newspaper reached in village, his relatives were residing, then how the appellant was served with the show-cause notice. Nothing was on record that show-cause notice was ever served upon the appellant in jail. As observed above, the appellant has not been heard during departmental proceedings, thus, it is manifest that the principle of natural justice that "none be condemned unheard" has been violated in this case. In this respect, we are supported with the cases of (1) Mrs. Anisa Rehman v. P.I.A.C. and another reported as 1994 SCMR 2232, (2) Pakistan International Airline Corporation through Chairman and others v. Nasir Jamal Malik and others reported as 2001 SCMR 934 and (3) Hazara (Hill Tract) Improvement Trust through Chairman and others v. Mst. Qaisra Elahi and others reported as 2005 SCMR 678.

8. Admittedly, the appellant was not heard before passing adverse order of inflicting major penalty of removal from service upon the appellant. Therefore, in the peculiar circumstances of the matter, the impugned orders dated 14.07.2003 and 12.11.2005 passed by the District and Sessions Judge, Mirpurkhas and by departmental authority are not sustainable in law and same are set-aside.

9. In view of the above, after perusal of service record of appellant, we partly allow this appeal in terms whereby converting the major penalty of the appellant of removal from service to the minor one under sub-clause (ii) of clause (1) part (a) of Rule 4 of Sindh Civil Servants (E&D) Rules, 1973 by withholding his annual increments for five (05) years of his service and reinstate him in service. However, the intervening period from 14.07.2003 till the appellant resumes his duty shall be considered towards his extraordinary leave without pay.

Appeal is disposed of in above terms.

*For Appellate*  
*void order =*  
*judicial with*  
*faizul Jabir*

2019 S C M R 648

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, Faisal Arab and Ijaz ul Ahsan, JJ

Qazi MUNIR AHMED---Petitioner

Versus

RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others---Respondents

Civil Petitions Nos. 606 and 607 of 2018, decided on 6th March, 2019.

(Against the Judgment dated 07.12.2017 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Intra Court Appeals Nos. 181 and 196 of 2012)

**(a) Limitation---**

---Void order--- No period of limitation ran against a void order.  
Yousaf Ali v. Muhammad Aslam Zia PLD 1958 SC 104 ref.

**(b) Appeal---**

---Aggrieved person--- Scope---Any aggrieved person whether or not he was a party in a lis had the right to approach an appellate forum.

H.M. Saya and Co. v. Wazir Ali Industries Ltd. PLD 1969 SC 65 ref.

**(c) Constitution of Pakistan---**

---Art. 199---Constitutional petition---Competency---Necessary and proper party i.e. Provincial Government not impleaded---Where petitioner did not implead the Provincial Government as a party in the constitutional petition, despite the fact that the said Government was a necessary and proper party in the case, the constitutional petition was not competent and was liable to be dismissed.

Government of Balochistan v. Mir Tariq Hussain Khan Magsi 2010 SCMR 115 ref.

**(d) Constitution of Pakistan---**

---Art. 199---Contract employment---Constitutional petition filed by a contract employee--- Maintainability---Contract employee was debarred from approaching the High Court in its constitutional jurisdiction---Only remedy available to a contract employee was to file a suit for damages alleging breach of contract or failure to extend the contract.

Federation of Pakistan v. Muhammad Azam Chatha 2013 SCMR 120 ref.

**(e) Master-servant---**

---Contract employee---Contract employee could not press for reinstatement to serve for the left-over period and could at the best claim damages to the extent of unexpired period of his service.

Federation of Pakistan v. Muhammad Azam Chatha 2013 SCMR 120 ref.

Sardar Abdul Raziq Khan, Advocate Supreme Court and Syed Rafaqat Hussain Shah, Advocate-on-Record for Petitioner (in both cases).

Mian Abdul Rauf, Advocate Supreme Court for Respondents.

Date of hearing: 6th March, 2019.

**ORDER**

**IJAZ UL AHSAN, J.**---Through this order, we propose to decide C.P.L.As. Nos.606 and 607 of 2018 as common questions of law are involved and both petitions arise out of the same impugned judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi.

2. The petitioner seeks leave to appeal against a judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi, dated 07.12.2017, through which Intra Court Appeals (I.C.As. Nos.196 and 181 of 2012) filed by the Respondents were accepted, the judgment dated 30.08.2012 passed by the learned Single Judge in Chambers was set aside and the constitutional petition (W.P.No.2059 of 2011) filed by the petitioner was dismissed.

3. The brief facts necessary for disposal of this lis are that the petitioner was appointed as an ECG Technician in District Headquarters Hospital, Rawalpindi in 2005 on contract basis. In 2009, his services were terminated. He challenged his termination through a representation which was not decided. He therefore approached the High Court in its constitutional jurisdiction. The High Court ultimately directed the Respondents to decide the petitioner's representation. This was dismissed by the departmental authority on 06.08.2011. The petitioner challenged the said order through Writ Petition No.2059 of 2011, which was allowed, vide order dated 30.08.2012. The Respondents feeling aggrieved challenged the said judgment through two separate Intra Court Appeals. These were allowed, vide impugned judgment dated 07.12.2017. Hence, these petitions.

4. The learned counsel for the petitioner submits that the Division Bench of the High Court fell in error in reversing the findings of the learned Single Judge in a mechanical manner. He further maintains that the ICA filed by the Rawalpindi Medical College ("RMC"), which was neither a party to the proceedings in the writ petition nor was directly aggrieved of the order dated 30.08.2012, was not competent. He further maintains that the ICA filed by the Government of Punjab was barred by time and the learned Division Bench erred in law in entertaining the appeals and ultimately accepting the same.

5. The learned counsel for the Respondents on the other hand has defended the impugned judgment. He has pointed out that even if the appeal filed by the Government of Punjab was barred by time, another appeal filed by RMC was admittedly within time. It is settled law that if two appeals against the same impugned judgment are filed, one of which is within time, the other appeal should also be entertained and decided on merit rather than being dismissed on technical grounds thereby creating legal complications and anomalies.

6. We have heard the learned counsel for the parties and carefully examined the record. There is no denial of the fact that the appeal filed by the RMC was within time. As such, even if the appeal filed by the Government of Punjab was barred by time, the learned Division Bench had legal basis and lawful justification to entertain and decide both appeals on merits. Even otherwise, the order of petitioner's appointment was found to be void. Further, in terms of the law laid down by this Court in the judgment reported as *Yousaf Ali v. Muhammad Aslam Zia* (PLD 1958 SC 104), no period of limitation runs against a void order.

7. As far as the argument of the learned counsel for the petitioner that RMC could not have filed an appeal, suffice it to say that any aggrieved person whether or not he was a party in a lis has the right to approach an appellate forum. Reference in this regard may usefully be made to *H. M. Saya & Co. v. Wazir Ali Industries Ltd.* (PLD 1969 Supreme Court 65). The learned ASC for the petitioner has not been able to convince us either that the appeal filed by the RMC was not competent or that the same was wrongly entertained and decided by the Division Bench.

8. Adverting to the merits of the case, we find that vide letter dated 22.06.2004, the Principal Secretary to the Chief Minister, Punjab had desired that the case of the petitioner for re-employment be placed before the Re-employment Board for consideration on merit. However, it appears that the Medical Superintendent, DHQ Hospital, Rawalpindi without referring the matter to the Re-employment Board, and on his own accord directly appointed the petitioner on contract basis. Such order was clearly in violation of the aforementioned letter as well as beyond the powers of the said office.

9. We have specifically asked the learned counsel for the petitioner that under what authority of the law the Chief Minister had the power to issue directives regarding re-employment of government servants. He has not been able to provide any legally sustainable response to the same.

10. It also appears that the case of one Rizwana Bibi involving identical questions had been dismissed by a Division Bench of the High Court. The said matter came up for hearing before this Court in C.P.L.A. No.155 of 2010 which was dismissed vide judgment dated 15.02.2010. The points of law involved in the petitioner's case are the same regarding which findings have already been relieved and law laid down in Rizwana Bibi's case. As such, the learned High Court was justified in relying on the same and refusing to grant relief to the petitioner.

11. It is also noticed that the petitioner did not implead the Province of Punjab as a party in the constitutional petition. This was despite the fact that the said Government was a necessary and proper party in the case. In the circumstances, even otherwise, the constitutional petition was not competent and was rightly dismissed by the Division Bench. Reference in this regard may

usefully be made to Government of Balochistan v. Mir Tariq Hussain Khan Magsi (2010 SCMR 115).

12. We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120), where it has been held that it is a cardinal principle of law that a contract employee cannot press for reinstatement to serve for the left over period and can at the best claim damages to the extent of unexpired period of his service. Therefore, it was correctly held that the petitioner approached the wrong forum in the first place and the learned Single Judge had exceeded his jurisdiction by interfering in a purely contractual matter.

13. The learned counsel for the petitioner has not been able to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment of the Division Bench is well reasoned, based on settled principles of law on the subject and the conclusions drawn are duly supported by the record. We are therefore not inclined to grant leave to appeal in this matter.

14. For the foregoing reasons, these petitions being devoid of merits stand dismissed. Leave to appeal is refused.

MWA/M-12/SC

Petitions dismissed.

2015 S C MR 795

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ

FAZLI HAKEEM and another---Petitioners

versus

SECRETARY STATE AND FRONTIER REGIONS DIVISION ISLAMABAD and others--Respondents

Civil Petitions Nos. 418 and 707 of 2012, decided on 8th February, 2013.

(On appeal against the judgment dated 19-1-2012 passed by Federal Service Tribunal, Islamabad in Appeals Nos.766(P)CS/2010 and 814(P)CS/2010)

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

----S. 5(1)---Limitation Act (IX of 1908), S. 3---Constitution of Pakistan, Art. 185(3)---Federal Service Tribunal, order of--- Order not passed in accordance with law---Void order, limitation against---Scope---Promotion---Temporary employee promoted in preference to regular employees against the law---Contention of respondent that present petition should be dismissed on the grounds of limitation---Validity---Respondent was a temporary contract employee and he was working as such at the time he was promoted---Question as to how could the respondent rank senior and how he could be given preference over the employees who were regularized much earlier were questions which had not been answered either in the impugned judgment of the Service Tribunal or by the respondent---Present case was not a case where the matter could be set at rest by invoking the provisions regulating limitation---Courts of law were not supposed to perpetuate what was unjust and unfair by exploring explanation for an act which was prima facie against law and thus void---Courts should rather explore ways and means for undoing what was unfair and unjust---Even where the question of limitation, if at all, created any impediment in the fair adjudication of the case, it had to be looked from such angle of vision---Controversy urged before the Service Tribunal in the present case had not been considered and decided in its correct perspective---Remand of the present case was inevitable---Supreme Court, thus, converted petition for leave to appeal into an appeal, set aside the impugned judgment of Service Tribunal and sent the case back to the Service Tribunal for decision afresh in accordance with law.

Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others PLD 1987 SC 447 ref.

**(b) Administration of justice---**

----Person/institution exercising executive, judicial or quasi-judicial power---Order of---Order

*Wrongly decided  
two procedures  
cannot be conducted  
at same time.  
Void order*



not passed in accordance with law---Non est order--- Scope---Repository of executive, judicial or quasi-judicial power was required to act in accordance with law---For the very condition for the conferment of such power was that such repository had to act in accordance with law---If and when such repository would go wrong in law it would go outside its jurisdiction, and order thus passed would be non est---Such order could not be protected simply because the repository of such power, had the power to pass such order.

"Discipline of law" by Lord Denning pages 74 and 76 ref.

Abdur Rehman Siddiqui, Advocate Supreme Court for Petitioners (in C.P. 418 of 2012).

Shoaib Shaheen, Advocate Supreme Court for Petitioners (in C.P. 707 of 2012).

Ejaz Anwar, Advocate Supreme Court for Respondents Nos.2, 3 and 4 (in C.P. 418 of 2012).

M.S. Khattak, Advocate-on-Record for Respondents Nos.1 to 4 and 6 (in C.P. 707 of 2012).

Syed Arshad Hussain Shah, Additional A.-G. Khyber Pakhtunkhwa for Khyber Pakhtunkhwa on Court's Notice.

Date of hearing: 8th February, 2013.

## JUDGMENT

**EJAZ AFZAL KHAN, J.**---These petitions for leave to appeal have arisen out of the judgment dated 19-1-2012 of the learned Federal Service Tribunal, Islamabad, whereby it dismissed the appeals filed by the petitioners.

2. Learned counsel appearing on behalf of the petitioners contended that the learned Service Tribunal while disposing of the appeals filed by the petitioners did not consider the entire spectrum of the controversy and as such has failed to deliver a fair and just finding in this case. The learned counsel next contended that when the respondent was admittedly a temporary employee, he could not have been promoted to the next higher scale particularly when the petitioners being eligible by all means were side tracked by brushing aside all the recognized canons of law and propriety. A finding thus handed down, the learned counsel added, cannot be maintained.

3. We have gone through the entire record carefully and considered the submissions of the learned counsel for the parties.

4. The record reveals that respondent was a temporary employee and he was working as such at the time he was promoted. Though his services were ex-post facto regularized on 25-9-2008, yet at the relevant time he was an employee on contract to all intents and purposes. How could he rank senior and how he could be given preference over the employees who were

regularized much earlier are the questions which have not been answered either in the impugned judgment or by the learned counsel for the respondents.

5. The learned AAG sought the dismissal of these petitions mainly on the ground of limitation but to our mind, it is not a case where the matter can be set at rest by invoking the provisions regulating the limitation. Whether the order promoting respondent No.4 to the next higher scale could be held to be free from the traits and trappings of a void order is a question which has deep bearing on the fate of the case. The learned Service Tribunal has not examined this question in its correct perspective. It has tried to draw a distinction between an illegal and void order but it appears to have taken too myopic a view of the subject. It cannot be ignored altogether that a repository of executive, judicial or quasi judicial power is required to act in accordance with law. For the very condition for the conferment of such power is that it has to act in accordance with law. If and when it would go wrong in law it would go outside its jurisdiction. An order thus passed would be non -est. Such order cannot be protected simply because the repository of such power, has the power to pass such order. Lord Denning in his well known book the Discipline of law, while commenting on orders of this nature at page 74, observed as under:--

"This brings me to the latest case. In it I ventured to suggest that whenever a tribunal goes wrong in law, it goes outside the jurisdiction conferred on it and its decision is void, because Parliament only conferred jurisdiction on the tribunal on condition that it decided in accordance with the law".

Another paragraph of this book at page 76 also merits a keen look which reads as under:--

"I would suggest that this distinction should now be discarded. The High Court has, and should have, jurisdiction to control the proceedings of inferior courts and tribunals by way of judicial review. When they go wrong in law, the High Court should have power to put them right. Not only in the instant case to do justice to the complainant. But also so as to secure that all courts and tribunals, when faced with the some point of law, should decide it in the same way. It is intolerable that a citizen's rights in point of law should depend on which judge tries his case, or in what court it is heard. The way to get things right is to hold thus: No court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it."

6. In the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others (PLD 1987 SC 447), the Hon'ble Supreme Court held as under:--

"It is not right to say that the Tribunal, which is invested with the jurisdiction to decide a particular matter, has the jurisdiction to decide it "rightly or wrongly" because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly. Accordingly, when the tribunal makes an error of law in deciding the matter before it, it goes outside its jurisdiction and, therefore, a determination of the Tribunal which is shown to be erroneous on a point of law can be quashed under the writ jurisdiction on the ground that it is in excess of its

jurisdiction."

7. Even otherwise, the Courts of law are not supposed to perpetuate what is unjust and unfair by exploring explanation for an act which is prima facie against law and thus void. They should rather explore ways and means for undoing what is unfair and unjust. Even the question of limitation, if at all, created any impediment in the fair adjudication of the case, has to be looked from such angle of vision. When considered in this background, we are constrained to hold that the controversy urged before the Service Tribunal has not been considered and decided in its correct perspective. Remand of the case would thus be inevitable. We, therefore, convert these petitions into appeals, set-aside the impugned judgment and send the case back to the learned Service Tribunal for decision afresh in accordance with law.

MWA/F-3/SC

Case remanded.

2007 S C M R 229

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Steed Ashhad, JJ

AZIZULLAH MEMON---Petitioner

Versus

PROVINCE OF SINDH and another---Respondents

Civil Petition No.220-K of 2005, decided on 31st August, 2005.

(On appeal from the judgment, dated 28-12-2004 passed by Sindh Service Tribunal, Karachi in Appeal No.192 of 2002)

**Removal from Service (Special Powers) Sindh Ordinance (IX of 2000)---**

--Ss. 3 & 11---Constitution of Pakistan (1973), Art.212(3)---Penalty of censure, imposition of---Entire proceedings, commencing from issuance of charge-sheet, departmental enquiry, order of imposition of penalty, alteration of the penalty by Authorized Officer and final order impugned before the Tribunal, were conducted under provisions of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 at the time when Removal from Service (Special Powers) Sindh Ordinance, 2000 was already promulgated---Removal from Service (Special Powers) Sindh Ordinance, 2000, had over-riding effect over all other laws, but neither Departmental Authorities nor the Service Tribunal bothered to notice that after the date of promulgation of the Ordinance, all disciplinary proceedings should have been initiated under said Ordinance rather than Rules enforced in 1973---Since impugned action was initiated and taken to its logical conclusion under a misconception of law and under a wrong law, it had vitiated entire proceedings including final order, which could not be sustained under the law---Proceedings as well as final order, were liable to be set aside---Supreme Court converted petition into appeal and proceedings as well as impugned order of the Service Tribunal, were set aside accordingly.

M.M. Aqil Awan, Advocate Supreme Court and Raja Sher Muhammad Khan, Advocate-on-Record for Petitioner.

Anwar Mansoor Khan, Advocate-General Sindh for Respondents.

### ORDER

**RANA BHAGWANDAS, J.**---This petition is directed against Sindh Service Tribunal's judgment, dated 28-12-2004 filed against final appellate order, dated 3-6-2002 passed by Chief Secretary, Government of Sindh dismissing his appeal against the penalty of censure imposed by the authorized officer after altering the order of dismissal' from service.

*Wrong procedure  
this procedure can't  
be used at all  
Same time,  
void procedure*

2. On perusal of the record and after hearing learned counsel for the parties we find that despite promulgation of Removal from Service (Special Powers) Ordinance (Sindh Ordinance IX of 2000) (hereinafter referred to as the "Ordinance") promulgated with effect from 20-8-2000 the entire proceedings commencing from issuance of charge-sheet, departmental enquiry, order of imposition of penalty, alteration of the penalty by the authorized officer and final order impugned before the Tribunal were conducted under the provisions of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973. It is pertinent to note that section 3 of the Ordinance provides the mechanism for disciplinary proceedings against civil servant on variety of grounds and prescribes punishments, which may be imposed upon a civil servant found guilty of charge. Section 11 of the Ordinance (sic) that notwithstanding anything to the contrary contained in the Sindh Civil Servants Act, 1973 and the rules made thereunder and any other law for the time being in force:

"11. The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the Sindh Civil Servants Act, 1973 and the rules made thereunder and any other law for time being in force."

3. In the presence of express and specific language employed in the Ordinance neither the departmental authorities nor the Tribunal bothered to notice that after the date of promulgation of the Ordinance all disciplinary proceedings should have been initiated under Ordinance rather than the old Rules enforced in 1973. This Court has already ruled in a number of judgments that this Ordinance has the overriding effect over all other laws on the subject except in case of proceedings, which were already pending before promulgation of the Ordinance. Since the impugned action was initiated and taken to its logical conclusion under a misconception of law and under a wrong law, it has vitiated the entire proceedings, including the final order, which cannot be sustained under the law. The proceedings as well as final order is, therefore, liable to be set aside.

4. Accordingly after converting this petition into appeal, we set aside the same as well as the impugned judgment of the Tribunal. The department would be at liberty to initiate fresh proceedings against the petitioner and finalize it within three months from today. The petitioner is reinstated into service. However, the question of award of back benefits to him would certainly depend on the outcome of fresh enquiry, if any, as above:

H.B.T./A-74/SC

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Appeal allowed.

Para 5 of Judgments

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**



APPEAL NO. 1208 /2017

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1255

Dated 31-10-2017

Mr. Faiz Muhammad Ex-Baliff,  
District Courts Peshawar.

(Appellant)

VERSUS

1. The Registrar Peshawar High Court, Peshawar.
2. The District & Session Judge Peshawar.
3. The Senior Civil Judge Peshawar.

(Respondents)

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**ATTESTED**  
*[Signature]*  
Registrar  
Peshawar

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 04.05.2017 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 04.10.2016 PASSED BY HON'ABLE SENIOR CIVIL JUDGE PESHAWAR.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL ORDER DATED .04.05.2017 AND 14.10.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS OR THE PENALTY MAY BE MODIFIED TO COMPULSORY RETIREMENT KEEPING IN VIEW APPELLANT'S MORE THAN 27 YEARS SERVICE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day  
*[Signature]*  
Registrar  
31/10/17

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1208/2017

Date of Institution ... 31.10.2017

Date of Decision ... 08.07.2020

Mr. Faiz Muhammad, Ex-Bailiff, District Courts, Peshawar. ... (Appellant)

VERSUS

The Registrar, Peshawar High Court, Peshawar and two others. ... (Respondents)

Syed Noman Ali Bokhari,  
Advocate. ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,  
Asstt. Advocate General ... For respondents.

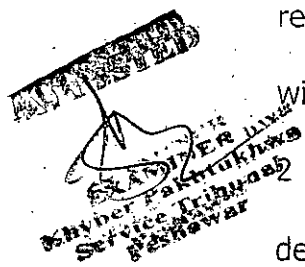
MR. HAMID FAROOQ DURRANI,  
Mr. MIAN MUHAMMAD, ... Chairman.  
... Member (Executive)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 14.10.2016 passed by respondent No. 3, whereby, he was terminated from service on account of willful absence from duty. In the instant appeal the order of respondent No. 3 dated 04.05.2017 has also been questioned. Through the latter the departmental appeal of appellant was rejected.

2. The appellant, having been appointed as Process Server (BPS-02) in the year 1987/88, was performing duty at different stations. During the course of employment he was promoted to the post of Bailiff BS-03 which was later on upgraded to BS-05. During the relevant days the appellant was



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posted at District Courts Peshawar when he was implicated in a criminal case through FIR No. 868 dated 18.07.2016 recorded under Section 302/324/148/149-PPC. As per record and also his statement at the bar, the appellant remained fugitive from law for 6/7 months. After his arrest he was released on bail on 24.04.2017. Needless to note that during his absence the impugned order was passed on 14.10.2016. Departmental appeal was submitted on 25.03.2017 which was rejected on 04.05.2017, solely on the ground of being barred by time. A second departmental appeal was preferred before the Honourable Administrative Judge, Peshawar High Court, which also could not find favour and was rejected on 07.10.2017 being incompetent under the law. Consequently, instant service appeal was preferred on 31.10.2017.

3. We have heard learned counsel for the appellant, learned Assistant Advocate General on behalf of respondents and have carefully examined the relevant record.

4. Learned counsel argued that the penalty of termination from service is not included in the rules, therefore, the impugned order dated 14.10.2016 was void. The period of limitation would thus not run for submission of appeal against such order. It was also contended that no show cause notice, charge sheet or the statement of allegations was ever issued to the appellant hence Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 were disregarded by the respondents. In his view, the appellant should have been suspended till completion of criminal case against him and the departmental proceedings taken up thereafter. He further stated that the punishment awarded to the appellant was harsh keeping in view 33 years of service

**ATTACHED**  
 KHYBER PAKHTUNKHWA  
 GOVERNMENT SERVANTS (E&D) RULES, 2011  
 PESHAWAR

*[Handwritten signature]*



rendered by him. In support of his arguments learned counsel relied on judgments reported as PLD-2010-Supreme Court-695, 2007-SCMR-834, 2007-PLC(C.S) 685-118 and judgment of this Tribunal delivered on 20.02.2018 in Service Appeal No. 905/2016.

Learned Assistant Advocate General, on the other, contended that the departmental appeal preferred by the appellant was admittedly barred by time. Further the submission of second appeal before Honourable Administrative Judge of Peshawar High Court was without any legal basis and the time consumed in pursuing such appeal further delayed the filing of service appeal in hand. It was the argument of learned AAG that codal formalities are supposed to be complied with and completed in the case of a civil servant who is present and joins the proceedings. In the case in hand, the appellant had not only remained absconder from law for about 6/7 months but also did not care to participate in the departmental proceedings. He relied on judgment reported as PLD-2016-Lahore-872.

5. Dealing with the question of delay in submission of departmental appeal it is observed that the same is not to be extended much weightage. The impugned order provided for penalty to the appellant in terms of termination from service which, as rightly argued by the learned counsel, is not included in the major or minor penalties provided in Rule 4 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The order, therefore, having been passed in blatant disregard of law can only be termed as void.


6. It is also a fact that the record before us does not include copies of show cause notice or the statement of allegations etc. It is noted in the

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 JINER  
 Peshawar

*[Handwritten signature]*

departmental appellate order that due to non-appearance of appellant a notice was affixed at his home, however, no copy of such notice has been made part of the record. Pertinent to note that the departmental appeal was dismissed solely on the ground of being barred by time.

The provisions of Rule 9 of the rules *ibid* require that in case of willful absence from duty a notice shall be issued by the competent authority through registered acknowledgment on his home address requiring the resumption of duty within fifteen days. In case no response is received from absentee within the stipulated time, a notice shall be published in at least two leading newspapers requiring the resumption of duty within fifteen days of publication of notice. In case of failure of absentee in appearing in response to the publication of notice, an ex-parte proceedings may be taken against him. The rule also provides that on expiry of stipulated period given in the notice major penalty of removal from service may be imposed upon such government servant. In the case in hand, neither any notice was published in the newspapers nor the penalty of removal from service was imposed upon the appellant.

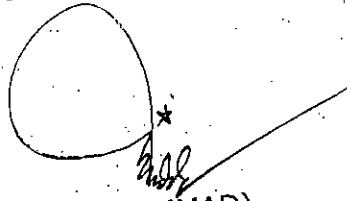
**ATTESTED**  
  
 MEMBER  
 SERVICE TRIBUNAL  
 Poonahwar

7. For what has been discussed above we are of the view that no proper enquiry was conducted against the appellant before imposition of penalty. The impugned orders are, therefore, set aside and the appellant is reinstated in service. The respondents may, however, conduct a proper/regular enquiry against the appellant and conclude the proceedings within ninety days of receipt of copy of instant judgment. Needless to note that the appellant shall be entitled to participate in the proceedings and put forth his defence in



addition to the cross-examination of witnesses, if any, appearing against him.

The issue of back benefits in favour of the appellant shall be subject to the outcome of denovo enquiry. Parties are left to bear their own costs. File be consigned to the record room.



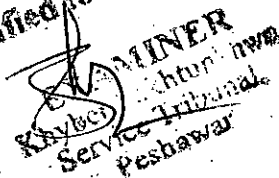
(MIAN MUHAMMAD)  
Member (Executive)



(HAMID FAROOQ DURRANI)  
Chairman

ANNOUNCED  
08.07.2020

*Certified to be true copy*

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 06/1/22  
Number of Words 2050  
Copying Fee 22/-  
Urgent 4/-  
Total 26/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 6/1/22  
Date of Delivery of Copy 6/1/22

Retrospective order rectified, Rule 9 is applicable.  
despite RSO - D/SMS-2

15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

in Lumbani  
Termination

Rule 9

Appeal No. 703/2016

Date of Institution ... 10.06.2016

Date of Decision ... 26.09.2017

condonation

of delay.

Iqbal Kokar, Ex-Primary School Teacher, District Hangu R/O Garden Colony, near GGHS No. 3 Kohat City. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary E&SE, Peshawar and 2 others.

(Respondents)

MR. YASIR SALEEM,  
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,  
Asstt. Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. AHMAD HASSAN

CHAIRMAN  
MEMBER

JUDGMENT

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

FACTS

2. The appellant is aggrieved from his termination order dated 09.09.2009. Against which he filed departmental appeal on 13.2.2016 which was not responded to and thereafter the present appeal on 10.06.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was never charge sheeted nor regular enquiry was held as it was the requirement of the relevant law in

Absence admitted, no need of regular inquiry  
2021 SCMR 959, 1367

vogue for the time being i.e. Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. That the appellant was never served with final impugned order for which he had been striving through correspondence with the department but the department had not been providing the copies of the order. That at last he got the copy of the order through the Right to Information Commission on 13.11.2015. He further argued that at the relevant time, the above mentioned Ordinance was in vogue whereas the department has issued notice of absence and other proceedings like advertisement in newspapers under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973. That the delay in filing in departmental appeal was due to his illness and due to family problems. That the word "termination" as mentioned in the final impugned order is not proper. That if the appeal is not accepted, the penalty of appellant may be converted into compulsory retirement as the appellant has 23 years service at his credit. The learned counsel for the appellant argued that in view of judgment reported in 2004-PLC (C.S)1014 technicality should not come in the way of substantial justice and the limitation is a matter of technicality.

4. On the other hand, the learned Assistant Advocate General argued that the present appeal is hopelessly time barred for the reason that the departmental appeal was filed after almost 7 years. That no explanation for this delay has been put forth by the appellant. That no application for leave has ever been submitted by the appellant in the department. That there was no other way for the department but to issue notice on his home address and also inform him through newspaper which was a correct procedure.

#### CONCLUSION.

5. This Tribunal would first take up the issue of the proceedings being conducted under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 at the time when Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in force. Going through the said Ordinance one can reach the conclusion that this

Ordinance has never repealed the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973. Rule 11 of the Ordinance clearly gives overriding effect to the Ordinance viz-a-viz the Civil Servants Act, 1973 and the rules made there under and any other laws for the time being in force. Since the Ordinance does not provide any special procedure for the proceedings of absent civil servant, and the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 do provide a special procedure in the form of Rule 9 there is no discordance between rule 9 *ibid* and the provisions of the Ordinance. The department had therefore rightly invoked the provisions of Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973.

E&D rule  
73  
Still in  
field

6. The notices were issued to the appellant and when he did not turn up, advertisement in the newspapers were issued and thereafter when he did not join the duty and proceedings, the impugned order was passed. There is no illegality in the proceedings.

7. Coming to the limitation, the departmental appeal having been filed after 7 years is clearly time barred and the appellant was duty bound to have explained each and every day for condonation of delay. He has filed an application for condonation of delay which is general in nature and it cannot be presumed to explain each and every day delay. Being a civil servant, the appellant was bound to apply for leave which itself is a misconduct and he cannot give any explanation for this.

Each & every  
day must be  
explained

8. Coming to the judgment relied upon by the learned counsel for the appellant regarding limitation being technicality, this Tribunal is not inclined to agree with the learned counsel for the appellant as the circumstances mentioned in the above reported judgments were not similar to the present appeal. Had the order of the authority been void ab-initio, or the limitation of only days was his case then surely this Tribunal would have ignored the limitation but this is not the case. The objection of the learned counsel for the

appellant in the impugned order by using the word "termination", this Tribunal is of the view that by using the word "termination" instead of "removal", the order does not become void. It can at the most be irregular and this Tribunal has the power to rectify the same. Similarly, the learned counsel for the appellant also objected to the retrospectivity of the impugned order. By giving retrospective effect, the order cannot be termed as void. This irregularity can also be rectified by this Tribunal. This Tribunal therefore, in exercise of the powers conferred under Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 amend the impugned order by substituting the word "termination" into "removal" and also the date of termination is substituted with immediate effect. With these modifications, this appeal is dismissed. The request of the learned counsel for the appellant for converting the penalty of removal from service into compulsory retirement cannot be acceded to because this Tribunal sits in appeal against the departmental authority and can convert the penalty into any other major penalty or penalties if the departmental authority had also such power. But since the proceedings under Rule 9 of the E&D Rules provides only for removal from service, the departmental authority had no option of imposing any other penalty except removal from service. Had the penalty been imposed under Rule 4 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 or *pari-materia* Rule-4 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 this Tribunal could have converted the same to any other type but not when the scope of the penalty is limited by rule-9 of the E&D Rules 1973 to removal from service only. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)  
CHAIRMAN

(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
26.09.2017

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Retrospective  
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BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 17 /2018

1. Fazal Ghani Driver Constable No. 502 S/O Sardar Khan R/O village Garhi Hameed Gul Mian, Tehsil & District Charsadda.

APPELLANT

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 9

Dated 04/01/2018

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa Peshawar.
3. The Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa Peshawar.
4. The Assistant Inspector General of Police, CTD, Khyber Pakhtunkhwa Peshawar.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED ORDER DATED 04-12-2008  
PASSED BY THE ASSISTANT  
INSPECTOR GENERAL OF POLICE,  
CTD KHYBER PAKHTUNKHWA,  
PESHAWAR (RESPONDENT NO.4)  
WHEREBY THE APPELLANT WAS  
AWARDED MAJOR PENALTY  
OF DISCHARGE FROM SERVICE  
AGAINST WHICH A  
DEPARTMENTAL APPEAL WAS  
FILED BUT THE SAME WAS NOT  
RESPONDED.

Filed to-day

Registrar

4/1/18



S.A # 17/2018 Fazal Ghani Vs. Police Department

01.07.2021

Appellant with counsel present.

Mr. Usman Ghani learned District Attorney alongwith Wajid Khan A.S.I for respondents present.

After hearing the parties at certain length, what we are able to understand is that the appellant was holding the post of Driver Constable who undisputedly, was proceeded against on account of his alleged absence from duty. The appellant has purported in memorandum of appeal that he was prevented from performance of duty under the color of an inquiry relating to his absence but without affording him any opportunity of hearing, he was discharged from service.


On the other hand, the impugned order speaks itself that the Driver Constable (Appellant) was found absent from duty for certain periods enumerated in the impugned order without obtaining any leave or permission from his superiors. According to narrative in the impugned order, the absence period of the appellant was treated as deliberate absence from lawful duty without any intimation or permission by his superiors. This factual position attract our attention to Police Rules, 1975, wherein, no ground is provided for punishment relating to willful absence; while he was not proceeded against under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in field having overriding effect on other laws. Obviously, the Police Laws relating to punishment/disciplinary action are also included. Rule-3 of (R.S.O, 2000) deals with dismissal, removal and compulsory retirement etc. of certain persons involving Corporation Service etc. Section 3(1) (a) of (R.S.O, 2000) among other grounds for punishment also provides a ground being guilty of habitually absenting himself from duty without prior permission of the superiors. There is no provision in (R.S.O, 2000) providing ground for action on willful absence from duty. If the Police Rules, 1975 and R.S.O, 2000 do not deal with ground for action on willful absence, then at the time of impugned absence from duty, the action was possible under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973. Rule 8-A of said rules deals with procedure in case of willful absence. There is non-abstante clause in the Rule 8-A and is followed by a self-contained procedure for disciplinary action in the case of willful absence, as copied below:

**"Procedure in case of willful absence.---** Notwithstanding anything to the contrary contained in these rules, in case of willful


absence from duty by a Government Servant, a notice shall be issued by the authorized officer through registered acknowledgment due cover on his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him. On expiry of the stipulated period given in the notice, the authorized officer shall recommend his case to the authority for imposition of major penalty of removal from service."


Having expounded the legal position relating to willful absence herein-before, we have no hesitation to hold that in case of an order of the imposition of punishment on account of willful absence, the question of retrospectivity of punishment does not arise mainly for the reason that absence preceding the date of culmination of disciplinary proceedings itself makes basis for ex-parte decision for removal from service. Therefore, the case in hand involving imposition of penalty through impugned order on account of purported willful absence is not a fit case to be heard by full Bench constituted in view of some intricate points raised at different stages during hearing of appeal. With the given observations, we direct for hearing of this appeal in ordinary course and it is hereby delinked from the questions having arisen in the case of Muhammad Saleem i.e. Service Appeal No.265/2017. Learned District Attorney at this stage, submitted that the appellant was discharged from service within meaning of Rule-12.21 of Police Rules, 1934 and the same is not covered within the punishment under Police Rules, 1975. He will be at liberty to press this point with his own contention at the time of full hearing of the appeal.

Case is adjourned to 25.08.2021 before D.B for hearing.

  
(Salah-ud-Din)  
Member (J)

  
Chairman

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 6598/2021

Date of Institution ... 19.05.2021

Date of Decision ... 22.12.2021



Imran-Ud-Din, Ex-S.I No. 1375/P, Police Station Agha Mir Jani Shah, Peshawar  
... (Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.  
... (Respondents)

Asif Yousafzai,  
Advocate

For Appellant

Noor Zaman Khattak,  
District Attorney

For respondents

**AHMAD SULTAN TAREEN** ...  
**ATIQ-UR-REHMAN WAZIR** ...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

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

This single judgment

shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellants, while serving as SHOs in police stations, were charged in FIR Dated 24-06-2020 U/Ss 166/342/355PPC read with section 118 & 119 of Police Act, 2017 and section 20/21/22 and 24 of cyber crime Act, 2016. Consequently, the appellants were arrested and proper criminal procedure initiated against them. Simultaneously, departmental proceedings were also initiated against them and were ultimately awarded with

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major punishment of dismissal from service vide order dated 28-12-2020. Feeling aggrieved, the appellants filed separate departmental appeals, which were also rejected vide order dated 20-04-2021, hence the instant service appeals with prayers that the impugned orders dated 28-12-2020 and 20-04-2021 may be set aside and the appellants may be re-instated in service with all back benefits.

03. Learned counsel for the appellants has contended that the impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set at naught; that the appellants has not been treated in accordance with law and their rights secured under the Constitution has badly been violated; that the appellants were not afforded appropriate opportunity of defense, as no regular inquiry was conducted against the appellants; that during the course of disciplinary proceedings, the appellants were behind the bars, inspite they were not associated with proceedings of the inquiry, as such the impugned orders are liable to be set aside on this score alone; that neither statements of the witnesses were recorded in presence of the appellants nor any opportunity was afforded to the appellants to cross-examine such witnesses; that the appellants were not directly charged in FIR, but upon the statement of the complainant u/s 164 CrPc, the appellants were nominated in that criminal case; that no statement of the complainant was recorded in presence of the appellants during the inquiry proceedings, which was a mandatory step in disciplinary proceedings; that no charge sheet was communicated to the appellants inspite of the fact that the appellants were in jail and it was very easy for the respondents to serve show cause notice through superintendent of Jail, which however was not done in case of the appellants; that show cause notice was issued to the appellants on 24-12-2020, which was received by Superintendent of Jails on 28-12-2020 and handed over to the appellants on the same day; that on the same day i.e. 28-12-2020, the appellants were dismissed from service, which shows malafide on part of the respondents; that the appellants were involved in a criminal case and as per CSR-

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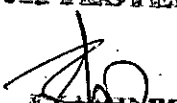
194-A, the appellants were required to be suspended from service till the conclusion of the criminal case pending against them, but the respondents without waiting for decision in the criminal case, dismissed the appellants from service in violation of CSR-194.

04. Learned District Attorney for the respondents has contended that the appellants were proceeded departmentally on the charges of subjecting one Radiullah alias Aimeray Tehkalay to inhuman and degrading treatment; that a criminal case was also registered against them u/s 166/342/355 PPC read with section 118 and 119 of KP Police Act, 2017 and sections 20/21/22 and 24 of cyber crime Act, 2016; that the appellants were proceeded against departmentally on the same very charges and they were served with charge sheet/statement of allegations and SP City was appointed as inquiry officer; that during the course of inquiry, the inquiry officer found them guilty of the charges leveled against them; that upon receipt of findings of the inquiry officer, the appellants were issued final show cause notices; that after observing all the codal formalities, the appellants were awarded with appropriate punishment of dismissal from service vide order dated 28-12-2020.

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

06. In order to fully appreciate the issue in hand, it would be useful to have a glimpse of the background of the case. Record reveals that a video was made viral on social media by unknown persons, where one Mr. Ridiullah alias Amir Tehkalay can be seen drunken, abusing senior police officers, which attracted wrath of police in shape of an FIR lodged against him in police station Yakatut, thereafter another video of Amir was made viral, where he is seen apologizing for his abusive language in his first video. After few days, another video of the same person went viral, wherein police officials can be seen inflicting brutal torture on him and striping him naked. High-handedness of police in the video came to the

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limelight, which was agitated and condemned from every corner including print and electronic media and which necessitated the senior police officials to take action against those involved in the issue. In the first place, an FIR U/Ss 166/342/355 PPC read with sections 118, 119 of Khyber Pakhtunkhwa Police Act, 2017 and sections 20/21/22/ & 24 of Cyber Crime Act, 2016 dated, 24-06-2020 was registered against three police officials, namely ASI Zahir Ullah and constables Tauseef and Naeem, who can be clearly seen in the video. Amir, the victim, was produced before the court of judicial magistrate, who in his statement dated 01-07-2020 recorded U/S 164 CrPc; interalia had divulged that he was tortured by police on the directions of both the appellants, who at that time were SHO PS Yakatut and PS Tehkal, hence names of the appellants were also inserted in the FIR dated 24-06-2020 and both the appellants were arrested on 01-07-2020.

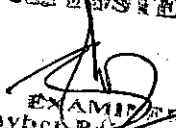
07. On the other hand, departmental proceedings were also initiated against the appellants. Being involved in a criminal case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed them from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

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08. Placed on record is charge sheet/statement of allegations dated 03-07-2020 containing the charges as discussed above and probable involvement of the appellants in the brutality and recording and making viral the videos of the victim. Record would suggest that such charge sheet/statement of allegations were not served upon the appellants, as the appellants at that particular time were in jail and it was very easy for the respondents to serve it upon the appellants through superintendent Jail, but the respondents confined its proceedings only to the extent of fulfillment of a formality, which shows malafide on part of the respondents. The allegations so leveled against the appellants are mainly based on the statement of the complainant, but it was responsibility of the inquiry officer to prove the charges leveled by the complainant, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.

09. Report of the inquiry so conducted was submitted on 24-11-2020, but it cannot be termed as a regular inquiry, as the same is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings knowing the fact that the appellants are behind the bars, rather he has observed in his report that the appellants were called through summons/parwanas to attend his office, but they did not appear before the inquiry officer. It is ridiculous on part of the inquiry officer summoning a person, who is behind the bars and not taking the pain to attend to them in jail, which clearly shows that neither the appellants were associated with proceedings of the

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inquiry nor were they afforded any opportunity to defend their cause. Such an act on part of the inquiry officer is a clear manifestation of professional dishonesty and shirking responsibility, which raises a question as to what would be the evidentiary value of the contents of the inquiry report. The appellants were very clearly discriminated, which however was not warranted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

10. In the inquiry so conducted, no effort has been made to prove the charges leveled against them, nor statements of any witnesses were recorded. In absence of any solid proof, the inquiry officer only relied on his own wisdom. In a manner, the appellants were deprived of the right to cross-examine witnesses resulting in manifest injustice. Reliance is placed on 2008 SCMR 609 and 2010 SCMR 1554. Since the appellants were in jail, hence, they were unable to appear before the inquiry officer, but the inquiry officer was duty bound to associate them even in jail and to afford them opportunity of personal hearing, which however was not afforded by the respondents and which smacks malafide on part of the respondents. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on hearsay with no solid evidence against the appellants. Mere reliance on hearsay and that too without confronting the appellants with the same had no legal value and mere

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presumption does not form basis for imposition of major penalty, which is not allowable under the law.

11. The respondents issued final show cause notice on 24-12-2020 asking the appellants to respond within seven days of the receipt of such notice. Record would suggest that such notice was received by Superintendent of Jail on 28-12-2020 and was delivered to the appellants the same day, but the respondents were bent upon removing the appellants from service, hence issued their dismissal order on 28-12-2020 without waiting for reply of the appellants, which shows a clear malafide on part of the respondents. We are conscious of the fact that the issue sparked the sense of insecurity at the hands of uniform personnel, besides creating panic in the society, which ultimately created uproar. In order to pacify the sentiments of public, the haste of respondents in making someone a scapegoat is understandable, but awarding major punishment without proving the guilt is not appropriate. Purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society. Concept of minor penalty in law was to make an attempt to reform the individual wrong doer. In service matter, extreme penalty for minor act depriving a person from right of earning livelihood would defeat the reformatory concept of punishment in administration of justice. Reliance is placed on 2006 SCMR 60.

12. Though the appellants were granted bail by order of the Supreme Court of Pakistan vide judgment dated 18-12-2020, but due to a typographical error in the bail granting order, another order was issued by Supreme Court of Pakistan vide judgment dated 24-02-2021 and the appellants were released on bail on 26-02-2021. The criminal case is still pending against the appellants, which will be decided on its own merits in due course of time, but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered

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opinion that the departmental proceedings were not conducted in accordance with law. The authority, authorized officer and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so leveled had not been proved. The appellants suffered for longer for a charge, which is not yet proved.

13. In circumstances, the instant appeal, as well as connected Service Appeal bearing No. 6599/2021 "titled Sheryar Ahmed Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others" are accepted. The impugned orders dated 28-12-2020 and 20-04-2021 are set aside and the appellants are reinstated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
22.12.2021



(AHMAD SULTAN TAREEN)  
CHAIRMAN)



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

**Certified to be true copy**

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