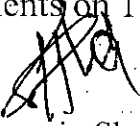



S.No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	03.12.2019	<p style="text-align: center;"><u>Present</u></p> <p>Arbab Saiful Kamal, Advocate For appellant</p> <p>Mr. Kabirullah Khattak,, Addl. Advocate General ... For respondents</p> <p>Vide our detailed judgment in connected Service Appeal No. 170/2018 (Arshad Khan Vs. Deputy Commandant FRP, Peshawar and two others), the appeal in hand is also dismissed.</p> <p>Parties are, however, left to bear their respective costs. File be consigned to the record.</p> <p style="text-align: center;"><i>Abdullah Mahmood</i> Member</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p> <p><u>ANNOUNCED</u> 03.12.2019</p>

18.07.2019 Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondent present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 18.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.09.2019 Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.10.2019 before D.B.


Member


Member

28.10.2019 Miss. Uzma, Advocate on behalf of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant has gone to Islamabad. Mr. Riaz Ahmad Paindakheji, Assistant AG for the respondents also present. Adjourned to 03.12.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

05.04.2019

Counsel for the appellant and Mr. Muhammad Riaz Paindakhel, Asstt AG for respondents present.

Replication to the written reply of respondents submitted on behalf of the appellant which is placed on record. Learned counsel for the appellant requests for adjournment due to over occupation before the Honourable High Court.

To come up for arguments on 27.05.2019 before the D.B.



Member


Chairman

27.05.2019

Appellant in person and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Due to general strike on the call of Bar Council, learned counsel for the appellant is no in attendance. Adjourned. To come up for arguments on 18.07.2019 before D.B.

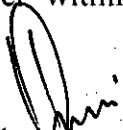

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.12.2018

Mr. Saadullah Khan, Advocate for appellant and Addl. AG alongwith Ihsanullah, H.C for the respondents present.

Reply on behalf of the respondents has been submitted. To come for arguments before the D.B-II on 20.02.2019. The appellant may submit rejoinder within a fortnight, if so advised.


Chairman

20.02.2019

Clerk to counsel for the appellant and Mr. Muhammad Jan learned DDA for the respondents present. Clerk to counsel for the appellant requests for adjournment as learned counsel for the appellant is not available today. Adjourned To come up for arguments on 05.04.2019 before D.B


Member


Chairman

02.08.2018

Miss. Uzma Syed, Advocate appeared on behalf counsel for the appellant. Mr. Ihsanullah, ASI alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Representative of the respondents made a request for adjournment. Granted. To come up for written reply/comments on 12.09.2018 before S.B.


Chairman

11.09.2018

Since 12th September 2018 has been declared as public holiday, by the Provincial Government on account of 1st Mukharram-ul-Haram, therefore the case is adjourned to 06.11.2018 for reply before S.B.


Chairman

06.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.


READER

as well as overage by five years eight months and five days till the date of said judgment i.e 11.10.2011 and not eligible for fresh appointment. Learned counsel for the appellant further contended that the respondent-department was required to consider the date of the appellant at the time when he was initially recruited and not at the time of the said judgment dated 11.10.2011 therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 30.04.2018 before S.B.

MA
(Muhammad Amin Khan Kundi)
Member

30.04.2018

None present on behalf of appellant. Learned Addl: AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **27.06.2018** before S.B.

S
Reader

27.06.2018

Junior counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on **02.08.2018** before S.B.

MA

Appellant Deposited
Security & Process Fee

13.03.2018




Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Constable in Frontier Reserve Police vide order dated 23.07.2002 after observing all codal formalities, however, he was discharged from service by the competent authority vide order dated 20.04.2003. It was further contended that the appellant filed service appeal against the discharged order which was partially accepted vide judgment dated 11.10.2011 and the respondents were directed to appoint the appellant against any of available vacancy of constable, In case no vacancy is available at present, he may be appointed as and when occurred in the department. It was further contended that the respondents filed CPLA in august Supreme Court of Pakistan against the Tribunal judgment and after hearing the arguments the apex court disposed of the appeal of the respondent-department vide judgment dated 09.02.2016 and it was observed by the apex court in the concluding para that the learned Additional Advocate General on behalf of the appellant submitted that he will be satisfied for the disposal of the appeal in terms of paragraph No. 8 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancy of constable such consideration will be subject to the fulfillment of requisite qualification and eligibility therefore, to this proposal the learned ASC for the respondents had no objection and accordingly the appeal was disposed of in the above terms. Learned counsel for the appellant further contended that the respondent-department again passed the impugned order dated 20.07.2016 regarding the present appellant alongwith two other namely Saleem Khan and Arshad Khan but it was observed by the respondent-department in the impugned order that the appellant Munir Khan was found deficient in height and chest

M. Amin

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 172/2018

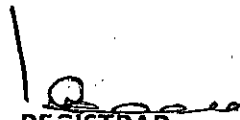
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/02/2018	<p>The appeal of Mr. Munir Khan resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR -</p>
2-	08/02/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	19.02.2018	<p>Junior counsel for the appellant present and seeks adjournment as his senior counsel is not in attendance today. Adjourned. To come up for preliminary hearing on 13.03.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>

The appeal of Mr. Munir Khan son of Rab Nawaz Khan Ex-Constable No. 1568 FRP Peshawar received today i.e. on 19.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of discharge order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-B, C and F of the appeal are missing.
- 3- Copy of departmental appeal against the order dated 20.7.2016 mentioned in para-5 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Memorandum of appeal may be got signed by the appellant.
- 5- Annexures of the appeal may be flagged.
- 6- Annexures of the appeal may be attested.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal which may be placed on it.

No. 141 /S.T,

Dt. 22/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv.

Sr.

Re-submitted after 3 flags.

3

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWARS.A No. 172/2018

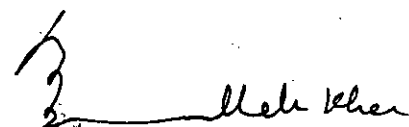
Munir Khan versus Deputy Commandant & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-3
2.	Appeal No. 98 908/10 with enclosures	"A"	4-9
3.	Judgment of Tribunal, 11-10-2010	"B"	10-12
4.	CPLA/Judgment of SC, 09-02-2016	"C"	13-18
5.	Order of refusal dated 20-07-2016	"D"	19-20
6.	Representation dated 18-08-2016	"E"	21-22
7.	Similar Judgment	"F"	23-32

Appellant

Through



Saadullah Khan Marwat
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676
0311-9266609

Dated 17-01-2018

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 172 /2018

Munir Khan S/O Rab Nawaz Khan,
R/o Katozai, Shabqadar, Charsadda,
Ex-Constable. No. 1296 FRP,
Peshawar Appellant

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 65

Dated 19-1-2018

1. Deputy Commandant, FRP, Peshawar.
2. Commandant FRP, KP, Peshawar.
3. Inspector General of Police,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. 5823-26/EC,
DATED 20-07-2016 OF R. NO. 1, WHEREBY
APPELLANT WAS NOT RECRUITED / RESTORED AS**

CONSTABLE:

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Filed to-day

Registrar

19/1/18

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

That after observing the due codel formalities by advertising numerous posts of Constables, appellant was enlisted as such vide order dated 23-04-2002. After qualifying training from PTC, Hangu, appellant was returned qualified personnel's to Police Line Peshawar and was waiting for posting when on 02-04-2003, he was discharged from service. Against the said order, representation was filed on 30-04-2003 to the appellate authority but of no avail.

2. That A. No. 98918/2010 was filed before the hon'ble Tribunal along with other similarly placed personnel's numbering in dozens which came up for hearing on 11-10-2010 with direction to respondents to

Re-submitted to -day
T and filed.

Registrar
6/2/18

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appoint appellant against any available vacancy instead of using word "reinstatement" because in other similar Appeals, all the personnel's were reinstated in services. (Copy as Annex "A")

3. That against the aforesaid judgment of the hon'ble Tribunal, the department filed CPLA before the apex Supreme Court of Pakistan which came up for hearing on 09-02-2016 by maintaining the judgment of the hon'ble Tribunal. (Copies as Annex "B" & "C")
4. That the judgment of the apex court was remitted to the department by the appellant for compliance but the same was not honored and decided on 20-07-2016 without any relief. This order was not addressed to appellant as is evident from the same, so the same was got on personal level from the office of respondents on 20-12-2017. (Copy as Annex "D")
5. That against the aforesaid order dated 20-07-2016 of the Authority, appellant filed representation before R. No. 02 for reinstatement in service which met dead response till date. (Copy as Annex "E")
6. That similar question of Law & facts have already been decided by this hon'ble Tribunal which was upheld by the apex court. (Copy as Annex "F")

Hence this appeal, inter alia, on the following grounds:-

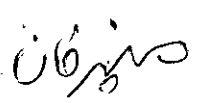
GROUND S

- a. That at the time of filing of appeal before the hon'ble Tribunal, no lacuna was ever in the field but due to the passage of time, some deficiencies came into force.
- b. That co-employees of appellant, being similarly and equally placed, are/were enjoying the fruits of the service, while appellant is still fighting for his right since 02-04-2003.
- c. That in other judgments, the hon'ble Tribunal used the word "reinstatement" while in the judgments in hand, word "appointment"

is used which created some complication. Even then the department was legally bound to appoint / reinstate appellant at his former post.

- d. That since 02-04-2003, dozens of fresh advertisements were made by the department for appointment of constables. Appellant was liable to be adjusted at the post, being skilled hand.
- e. That the respondents mis-handled the case of appellant, so he is entitled for reinstatement in service since 02-04-2003 with all consequential benefits.
- f. That appellant was already appointed as Constable after observing the due codel formalities, so at this stage he does not seek fresh appointment as Constable.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned order dated 20-07-2016 of the respondents be set aside and appellant be reinstated in service with effect from 02-04-2003 with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

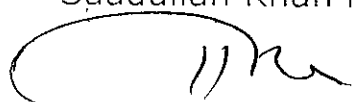


Appellant

Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal
Advocates,

Dated 17-01-2018

A 4

BEFORE THE N.W.F.P SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 889 /2010

Munir Khan S/O Rab Nawaz Khan,
R/O Katozai, Shabqadar, Charsadda
Ex.C.No.1296 FRP, Peshawar.Appellant

Versus

1. Deputy Commandant,
Frontier Reserve Police,
Peshawar.
2. Commandant,
Frontier Reserve Police,
N.W.F.P, Peshawar.
3. Inspector General of Police,
N.W.F.P, Peshawar. Respondents

<=> <=> <=> <=> <=> <=> <=> <=>

APPEAL AGAINST ORDER NO.1495-1504/OSI
DATED 02.04.2003 OF RESPONDENT NO.1,
WHEREBY APPELLANT WAS DISCHARGED FROM
SERVICE FROM THE DATE OF INITIAL
APPOINTMENT FOR NO REASON.

ATTESTED

<=> <=> <=> <=> <=> <=> <=> <=>

Respectfully Sheweth:

1. That on 27.12.2001, numerous posts for appointment of Constables in Frontier Reserve Police (FRP) were advertised by the Commandant of FRP in Daily Newspaper, "AAJ". (Copy as annex "A").

2. That appellant applied to the same and on 07.01.2002, physical/ running/ written test and interview was conducted, which was qualified by the appellant alongwith hundreds other candidates.
3. That after completing of the due codal formalities, appellant was enlisted as Constable vide order dated 23.07.2002. (Copy as annex "B").
4. That thereafter, appellant was deputed to Training Center, Hangu and got the requisite training and back brought to Police Line for posting.
5. That appellant was waiting for posting when all of a sudden and without any reason and justification, he was discharged from service from the date of his initial recruitment vide order dated 02.04.2003. (Copy as annex "C").
6. That soon after the discharge of appellant from service, the Department advertised posts of Constables for recruitment thousands in number and nearly 600 Constables were recruited. (Copy as annex "D").
7. That on 30.04.2003, appellant submitted representation before the authority, which was not decided so far. (Copy as annex "E").
8. That here it would be not out of place to mention that in the year, 1988, the said force was brought into regular force to be dealt with services of the employees under the Police Rules. (Copy as annex "F").

9. That as per the impugned order dated 02.04.2003 and similar other order dated 12.03.2003, wherein hundreds of the Constables were discharged from services, assailed the aforesaid orders in appeals before this Honourable Tribunal, which were accepted vide various judgments. (Copies as annex "G").
10. That after availing of the requisite remedy, appellant approaches this Honourable Tribunal for relief, inter alia, on the following grounds;

GROUND S:

- A. That the impugned order was passed in utter disregard of law and rules on the subject, hence liable to be set aside.
- B. That the impugned order was passed in 2003, yet the services of appellant were discharged from the date of his initial recruitment i.e. 2002, while under the law, no order can be given retrospective effect.
- C. That before passing of the impugned order, neither appellant was served with any notice to explain his position nor any inquiry into the matter was conducted, so the impugned order has no legal effect.
- D. That the Department recruited nearly 500 Constables alongwith appellant on merit. Only 100/150 Constables were discharged from services. Rest were leftover and are still serving the force, so appellant was discriminated.

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E. That as is evident from the second advertisement dated 18.10.2003, the Department bore vacant vacancies numbering in thousands and appellant could be easily adjusted without discharging him from service.

F. That not only the impugned order, but similar other order was declared illegal by this Honourable Tribunal in plethora of judgments, so appellant also deserves the same treatment.

G. That the impugned order is illegal, improper, unjust, with malafide, discriminatory, without lawful authority and against the natural justice, hence untenable.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned office order dated 02.04.2003 of respondent No.1 be set aside and appellant be reinstated in service with all back benefits.

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Appellant
Through

[Handwritten signature]
Saadullah Khan Marwat
Advocate,

Dated: 22.04.2010

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Date of ...	28.12.2011
Date of ...	28.12.2011

[Handwritten notes]
2011/12/28

ہر خاص و عام کو مطلع کیا جاتا ہے کہ فرنیچر اینڈ پبلسٹی سروسز سرحد میں کاسٹیشنوں کی خالی آسامیوں کو پُر کرنے کے لئے بھرتی مندرجہ ذیل پروگرام کے مطابق ہوگی۔

(1) درجہ 27.1.2002 کوئیج 09.00 بجے قیوم اسٹیڈیم پٹانور میں ٹاپ ٹول، فزیکل ٹیسٹ اور ماب ٹول، فزیکل ٹیسٹ کیا جائیگا۔ (2) فزیکل ٹیسٹ میں کامیاب امیدواران سے تحریری امتحان دائرہ دیوایا جائے گا۔ (3) امیدواران کے گراف مندرجہ ذیل ہونے چاہئیں۔

(1) قد: 5 فٹ 7 انچ (ii) جھاتی سائز: 34 انچ 33 انچ (iii) عمر: 18 تا 25 سال (iv) تعلیم: کم از کم میٹرک۔ (v) قومی شناختی کارڈ و دیسٹریکٹ سروسز اینڈ پبلسٹی سروسز سرحد میں اسناد پر مشتمل ہونا لازمی۔

روزنامہ آج 27-12-01

بھرتی کاسٹیشن

Better Copy

ہر خاص و عام کو مطلع کیا جاتا ہے کہ فرنیچر اینڈ پبلسٹی سروسز سرحد میں کاسٹیشنوں کی خالی آسامیوں کو پُر کرنے کے لئے بھرتی مندرجہ ذیل پروگرام کے تحت ہوگی۔ (1) درجہ 27.1.2002 کوئیج 09.00 بجے قیوم اسٹیڈیم پٹانور میں ماب ٹول، فزیکل ٹیسٹ کیا جائیگا۔ (2) فزیکل ٹیسٹ میں کامیاب امیدواران سے تحریری امتحان دائرہ دیوایا جائے گا۔ (3) امیدواران کے کوالٹ مندرجہ ذیل ہونے چاہئیں۔

(1) قد: 5 فٹ 7 انچ (ii) جھاتی سائز: 34 انچ 33 انچ (iii) عمر: 18 تا 25 سال (iv) تعلیم: کم از کم میٹرک (v) قومی شناختی کارڈ و دیسٹریکٹ سروسز سرحد میں اسناد پر مشتمل ہونا لازمی۔

سیرا مسیاز الطاف
سمانڈنٹ فرنیچر اینڈ پبلسٹی سروسز سرحد، پٹانور

9

ENLISTMENT ORDER.

Candidate Mr. Munir Khan
No. Ras Nawaz Khan resident of Vill: Katozal
Police Station Shabqader Teh: Shabqader Distt: Charsadda
enlisted as Constable in DPS-5 i.e (Rs. 2100-100-5100) w.c. from 23-7-02
and allotted Constabulary No. 1296

He is enlisted merely on temporary basis and his service would be liable in to terminate any time without any notice under Police Rules 12-21.

Height 5 - 6 Chest 33 - 34 1/2
Age 21 Education 10th
Dt: of Birth 6-12-1981

NO. _____
DATED 23/7/2002.

1/1/02
2/1/02

M. J. Jaleel
COMMANDANT,
FRONTIER RESERVE POLICE NWFP,
PESHAWAR.

Attested
Munir Khan

Attested
[Signature]

B 10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 889/2010

Date of Institution -- 30-04-2010

Date of Decision -- 11-10-2011

Munir Khan s/o Rab Nawaz Khan, r/o Katozai
Shabqadar, Charsadda Ex-C, 1296 FRP, Peshawar.

(Appellants)

Versus

1. Deputy Commissioner, FRP, Khyber Pakhtunkhwa, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Inspector General of Police Peshawar.

APPEAL AGAINST ORDER NO. 1495-1504/OSI DATED 02-04-2003 OF RESPONDENT NO. 1 WHEREBY APPELLANT WAS DISCHARGE FROM SERVICE FROM THE DATE OF INITIAL APPOINTMENT FOR NO REASON

Mr. SAADULLAH KHAN MARWAT
ADVOCATE.

For Appellant

MR. ARSHAD ALAM
Addl: Govt. Pleader.

For Respondent

SYED MANZOOR ALI SHAH

MEMBER

MR. KHALID HUSSAIN

MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER:- This appeal has been filed by Munir Khan, Appellant against the order dated 02-04-2003 of respondent No. 1, whereby he was discharged from service.

2. Brief facts as narrated in the Memo: of appeal are that numerous posts of Constable had been advertised for appointment in Frontier Reserve Police in Daily "Aaj" Newspaper dated 27-12-2001. The Appellant applied on 07-1-2002 and after observing all the codal formalities, he was enlisted as Constable Vide order dated 23-7-2002. The Appellant was deputed to PTC Hangu and got the requisite training. He while (sick) for posting in Police lines, Peshawar had been discharged from service from the dale of his initial recruitment vide order dated 20-4-2003. Feeling aggrieved the appellant submitted representation before respondent No. 2 on 30-4-2003, which elicited no response till date, hence this appeal.

3. Notice were issued to the respondents. They filed their written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

ATK
[Signature]

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Arguments heard and record perusal.

5. The learned Counsel for the appellant argued that the appellant was enlisted in Police Department by the competent authority and undergone requisite training and received monthly salaries for more than 11 months. He further argued that no charge sheet/Statement of allegation was issued to the appellant no proper enquiry was conducted. Even show cause notice was not issued to him, which were mandatory under the law. Counsel for the appellant pointed out that the department advertised numerous vacancies of Constables, just after removal of the appellant from service and instead of recruiting new constables; the respondent should have adjusted the appellant being trained. The learned counsel stated that if there were some lapses in selection of appellant, it was the responsibility of the respondents for the appellant could not be penalized. On the point of limitation the colleagues of the appellant have been decided by this Tribunal, the impugned orders were set aside and respondents were directed to reinstate them in service from the date of their removal from service. In case there were no vacancies available they should be adjusted on first available vacancies as and when occurred. So the appellant is also entitled to the same treatment as per 1996-SCMR-1185.

6. The learned Govt. Pleader, on hand argued that the appellant was discharged from service on 2.4.2003, against which the appellant filed departmental appeal on 30-4-2003 and the present appeal has been filed on 30-4-2003, which is hopelessly time barred. One factual side, it has been stated that the appellant was discharged from service on the grounds that he had been recruited illegally and fraudulently and action has also been taken against the defaulting officers/officials of the department. He further argued that the appellant was not confirmed and under rule 12.21 of Police Rules 1934 there was no need of conducting departmental proceedings. He requested that the appeal may be dismissed.

7. The Tribunal observes that no charge sheet/ Statements of allegations has been served upon the appellant nor the appellant was given proper opportunity of defense, which were mandatory under the law. Since cases of other colleagues of the appellant, aggrieved consolidated judgment dated 16-11-2005 in Service Appeal No. 1197/2003, The appellant has also entitled to the same treatment in the light of authority referred by the counsel for the appellant.

8. In View of the above the impugned order dated 02-4-2003, is set aside to the extent of appellant and the respondents are directed to appoint the appellant against any of available vacancies of constable, in case there is no vacancy available at present, he may be appointed as and when occurred in the department. The appeal is accepted in the above terms.

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9. This order will also dispose of other connected appeals No. 1076/2010, Salim Khan and appeal No. 1928/2010, Arshad Khan, in the same manner, involving common question of law and facts.

10. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11.10.2011

(KHALID HUSSAIN)
MEMBER

(SYED MANZOOR ALI SHAH)
MEMBER

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2011

- 1- Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar
- 2- Deputy Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar
- 3- Inspector General of Police (Now Provincial Police
Officer KPK, Peshawar

-----PETITIONERS

VERSUS

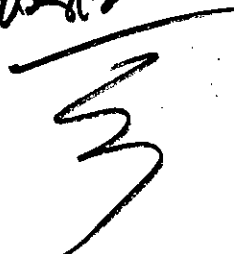
*Munir Khan s/o Rab Nawaz
R/O Katozai, Shubqadar Charsadda
Ex-Constable No. 1296 FRP, Peshawar*

-----RESPONDENT

PETITION FOR LEAVE TO APPEAL UNDER
ARTICLES 212 (3) OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973
AGAINST THE JUDGMENT OF LEARNED
SERVICE TRIBUNAL, PESHAWAR IN SERVICE
APPEAL NO. 889/2010 DATED 11-10-2011.

RESPECTFULLY SHEWETH

1- The substantial questions of law of public importance and grounds, inter alia, which fall for determination of this august Court are as under:-

Attor


- A. Whether the impugned judgment of learned Service Tribunal suffers from legal and factual infirmities and requires interference by this august Court?
- B. Whether the appeal of the respondent was barred by time and learned Service Tribunal without condoning the delay, could entertain the appeal of the respondent?
- C. Whether the appointment of the respondent was not the result of fraud, misrepresentation and irregularity was committed in his appointment?
- D. Whether the respondent was unconfirmed and enquiry etc was mandatory in the removal of the respondent under Rule 12.21 Police Rules 1934?
- E. Whether the law on the subject was not correctly construed by the learned Service Tribunal?
- F. Whether the criminal case against the respondent was not sufficient ground for his dismissal from service?
- G. Whether the willful absence of the respondent was not strong evidence against the respondent to sustain his dismissal from service and the Ld. Service Tribunal has not failed to take this fact into consideration?

H. Whether the respondent had informed the petitioners about the ground of his absence since from the date of Commission of the offence by him or arrest by the Police and the Ld. Service Tribunal has not failed to consider this fault of the respondent?

I. Whether the impugned judgment of the Ld. Service Tribunal is not the out come of the misreading or non reading of evidence?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

- 1- That Petitioner No.1 advertised some posts of Constables on 27-12-2001 and the respondent applied for the same.
- 2- That respondent appeared in test interview for the above said post whereas the respondent did not qualified the requisite score for merit as required for the petitioner.
- 3- That the respondent was appointed illegally by the Acting Superintendent of Police, FRP Peshawar rang with the connivance of Mr. Umar Daraz Khan Ex-RI FRP/HQrs. Peshawar and Muhammad Tahir SI Ex-OSI FRP/HQrs Peshawar.

- 4- That the petitioner has taken action against them and awarded punishment to all concerned officers/officials and the respondent was discharged from service.
- 5- That the respondent neither filed any application for reinstatement nor departmental appeal before the petitioner and filed time barred Service Appeal before the KPK Service Tribunal which was accepted.
- 6- That the petitioners seek leave to appeal against the judgment of Ld. Service Tribunal, Peshawar dated 11-10-2011 in Service Appeal No. 889/2010.

It is, therefore, humbly prayed that leave to appeal may graciously be granted against the judgment of the Hon'ble Service Tribunal, Peshawar in Service Appeal NO. 889/2010, dated 11-10-2011.

(Mian Shaukat Hussain)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, Service Tribunal Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE

Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEALS NO.631 TO 633 OF 2012
(Against the judgment dated 11.10.2011 of the KPK
Service Tribunal, Peshawar passed in Service
Appeals No.889, 1076 and 1928 of 2010)

Commandant Frontier Reserve Police, KPK, Peshawar etc.

... Appellants
(in all cases)

VERSUS

- 1. Munir Khan
- 2. Salim Khan
- 3. Arshad Khan

(in C.A.631/2012)
(in C.A.632/2012)
(in C.A.633/2012)
... Respondent

For the Appellant: Mr. Waqar Ahmed Khan, Addl.A.G. KPK
(in all cases)

For the Respondents: Mr. Muhammad Nasir Mahfooz, AOR/ASC
(in all cases)

Date of Hearing: 09.02.2016

ORDER

ANWAR ZAHEER JAMALI, CJ:- We have heard the arguments of the learned ASCs for both the parties and perused the material placed on record. At this stage, learned Additional Advocate General on behalf of the appellants submits that he will be satisfied for the disposal of these appeals in terms of paragraph No.8 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of Constables, such consideration will be subject to fulfillment of requisite qualification and eligibility.

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Court Associate
Supreme Court of Pakistan
Islamabad

Civil Appeals No. 631 to 639 of 2012

To this proposal the learned ASC for the respondents has no objection. Accordingly, these appeals are disposed of in the above terms.

Sd/- Anwar Zaheer Jamali, HCL
Sd/- Mian Saqib Nisar, J
Sd/- Ijaz Afzal Khan, J
Sd/- Mushir Alam, J
Sd/- Manzoor Ahmad Malik, J

Peshawar High Court, Peshawar
Naib Court Office
Tel: 924154 Ext: 315
Fax: 9240225
29 FEB 2016
By: No. 741

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

FRP 02/16
SEAL OF THE SUPREME COURT OF PAKISTAN
Islamabad, the
09th February, 2016
Not Approved For Reporting
Waqas Nasser / *

GR No: 2534/16
Date of Filing: 16-2-16
Civil/Criminal

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Handwritten notes and dates: 20-2-16, 22-2-16

ORDER

In pursuance the judgment dated 09.02.2016 of the Honorable Apex Court of Pakistan, this order is hereby passed to dispose of the judgment of Honorable Supreme Court of Pakistan dated 09.02.2016 in CA No.631, 632, 633 of 2012 regarding to fresh appointment of Ex-recruit constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar.

Brief facts of the case are that Ex-recruit constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar, discharged from service on 02.04.2003, due to non availability of vacancies.

Feeling aggrieved they filed the service appeal before the Service Tribunal Peshawar, against the order of their discharge from service, which were decided in their favour vide judgment dated 11.10.2011.

Subsequently this department filed CPLA in the Apex Court of Pakistan against the judgment of KPK Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 in the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable august Court has been disposed of the case with the following terms:-

We have heard the arguments of the learned ASCs for both parties and perused the material placed on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these appeals are disposed of in the above terms.

Thereafter the case was forwarded to CPO for further necessary action, which returned by CPO to this office vide CPO memo 539/Legal dated 09.03.2015 with directions that according to the judgment of Supreme Court of Pakistan the above named Ex-officials will be considered for fresh appointment against the available vacancies of constables. Such consideration will be subject to fulfillment of requisite qualification and eligibility.

In the light of the directions of CPO, a committee comprising on DSP/HQ, SI/Legal & OSI FRP, was constituted to examine/consider the requisite qualification and eligibility for fresh appointment of the above Ex-officials and after fulfillment the due codal formalities submit their report.

After due deliberation the committee submitted report, that all the Ex-officials concerned were appeared before the committee except the Ex-official Saleem Khan (reportedly he is bring abroad) which detail produced as bellow:-

S.N	Name	Father Name	Education	Hight & Chest	D/O Birth
1	Arshad Khan	Mushtaram Khan	10 th	5 Feet 6 3/4 Inch	06-02-1978
2	Munir Khan	Rabnawaz	10 th	5 Feet 5 Inch	06-12-1981


Arshad

Saleem Khan	Zait Ullah	10 th	Bring abroad	10-04-1979
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Keeping in view the above facts the committee after consideration come to the conclusion that the Ex-official mentioned at serial No.1 is found deficient in hight and as well as averaged by 7 Years, 8 Months and 6 Days and similarly Ex-Official mentioned at serial No.2 is also found deficient in hight & chest and as well as averaged by 05 Years, 08 Months and 05 Days till to the judgment of service tribunal dated 11.10.2011, therefore, both the Ex-officials are not eligible for fresh appointment.

The Ex-Official Saleem Khan exist at serial No.3 is reportedly bring abroad, but however his father namely Ziat Ullah S/O Rahmat Ullah R/o Mandizai Shabqadar District Charsadda was called to appear before the Committee concerned on behalf of his son. Subsequently he appeared before the committee and produced the photo Copies of CNIC, SSC certificate alongwith domicile certificate of his son and stated that his son is bring abroad for labor. In this regard his statement was recorded. According to CNIC of the said Official, his date of birth is mentioned as 10-04-1979, therefor, he is also found averaged by 7 years 6 months and 10 days till the date of said judgment i.e. 11.10.2011 and not eligible for fresh appointment as Constable, besides he is also bring abroad.

Keeping in view the facts stated above and perused the material pleased on record all of them are neither eligible/nor fit for fresh recruitment as constables as they are not fulfilling the basic criteria for recruitment provided by Police Rules 12-15.


Deputy Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

S823+26

No. _____/EC, dated Peshawar the 20/07/2016.

Copy of above is forwarded to the:-

1. Commandant FRP/KPK, Peshawar for faour of information.
2. All concerned.



خدمتِ خطیبہ کمانڈنٹ صاحب فرنیچر ریزرو پولیس کے پی ایف اور

اپیل پر خذف حکم مورخہ $20 \frac{7}{16}$ جاری کردہ
 ڈیٹی کمانڈنٹ ایف اے اے اور حسی رو سے
 ماسٹیلن کو بحال کرنے سے انکار کیا گیا۔

خطیبہ عالیہ

ایم ایم لائسنس ہولڈر اسٹیوٹ کی مشینری کے بعد ماسٹیلن نے پولیس کانسٹیبل کو پی کیلئے
 درخواست گزار کی اور مجوزہ طریقہ کار اپنانے کے بعد ماسٹیلن کو سال 2003 میں بحالی کیا

۲۔ یہ کہ بعد ازاں ماسٹیلن کو سٹریٹنگ کیلئے کوہاٹ ٹریننگ سنٹر بھیجا گیا تھا۔ جسکی تکمیل
 کے بعد ماسٹیلن کو واپس ٹریننگ کیلئے پولیس ہیڈ کوارٹر ایف اے اے اور پی ایف اے اے کی۔ لیکن پولیس ویم
 کے مورخہ 2-4-03 کو سرورس سے ہر طرفی کارڈر جاری کیا۔

سورج کے نام عرف ماسٹیلن پیدہ تقریباً چھ سو (600) کنبیلان کی ہر طرفی کے بعد ماسٹیلن
 نے بجائی ہر ملازمت فدانہ اپیل گزاریں۔ جسکی خاص شہوانی نہ ہو کر سرورس ٹریننگ میں
 اپیل ٹاڈ لکھیں۔ جو مورخہ 10.10.11 کو منظور ہوئیں، اور حکم کو ہدایت ہوئی کہ اسے
 بحال کیا جائے۔

یہاں رسا امر کی وضاحت ضروری ہے، کہ ماسٹیلن پیدے سے مجوزہ طریقہ کار کے
 بعد بحالی ہوا تھا۔ جسکی بجائی ضروری تھی، نہ کہ فریٹس ہوئی۔

۴۔ یہ کہ حکم نے سریم کورٹ میں اپیل دائر کی جو کہ مزکورہ بالا ٹریننگ کے
 فیصلے پر منتج ہوا۔ اور ٹریننگ کے فیصلے میں کوئی تبدیلی نہیں کی۔

۵۔ یہ کہ حکم نے مورخہ 16-7-20 کو حکم جاری کیا کہ ماسٹیلن کو فریٹس ہوئی
 نہیں کیا جاسکتا ہے۔ کیونکہ اب وہ زراہ العسیر ہو چکے ہیں۔

۶۔ ہم سائیلڈن کے ساتھ تقریباً چھ سو (600) کینٹیلڈن کو ٹورس سے لطف
کئے گئے تھے۔ جنہوں نے ٹورس ٹریول میں اپنی دایرہ کے بحال ہو گئے ہیں
اور اب وہ ڈیوٹیاں سرانجام دے رہے ہیں۔

۷۔ ہم سائیلڈن گائیس فرینٹ بولٹی کانسٹیبل کا بندہ بحالی کا تھا۔ اور سال 2003ء
میں نہ تو زائد لکھ تھا۔ اور نہ ہی کسی دیگر کمی کا شکار تھا۔

۸۔ ہم سائیلڈن کے ساتھ بھرتی کردہ کینٹیلڈن تو صرف اپنے ٹورس کو بحال ہو
چکے ہیں۔ لیکن تمام سابقہ مراعات کے ساتھ ڈیوٹیاں سرانجام دے رہے ہیں۔

۹۔ ہم حکم نمبر 20-7-16 خدیف قانون و واقعات سے ملکہ سبھی برائیاں
پرستی ہے۔

اسد علی نے سائیلڈن کو تاریخ بروز استغی سے تمام سابقہ مراعات
آپ کے ساتھ بحال کرنے کا حکم صادر فرماویں۔

الموقع 16-8-18

الگار ل

- ۱۔ سلیم خان ولد زینت اللہ خان ساکن شہد فدیہری خاریدہ
 - ۲۔ ارشد خان ولد نیرم خان ساکن مہم منل علی جہادہ
 - ۳۔ منیر خان ولد ربووز خان ساکن کٹورنگا خاریدہ
- سابقہ کینٹیلڈن الفاریجی کے در

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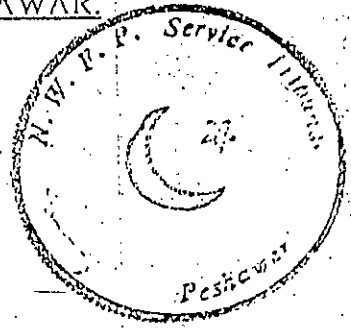
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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1197/2003

Date of institution - 06.11.2003

Date of decision - 15.11.2005



Muhammad Ishaq Ex-constable No. 3496,
Frontier Reserve Police NWFP Peshawar.....(Appellant)

VERSUS

- 1. Deputy Commandant FRP Peshawar.
- 2. Commandant FRP Peshawar.
- 3. Inspector General of Police NWFP Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellants.
Mr. Zaffar Abbas Mirza, Government Pleader.....For respondents.

ABDUL KARIM QASURIAMEMBER.
GHULAM FAROOQ KHANMEMBER.

JUDGMENT

ABDUL KARIM QASURIA, MEMBER :- This appeal will dispose of the following identical appeals, as identical questions of law and facts are involved in all these cases. These are service appeals filed by the appellants against the order of Deputy Commandant F.R.P. Peshawar whereby the services of the appellants were terminated and they were discharged from

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MEMBER
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service w.e.f. 17.6.2003. The appellants also prayed that the impugned order may be set aside and they be re-instated in service with full back benefits.

<u>S.No.</u>	<u>Appeal No.</u>	<u>Name of appellant</u>	<u>Versus</u>
1.	152/2004	Khaista Gul	IGP NWFP etc.
2.	666/2003	Mujahid Khan	Commandant FRP etc.
3.	224/2005	Fayaz Ahmad	-do-
4.	95/2005	Gohar Zaman	-do-
5.	97/2005	Ghulam Mustafa	-do-
6.	96/2005	Nazar Ali	-do-
7.	104/2005	Abdul Latif	-do-
8.	103/2005	Fayaz Ahmad	-do-
9.	1349/2003	Raza Muhammad	-do-
10.	100/2005	Shaukat Ali	-do-
11.	93/2005	Sabihullah	-do-
12.	102/2005	Gul wali	-do-
13.	101/2005	Zainur Rehman	-do-
14.	94/2005	Shamsur Rehman	-do-
15.	98/2005	Sanallah	-do-
16.	99/2005	Azmat Akbar	-do-
17.	118/2005	Irshad Khan	-do-
18.	456/2004	Sanallah	-do-
19.	1198/2003	Sajid Ali	-do-
20.	455/2004	Azmat Akbar	-do-
21.	667/2003	Tariq Khan	-do-
22.	1202/2003	Roohullah	-do-
23.	1201/2003	Imranullah	-do-
24.	1199/2003	Abid Jan	-do-
25.	668/2003	Suhail Ahmad	-do-
26.	766/2003	Tahirullah	-do-

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27.	1200/2003	M.Saeed Khan	-do-
28.	113/2004	Shah Khalid	-do-
29.	114/2004	Ziaru Rehman	-do-
30.	1365/2003	Sher Wali	-do-
31.	1364/2003	Mohtamim Khan	-do-
32.	1363/2003	Shabir Khan	-do-
33.	1362/2003	Niaz Ali	-do-
34.	1353/2003	Rookhullah	-do-
35.	1352/2003	Tasbeehullah	-do-
36.	1350/2003	Mohkam Shah	-do-
37.	1351/2003	Riaz Muhammad	-do-

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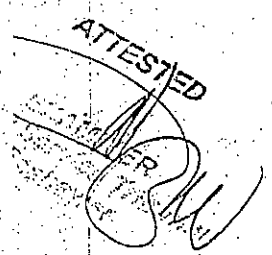
2. Brief facts of the case as narrated in the memo of appeal are that on 27.12.2001 numerous posts were advertised in Daily Newspapers "Aaj" for appointment as constable in the F.R.P, throughout N.W.F.P. The candidates were also directed to submit their applications on 18.10.2003 alongwith their testimonial in the office of Superintendents of Police of their respective Districts. The appellants applied for the posts and as per advertisement, physical test was conducted and qualifying the same, written test and interview was held on 7.1.2002. After completion of all code formalities by the respondents, orders of appointment of appellants were issued on 1.4.2002. The appellants were allotted constabulary numbers and were deputed to the training centers at Kohat and Hangu. After completion of training the appellants were directed to report to the Headquarter Peshawar for posting. Accordingly the appellants made their arrival reports

ATTEST

 Peshawar

in their respective places of postings. The appellants were discharged from services vide the impugned order dated 17.6.2003 with effect from the date of their initial appointment i.e. 1.4.2002 retrospectively. Feeling aggrieved by the said impugned order dated 17.6.2003, the appellants submitted representation before the Commandant F.R.P. NWFP Peshawar, respondent No. 2 on 8.2.2003 for re-instatement but the same met with deed response. The appellants thereafter, filed this appeal before the Tribunal on 6.11.2003 u/s 4 of the NWFP Service Tribunal Act 1974 against the order dated 17.6.2003 whereby the appellants have been punished and discharged from service.

3. The grounds of appeal are that the impugned order dated 17.6.2003 of respondent No. 1 is against law, equity, justice and utter violation of rules and regulations. The impugned order was passed in total disregard of law, especially by giving retrospective effect. Before passing the said order no show cause notice was issued before "removal from service". Thus the appellants were deprived of the right of proper defence. The impugned order is violative of the principles of natural justice as the appellants have been condemned unheard, therefore, the impugned order is not tenable under any law and is liable to be set aside. The appellants have prayed that they may be re-instated in service with all back benefits.

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4. The respondents were summoned. They appeared through their respective representatives/counsel, submitted written para-wise comments through which they denied the claim of the appellants and defended their action.

5. In reply to the grounds of appeal, the respondents have asserted that the appeal is time barred, the same is bad for non-joinder and mis-joinder of necessary parties, the appellants have no cause of action and have not come to the court with clean hands. On factual side it was contended that the appellants were recruited by Mr. Jalaluddin Khan PDSP (Acting S.P./FRP, Peshawar Range Peshawar) with connivance of Mr. Khurshid Khan DSP/FRP/Hqrs, Ex-R.I./FRP/Hqrs, Mr. Umar Daraz Khan DSP/FRP/Hqrs, Ex-R.I./FRP/Hqrs, Mr. Umar Daraz Khan, Inspector Ex-OSI/FRP Hqrs, Muhammad Tahir Khan Ex-OASI/FRP, Hqrs, Malik Zada Khan and others illegally and fraudulently in FRP. Action has been taken against them and they were proceeded departmentally and awarded punishments. The appellants were discharged from service as they were not enlisted through proper procedure by the competent authority. The representations submitted by the appellants were examined and rejected. The enlistment order of the appellants was found illegal, so they were discharged from service. As a consequence, the order of discharge issued by respondent No. 1 is legal and valid. According to police rules 12-21, there was no need of personal appearance as the service period of the appellants were less than three years. However, no opportunity was required under the law and no other official

was given such opportunity. The appellants were not recruited through proper channel so they were discharged by the authority. The order is legal, justified and in accordance with rules.

6. The appellants have also submitted their replication in rebuttal. According to the replication submitted by the appellants, the appeal is well within time, as the appellants were discharged from service on 17.6.2003. They made representation to the authority on 8.7.2003 which was rejected and thereafter lodged the present appeal. As far as the second objection regarding non-joinder and mis-joinder of the necessary parties is concerned, no necessary party to be impleaded in appeal has been pointed out by the respondent department. The parties impleaded in the appeal are quite sufficient to resolve the issue in hand. The objection about no cause of action is also not sustainable as the appellants are civil servants and they have been aggrieved by the impugned order effecting their terms and conditions of service.

*Dr. Anurag
16/11/05
[Signature]*

7. On factual side replying to the written statements of respondents by the appellants, it was urged that the appellants were appointed after observing all the codal formalities by the respondents, advertisement was made, written/written tests were conducted and interview was held which are the mandatory requirements for appointment.

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8. No action as alleged in the para wise comments, has been taken by the department against Mr. Jalaluddin PDSI/SF, FRP, Khurshid Khan, DSP, FRP, Hqrs, and other officials. Only Omar Daraz Inspector RI, FRP, Hqrs, was dismissed from service but not in this case. Rather in another case of corruption of FRP land in Shabqadar.

9. Arguments heard and record perused.

10. The learned counsel for the appellants stated that the appellants were enlisted in the police by the competent authority i.e. respondent No. 1, but they have been discharged by the Deputy Commandant FRP, who was junior and subordinate to the Commandant in rank, so the impugned order is without lawful authority. The learned counsel further contended that the appellants also got monthly salaries for more than one year but no such objection was ever raised by the department and Audit Party regarding illegal recruitment. He further argued that as far as rejection of the departmental appeal is concerned, the same is also without any evidence and proof. No order of rejection was ever communicated to the appellants, nor any evidence was produced by the respondent department regarding the rejection of departmental appeal. The learned counsel further contended that apart from the appellant, 400 more constables were recruited in the same manner on the same date but only 40/45 constables were discharged from service while the others are still in service. Even they were not served with any notice but the appellants were made a scape goat and were removed

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16/11/05

Shabqadar

ATTESTED


from service. The learned counsel for the appellants further stated that in some cases reason for non-availability was given but this reasons is of no avail to the department because the appellants are civil servants for which procedure for discharge/removal from service is obviously mentioned in the rules. For removal/discharge from service, the respondents were required under the law to have served the appellant with charge sheet/statement of allegations on the appellants and then enquiry into the allegations should have been conducted in the matter. On completion of the enquiry proceedings, aggrieved persons should have been served with a final show-cause notice and they should have been provided with the opportunity of personal hearing. All these are mandatory provisions in law but in the instant case no such procedure has been adopted nor any one was served with any notice. To substantiate his arguments, the learned counsel also produced NLR-1996-Service, Page-36. The learned counsel also pointed out that the department advertised numerous vacancies for appointment of constables, just after the discharge/removal of the appellants from service. Instead of recruiting new constables, the appellants should have been adjusted in the best interest of the public. The learned counsel for the appellants contended that if it is to be presumed that the orders of appointment were illegal but the same were approved and signed by the competent authority which were implemented and have got finality, so the same could not be rescinded in the slipshod manner except re-coursing to law enumerated in the rules. For this act, the poor low paid employees cannot be held responsible and punished as

TESTED
[Signature]

12. After hearing the arguments of the learned counsel for the parties and going through the record, it transpires that the impugned order dated 17.6.2003 is illegal, unjust, mala fide, against the law and rules, discriminatory, arbitrary, without lawful authority and natural justice. The Tribunal agrees with the arguments advanced by the learned counsel for the appellants, sets aside the impugned order and re-instate the appellants from the date of their discharge from service. The appellants shall be adjusted forthwith on the available vacancies or if vacancies are not available with the department at present, they shall be adjusted on first available vacancies as and when occurred. The appellants are also exempted from the recruitment procedure as they have already fulfilled the same as well as training. The intervening period from the date of discharge till the adjustment of the appellants be treated as extra ordinary leave without pay. to order as to costs. File be consigned to the record.

ANNOUNCED.
5.11.2005.

(Signature)
(ABDUL KARIM QASURIA)
MEMBER.

(Signature)
(GHULAM FAROOQ KHAN)
MEMBER.
16/11/05

(Signature)
Certified to be a true copy.
Secretary, Service Tribunal
Dacca.

23.11.06
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(Signature)
23.11.06
23.11.06

(Signature)
(Signature)

بعدالت جناب سرسٹریٹریٹل سوپہ سردار پشاور

منجانب ایڈوائٹ

مقرر کاروں بنام محکمہ پوسٹ و ٹیلی گراف

دعوی اپیل

باعث شکریہ ایٹیکہ

مقرر مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹل اسٹیشن آفیسر خان سرور نے ایڈوائٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رضی نامہ و تقریر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بھرتی ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تعدد لیتی اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مستثنیٰ ایجنڈا کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا رکالت نامہ رکھ دیا کہ سند ہے۔

المترجم

العبد

العبد

العبد

ارباب سید اکمال
ایڈوائٹ

سید اللہ خان مروت
ایڈوائٹ

مہتر خان

من رویتہ تار
ایڈوائٹ

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 172/2018

Muneer Khan versus Deputy Commandant & Others

REPLICATION

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is time barred, bad for mis and non-joinder of necessary parties, without cause of action, unclean hands, estoppels and concealment of facts

ON FACTS:

1. Not correct. The para of the appeal is correct with documentary proof. Appellant served the department for about 04 years but no such lacuna of the then RI, OASI etc was pointed out.
2. Admitted correct by the respondents regarding filing of appeal, disposal of CPLA by the apex court with direction to adjust / consider appointment against the available vacancy of constable. This fact is admitted correct by the department that other officials who filed appeals were reinstated in service by the hon'ble Tribunal.
3. Not correct. The apex court maintained the judgment of the hon'ble Tribunal with direction to respondents to appoint appellant as and when vacancy becomes available.
4. Not correct. The impugned order 20-07-2016 was not served upon appellant as is evident from the same but got the same from the office of respondents at personal level. The deficiency shown in height of two inch and in chest are of no avail to the respondents as the police department is serving with such deficiencies by many servants. The appellant remained in service and were involved in litigations

before the hon'ble Tribunal as well as before the apex court so no question of overage arises at all.

5. Not correct. Annex "E" is the ample proof regarding representation.
6. Not correct. The para of the appeal is correct regarding acceptance of numerous appeals by the hon'ble Tribunal which judgments were upheld by the apex court annex with the appeal.

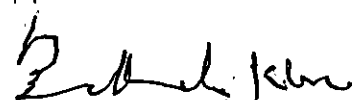
GROUND S:

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted.

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

Appellant

Through



Saad Ullah Khan Marwat

Advocate,

Dated: 05-04-2019

AFFIDAVIT

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

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


DEPONENT

BEFORE THE SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 172/2018

Ex Constable Muneer KhanPetitioner.

VERSUS

**1. Addl: IGP/Commandant FRP Khyber
Pakhtunkhwa Peshawar & Others.....Respondents.**

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments		03
2.	Judgment	A	02
3.	Committee report	B	02
4.			
Total			07


RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.172/2018.

Munir Khan S/o Rab Nawaz Khan R/o Katozai, Shabqadar, Charsadda Ex-Constable.
No. 1296 FRP Peshawar.....Appellant

VERSUS

1. Deputy Commandant of FRP
Khyber Pakhtunkhwa, Peshawar
2. Commandant of FRP
Khyber Pakhtunkhwa, Peshawar
3. Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.....Respondents.

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Court with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant trying to concealed material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS

FACTS

RESPECTED SHEWETH:-

1. Incorrect, the appellant was not enlisted as constable by the department accordingly, but he was enlisted by the then RI, OASI & others illegally and fraudulently in FRP. Subsequently all concerned were proceeded on departmentally and awarded suitable punishment. Moreover, the appellant has no locus standi to file departmental appeal within stipulated period.
2. Correct, to the extent that this department feeling aggrieved filed CPLA in the Apex Court of Pakistan against the judgment of Honorable Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 before the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable August Court has disposed of the case with the following terms:-

We have heard the arguments of the learned ASCs for both parties and perused the material pleased on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these

- appeals are disposed of in the above terms. (Copy of the judgment attached herewith as annexure "A"). Moreover, others officials, who filed Service Appeal within stipulated period were reinstated in service according to the judgment of this Honorable Tribunal.
3. Incorrect, the Apex Court of Pakistan allowed the arguments of learned ASC, i.e the terms of paragraph No.8 of impugned judgment, but subject to condition of qualification & eligibility of the appellants for appointment as constable.
 4. Incorrect, the allegation are false and baseless, the judgment of Apex Court of Pakistan was implemented sincerely and with letter in spirit. In this regard a committee was constituted to consider qualification & eligibility of the appellant for appointment as constable. After fulfillment of due codal formalities the committee was submitted their report, wherein they stated that the appellant is found deficient in height by two Inch, while in chest by 3#3/4 Inch, as well as averaged by 5 Years, 8 Months and 5 Days and therefore, not eligible for recruitment as constable.(Copy of committee report is attached herewith as annexure "C") Moreover, the above committee report was thoroughly examined and thereafter a speaking order was passed by the respondent No. 1 and copies of which have already been conveyed to all concerned.
 5. Incorrect, the appellant has failed to submit departmental appeal before the appellate authority
 6. Incorrect, that the judgment annexed by the appellant with the instant service appeal is not at par with the case of the appellant as he has come to this Honorable Tribunal at very belated stage, which is badly time barred about 15 years. Moreover, the department filed CPLA against the judgment dated 11.10.2010 passed earlier by this Honorable Tribunal, which was disposed of by the august Supreme Court of Pakistan with the directions to consider the appellant for appointment subject to condition of his qualification and eligibility.

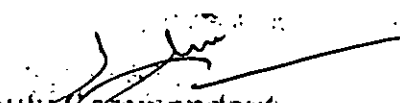
GROUNDS:-

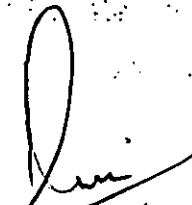
- a. Incorrect, the appellant was considered for appointment as constable in the light of decision of August Supreme Court of Pakistan, but he was not found fit for enlistment as constable in the Police department according to law/rules.
- b. Incorrect, as explained in the preceding Paras of fact the case of the appellant is not at par with the case mentioned by the appellant, as he approached for such relief in very belated stage, which was already refused by apex Court of Pakistan too, vide judgment dated 09.02.2016.

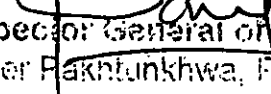
- c. incorrect, that a suitable decision was passed by this Honorable Tribunal in the case of the appellant by taking lenient view, while otherwise the case of the appellant was not tenable as the appellant filed Service Appeal in very belated stage, which is badly time barred.
- d. The appellant was recruited by the mafia illegally for their ulterior motive, without adopting the due codal formalities. Subsequently all defaulters concerned were proceeded on departmentally and awarded suitable punishment. Thus, the appellant was not entitled for adjustment at the post of constable.
- e. Incorrect, as explained in the preceding Paras the case of the appellant was considered according to the verdict of the Apex Court of Pakistan, to which he was found in eligible as per law/rules.
- f. Incorrect, as the appellant approached to Honorable Tribunal for reinstatement in service after delay about 08 years, thus he was not entitled for reinstatement in service. Therefore, the Honorable Tribunal correctly passed the order that to appointment the appellant afresh. However, the matter was taken up before the August Supreme Court of Pakistan, wherein his fresh appointment was connected subject to condition of eligibility for recruitment as a constable.

g. **PRAYERS:-**

It is therefore, most humbly prayed that in the light of aforesaid facts/submission the service appeal may kindly be dismissed with cost.


Deputy Commandant,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Commandant
Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

12/11/16

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEALS NO.631 TO 633 OF 2012

(Against the judgment dated 11.10.2011 of the KPK
Service Tribunal, Peshawar passed in Service
Appeals No.889, 1076 and 1928 of 2010)

Commandant Frontier Reserve Police, KPK Peshawar etc.

... Appellants
(in all cases)

VERSUS

1. Munir Khan
2. Salim Khan
3. Arshad Khan

(in C.A.631/2012)
(in C.A.632/2012)
(in C.A.633/2012)

... Respondent

For the Appellant:
(in all cases)

Mr. Waqar Ahmed Khan, Addl.A.G. KPK

For the Respondents:
(in all cases)

Mr. Muhammad Nasir Mahfooz, AOR/ASC

Date of Hearing:

09.02.2016

ORDER

ANWAR ZAHEER JAMALI, CJ:- We have heard the arguments of the learned ASCs for both the parties and perused the material placed on record. At this stage, learned Additional Advocate General on behalf of the appellants submits that he will be satisfied for the disposal of these appeals in terms of paragraph No.3 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of Constables, such consideration will be subject to fulfillment of requisite qualification and eligibility.

ATTESTED

C. S. Khan
20/2
Court Associate
Supreme Court of Pakistan
Islamabad

To this proposal the learned ASC for the respondents has no objection. Accordingly, these appeals are disposed of in the above terms.

Sd/- Anwar Zaheer Jamali, HCJ
Sd/- Mian Saqib Nisar, J
Sd/- Ejaz Afzal Khan, J
Sd/- Mushir Alam, J
Sd/- Manzoor Ahmad Malik, J

Peshawar High Court, Peshawar
Naib Court Office
Tel: 9210154-151515
Fax: 9210223
29 FEB 2016
Dy. No. 741

Certified to be True Copy

FRP 5/16
OF THE SUPREME COURT
Islamabad, the
09th February, 2016
Not Approved For Reporting
Waqas Nasr/**
2-16

10/2/16
Court Associate
Supreme Court of Pakistan
Islamabad

2533/16

GR No: _____ Civil/Criminal
Date of Disposal: 10-2-16
No. of Pages: 0
No. of Exhibits: 0
No. of Witnesses: 0
No. of Documents: 0
No. of Affidavits: 0
No. of Interlocutory Orders: 0
No. of Final Orders: 0
No. of Appeals: 0

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Copy
for
reference

Committee Report

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Sir,

It is submitted that Ex-Recruit Constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar, alongwith others were discharged from service on 02.04.2003, due to non availability of vacancies.

Feeling aggrieved the said Ex-Recruit Constables filed the service appeal before the Service Tribunal Peshawar, against the order of their discharge from service, which were decided in their favour vide judgment dated 11.10.2011. (Copy of the judgment attached as annexure "A")

Subsequently this department filed CPLA in the Apex Court of Pakistan against the judgment of KPK Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 in the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable august Court has been passed the remarks which re-produced as bellow:-

We have heard the arguments of the learned ASCs for both parties and perused the material pleased on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these appeals are disposed of in the above terms.

In the light of the decision of the Apex Court of Pakistan, a committee comprising on DSP/HQ, SI/Legal & OSI FRP, was constituted to examine academic documents of the requisite qualification and eligibility for fresh appointment of the appellants.

In pursuance the orders of the High up a meeting of the above committee was held on 18.04.2016 and on 30.05.2016 in the office of DSP/HQ and in this regard all the Ex-officials concerned were appeared before the committee the while Ex-official Saleem Khan failed to have appeared before the committee (reportedly he is bring abroad) which progress/detail produced as bellow:-

S.N	Name	Father Name	Education	Hight & Chest	D/O Birth
1	Arshad Khan	Mukaram Khan	10 th	5 Feet 6 ¼ Inch	06-02-1978
2	Munair Khan	Rahnawaz	10 th	5 Feet 5 Inch	06-12-1981
3	Saleem Khan	Zait Ullah	10 th	Bring abroad	10-04-1979

Keeping in view the above facts the committee after due deliberation come to the conclusion that the Ex-official mentioned at serial No.1 is found deficient

in hight and as well as averaged by 7 Years, 8 Months and 6 Days and similarly Ex-Official mentioned at serial No.2 is also found deficient in hight & chest and as well as averaged by 05 Years, 08 Months and 05 Days till to the judgment of service tribunal dated 11.10.2011, therefore, both the Ex-officials are not eligible for fresh appointment.

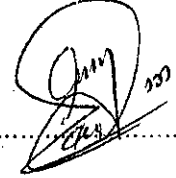
The Ex-Official Saleem Khan exist at Serial No.3 is reportedly bring abroad, but however his father namely Ziat Ullah S/O Rahmat Ullah R/o Mandizai Shabqadar District Charsadda was called to appear before the Committee concerned along with the academic documents of his Son. Subsequently he appeared before the committee and produced the photo Copies of CNIC, SSC certificate alongwith domicile certificate of his son and stated that his son is bring abroad for labor. In this regard his statement was also recorded which attached herewith as annexure "A". According to CNIC of the said Official, his date of birth is mentioned as 10-04-1979 therefor, he is also found averaged by 7 Years 6 Months and 10 days till the date of said judgment i.e. 11.10.2011 and not alleageable for fresh appointment as Constable.

Keeping in view the above facts, all of them are found not eligible/fit for fresh recruitment as constables as they are not fulfilled the basic criteria for recruitment provided by Police Rules 12-15.

Submitted for order please.

1. DSP, FRP HQ.....

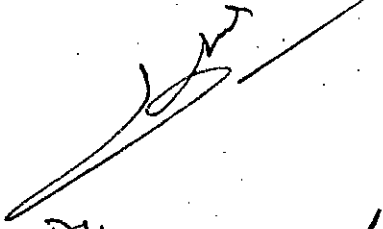
2. SI/Legal.....

3. OSI/FRP.HQ.....

Dy: Commandant, FRP/KP

EC/SI/Legal

write to CPO.


Dy: Commandant