

Service Appeal No. 704/2018

Khuram Shahzad

Vs

**District & Session Judge Kohat &
Others.**

Judgment/Order:

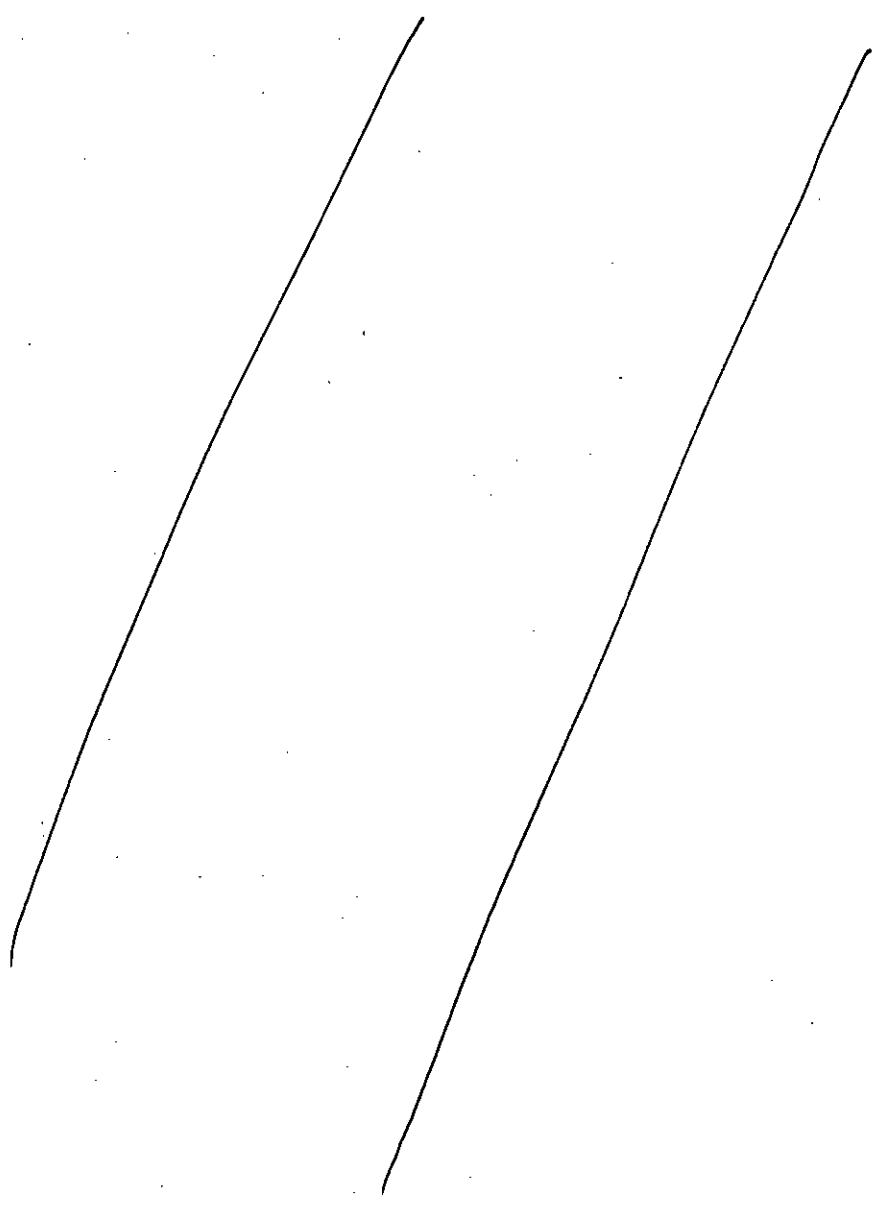
18.10.2018

1. Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General present.
2. The appellant (Ex-Stenotypist) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 21.08.2010 whereby the appellant was terminated from government service.
3. Learned counsel for the appellant stated that the impugned order of termination from service was issued on 21.08.2010. Learned counsel for the appellant argued that the appellant was implicated in case FIR 331 dated 08.06.2010 u/s 302/324/34 PPC Police Station Cantt: Kohat and then he earned his acquittal on 16.01.2017 in the above mentioned criminal case hence the delay in filing present service appeal should be condoned. Learned counsel or the appellant in support his case relied upon the judgment reported in 2012 PLC (C.S) page 913.
4. Preliminary arguments heard. File perused.
5. The appellant was appointed on the post of Stenotypist in the establishment of District & Session Judge Kohat vide order dated 30.05.2009. The impugned order of termination from service was issued on 21.08.2010 whereas the appellant filed the present service appeal there against on 23.05.2018. The appellant

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 18.10.2018 for preliminary hearing before S.B.


Chairman



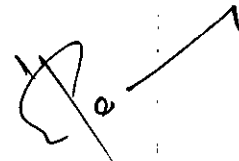
Service Appeal No. 704/2018

has not preferred departmental appeal against the impugned order dated 21.08.2010 rather he submitted application dated 04.08.2017 to the competent authority for his reinstatement and he therein specifically pleaded that he had gone into hiding due to the registration of criminal case.

6. The appellant remained fugitive from law/absconder and as such the judgment referred to by the learned counsel for the appellant is not attracted to the facts and circumstances of the present case.

7. Learned counsel for the appellant could not demonstrate that abscondance of a civil servant in a criminal case could be treated as a valid ground for condonation of delay in filing the departmental appeal/representation or service appeal. Moreover the appellant has not submitted any application for condonation of delay.

8. In view of above, the present service appeal is dismissed in limine being barred by limitation and not maintainable. No order as to costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member

ANNOUNCED.
18.10.2018

07.06.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that his services were terminated vide impugned order dated 21.08.2010. He filed departmental appeal on 04.08.2017, which was rejected on 19.04.2017, hence, the instant service appeal on 23.05.2018. The departmental appeal is badly time barred and no application for condonation of appeal has been submitted by the learned counsel for the appellant, even the service appeal is time barred. Learned counsel for the appellant when confronted on this point clarified that FIR no. 331 under Section-302/324/34 PPC dated 08.06.2010 was registered against him in P.S Cannt, Kohat. When the appellant was acquitted of the charges then he filed departmental appeal. As the appeal was badly time barred and learned counsel for the appellant was unable to give any valid justification for inordinate delay in filing the appeal, let pre-admission notice be issued to the learned Addl: AG to assist the Tribunal on this point. To come up for preliminary hearing on 31.07.2018 before S.B.


(AHMAD HASSAN)
MEMBER

31.07.2018



Appellant Mr. Khurram Shahzad in person alongwith his counsel Mr. Shah Nawaz, Advocate present. Mr. Kabirullah Khattak, Addl: AG on pre-admission notice present. Short arguments heard. The learned AAG placed reliance on the judgment of the Supreme Court of Pakistan reported as 2015 SCMR 165 which in response learned counsel for the appellant want to produce similar judgment in support of his contention. However, he also made a request for adjournment. Granted. Case to come up for arguments and preliminary hearing on question of limitation on 12.09.2018 before S.B.


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 704/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23/05/2018	<p>The appeal of Mr. Khurram Shahzad presented today by Mr. Shah Nawaz Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	28/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>07/06/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR

Service Appeal No 704 2018

Khurram Shehzad..... (Appellant)

V E R S U S

District and Sessions Judge Kohat and other..... (Respondents)

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Grounds of Appeal alongwith Affidavit	-	1-6
2.	Addresses of the parties	-	7
3.	Copy of the CNIC	'A'	8
4.	Copy of the appointment order dated 28 th April, 2009	'B'	9
5.	Copy of the office order dated 30-5-2009	'C'	10
6.	Copy of the impugned order	'D'	11
7.	Copy of the acquittal order	'E'	12
8.	Copy of the application	'F'	13
9.	Copy of the guidance letter	'G'	14
10.	Copy of the order	'H'	15
11.	Wakalat Nama (in original)	-	16

Appellant

Through:

(SHAH NAWAZ KHAN)

&

(RAMEEZ MUHAMMAD)

Advocate,

High Court, Peshawar

Office: Old Bar Room

Khyber Road, Peshawar

Cell # 0336-3036685

Dated: -23-05-2018

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

In Re: Service Appeal No 704 / 2018

Diary No. 757

Dated 23/5/2018

Khurram Shehzad S/O Nadir Khan R/O village Kaghzai
Kohat.....(Appellant)

VERSUS

1. District and Session Judge, Kohat
2. Registrar Peshawar High Court, Peshawar
3. Government of Khyber Pakhtunkhwa through Secretary
Department of Law.....(Respondents)

Appeal under Section 4 of the Khyber
Pakhtunkhwa Services Tribunal Act, 1974

Respectfully Sheweth:-

The Appellant humbly submits as under:-

- 1) That the Appellant belongs to District Kohat Khyber Pakhtunkhwa and residing within territorial jurisdiction of this Honourable Tribunal. (Copy of the CNIC is attached as Annex 'A').
- 2) That Appellant was appointed as Junior Clerk in the District Judiciary of Kohat through order No 28/A-1 dated 28th April, 2009. (Copy of the appointment letter is attached as Annex 'B').

Filed to-day

Registrar

23/5/18

- 3) That the competent authority was impressed from the abilities and performance of the Appellant ^ξ was subsequently appointed (promoted) as Steno Typist (BPS-12) via office order No 41/A-1 dated 30-05-2009. (Copy of the office order dated 30-5-2009 is attached as Annex 'C').
- 4) That on 08-06-2010 a false FIR No 331 under Section 302/324/34 PPC was registered against the Appellant in P.S Cantt Kohat.
- 5) That on 21-08-2010, the Respondent No 1 terminated the Appellant from his post vide office No 36/A-1 ^{order} without giving any reason for doing so. The Appellant was given no opportunity of person hearing nor any show cause notice was given to the Appellant by the Respondent No 1 before passing the impugned termination order No 36/1 dated 21st August, 2010. (Copy of the impugned order is attached Annex 'D').
- 6) That the Appellant was honourably acquitted from the charges leveled against him under FIR No 331 dated 08th June, 2010 by the learned Additional Session Judge-V, Kohat vide order/judgment dated 16-01-2017. (Copy of the acquittal order is attached as Annex 'E').
- 7) That after acquittal, the Appellant filed an application before the Respondent No 1 for the restoration of the Appellant to his post. (Copy of the Application is attached as Annex 'F').

- 8) That Respondent No 1 sought guidelines from the Respondent No 2. In guidelines issued by Respondent No 2 has guided the Respondent No 1 in terms that once authority has exercised his power, the same could not be revoked by the subsequent authority. (Copy of the guidance letter is attached as Annex 'G').
- 9) That the Respondent No 1 in the light of guidance received from Respondent No 2, rejected the application of the Appellant with advice to approach the proper forum. (Copy of the order is attached as Annex 'H').
- 10) That the grievances of the Appellant despite application to the concerned authorities are not redressed, hence approaches this Honourable Tribunal on the following grounds inter-alia:-

GROUNDS:-

- A) Because the Appellant was appointed to the post of Junior Clerk on the recommendation of the Selection Committee.
- B) Because the competent authority was impressed of the abilities and performance of the Appellant, therefore, he was subsequently appointed (promoted) to the post of upper grade.
- C) Because the removal of Appellant from his post without giving an opportunity is against the principles of natural justice and fundamental rights as guaranteed in the Constitution of Pakistan, 1973.

- D) Because the Respondent No 1 has wrongfully exercised the power of removal from service, when a Civil Servant is appointed (promoted to a higher post and his services are put to probation. In such circumstances, even during probation period, the competent authority cannot remove a Civil Servant from his post, but has revert the Civil Servant to his former post.
- E) Because a Civil Servant cannot be removed from service for the only reason of his nomination in a criminal case.
- F) Because only nomination in FIR do not prove the involvement of an individual in a criminal case. The involvement of an individual in a criminal case is tested through a proper mechanism, settled by law, and once an individual is acquitted by competent Court of Law, cannot be punished for the same otherwise.
- G) Because a Civil Servant cannot be deprived of his post only for the reason that he has left some other department of the Government, in the Civil Servant Act, no section for such situation is incorporated consciously.
- H) That constitution has guaranteed the right to join any profession.
- I) That this Honourable Tribunal has got ample power to entertain the instant appeal.

J) That the Appellant seeks permission of this Honourable Tribunal to adduce other grounds during course of arguments.

PRAYER:-

- i. The order of removal of the Appellant may kindly be declared illegal, null and void and the Appellant be restored to his post alongwith the arrears of salaries i.e. back benefits.
- ii. The Respondents No 1 may kindly be directed to provide record of inquiry report/other relevant record on the basis of impugned order dated 21-08-2010.
- iii. Any other relief as this Tribunal deems fit.

Appellant

Through:

(SHAH NAWAZ KHAN)
&

(RAMEEZ MUHAMMAD)
Advocates,
High Court Peshawar

Dated: -23-05-2018

NOTE:-

No such like appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.

Advocate

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR

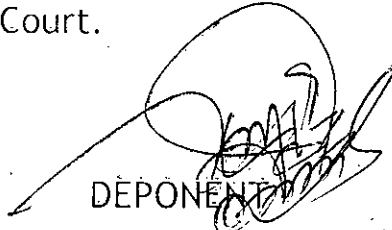
Khurram Shehzad.....(Appellant)

V E R S U S

District and Sessions Judge Kohat and other.....(Respondents)


AFFIDAVIT

I, Khurram Shehzad S/O Nadir Khan R/O village Kaghzai Kohat, do hereby solemnly affirm and declare on oath that all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.


DEPONENT

14301-2029876-7

Identified by:-


23/05/18
(SHAH NAWAZ KHAN)
Advocate
High Court, Peshawar



BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR

Khurram Shehzad..... (Appellant)

V E R S U S

District and Sessions Judge Kohat and other..... (Respondents)

ADDRESSES OF THE PARTIES

APPELLANT

Khurram Shehzad S/O Nadir Khan R/O village Kaghzai Kohat

RESPONDENTS

1. District and Session Judge, Kohat
2. Registrar Peshawar High Court, Peshawar
3. Government of Khyber Pakhtunkhwa through Secretary
Department of Law

Appellant

Through:


(SHAN NAWAZ KHAN)

&

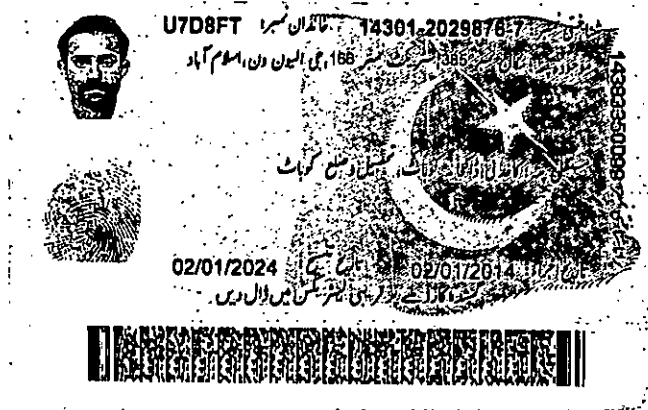
(RAMEEZ MUHAMMAD)

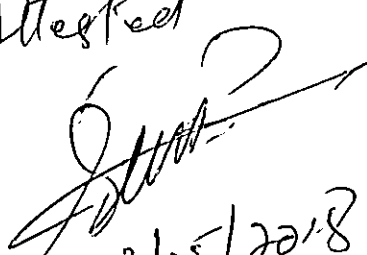
Advocates,
High Court, Peshawar

Dated: 23-05-2018

Annex - A

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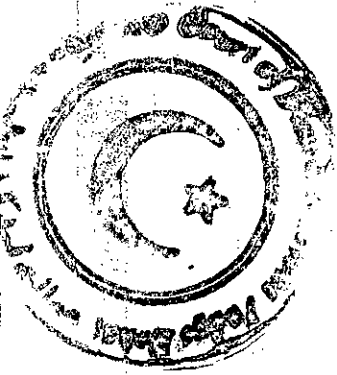
Attested

 23/05/2018

OFFICE OF THE DISTRICT & SESSIONS JUDGE, KOHAT

Annex - B

OFFICE ORDER No- 28/A-1

Consequent upon the recommendations of Departmental Selection Committee, contained in the minutes dated 28th April 2009, the following candidates are selected and appointed on the posts mentioned against their names with immediate effect, in the interest of public service.



1	Mr. Zeeshan s/o Atta Muhammad r/o Mohallah Mian Badshah, Kohat City	Key Punch Operator
2	Mr. Khuram Shahzad s/o Nadir Khan r/o village Kaghzai, Tehsil & District Kohat	Junior Clerk
3	Mudassir Khan s/o Salim Khan r/o Muslim Town, Pindi Road, Kohat	Naib Qasid
4	Mr. Zahoor Khan s/o Abdul Jabbar r/o village Khermatoo, Tehsil & District Kohat	Naib Qasid

TERMS AND CONDITIONS

- (A) The appointment shall be purely on temporary basis.
- (B) The service will be liable to termination at any time without notice and showing any reason.
- (C) They shall have to complete period of probation to the satisfaction of superior.
- (D) They shall produce medical fitness certificate before taking the charge.
- (E) They shall produce original identity card for determination of age.

In case the above terms and conditions are acceptable, they should report to the undersigned for assuming the duty within seven days from today, failing which the offer shall stand withdrawn.

(SHAH JEHAN AKHUNDZADA)
District & Sessions Judge, Kohat

No 315-320 /Kohat Dated 28/04/2009

Copy forwarded to:-

- 1- The Registrar, Peshawar High Court, Peshawar.
- 2- The Senior Civil Judge, Kohat
- 3- The District Accounts Officer, Kohat.
- 4- The Nazar of this court
- 5- All the concerned officials.
- 6- Information Kiosk.

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EVIDENCED
2009

District & Sessions Judge, Kohat

P-10

OFFICE OF THE DISTRICT & SESSIONS JUDGE, KOHAT

Annex - C

OFFICE ORDER No- 41/A-1

Consequent upon the recommendations of Departmental Selection Committee, contained in the minutes dated 30th May, 2009 the following selected candidates are appointed on the posts mentioned against their names with immediate effect, in the interest of public service subject to the terms and conditions enumerated below.

1	Khalid Amin s/o Jalal Khan r/o Shimla Pahari, Kohat Cant	Assistant (EPS-14)
2	Khuram Shahzad s/o Nadir Khan r/o village Kaghzai, Kohat	Stenotypist (BPS-12)
3	Ibrar Khan s/o Muhammad Ayaz r/o village Kaghzai, Kohat	Stenotypist (BPS-12)

TERMS AND CONDITIONS

- (A) The appointment shall be purely on temporary basis.
- (B) The service will be liable to termination at any time without notice and showing any reason.
- (C) They shall have to complete period of probation to the satisfaction of superior.
- (D) They shall produce medical fitness certificate before taking the charge.
- (E) They shall produce original identity card for determination of age.

In case the above terms and conditions are acceptable, they should report to the undersigned for assuming the duty within seven days from today, failing which the offer shall stand withdrawn.

(SHAH JEHAN AKHUNDZADA)
District & Sessions Judge, Kohat

No 458-463 /Kohat Dated 30/5/2009

Copy forwarded to:-

- 1- The Registrar, Peshawar High Court, Peshawar.
- 2- The Senior Civil Judge, Kohat
- 3- The District Accounts Officer, Kohat.
- 4- The Nazir of this court
- 5- All the concerned officials.
- 6- Information Kiosk.

District & Sessions Judge, Kohat

OFFICE OF THE DISTRICT & SESSIONS JUDGE, KOHAT.

P-11.

OFFICE ORDER: No. 36/A-1

Annex - D

Inquiry report received and perused. From the perusal of which it has been proved that Mr. Khurram Shahzad Steno Typist is involved in a criminal case vide FIR No: 331 dt: 08/06/10 u/s 302/324/34 PPC PS Cantt and on the other hand his Service record shows that he was appointed as Junior Clerk (BPS-7) vide order bearing Endorsement No. 315-320 dated 28/04/2009. He was subsequently appointed as Steno Typist (BPS-12) vide order bearing Endorsement No: 458-463 dated 30/05/2009 with prescribed terms and conditions, including two years probation period. Moreover, the record also shows that he is a deserter from the Armed Forces of Pakistan.

Consequently the accused / official who has not yet completed his probation, is hereby terminated from Government Service under Section 11 (1) (i) of NWFP Civil Servants Act, 1973, with immediate effect.

AYMONZIA

District & Session Judge, Kohat.

Kohat dated the 21 / 08 / 2010

No 697-699

Copy to:

1. The Senior Civil Judge, Kohat for necessary entries in the service book of the official.
2. The District Account Officer, Kohat
3. The Official concerned on his home address through registered post.

District & Session Judge, Kohat.

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EXAMINED
COPING BRANCH KOHAT

25/10

SESSIONS

بقراءتہ منہ سے فیصلہ فی حق اہل بیت علیہم السلام
11/11/16
26/10/10
331
Annex - E

ORDER 16.01.2017



Present:
Deputy PP for the state.
Accused Khurram Shahzad, Amjad Mehmood and Nadir Khan on bail
along with counsel.

Arguments on application u/s 265-K Cr.P.C. heard and record
perused.

Record of the case shows that complainant Arif Saleem, in his
cross-examination as PW-1. stated that, "I was also injured in the instant
case. All the accused satisfied me through the intervention of elders of
locality about their innocence and I have no objection if accused facing
trial are acquitted in the instant as they have satisfied us about their
innocence. It is correct that there was another case registered against me
and others, in which we are acquitted due to the no objection of the
complainant in that case. Accused facing trial were released on bail due
to no objection on behalf of me".

On the basis of statement of complainant, there remains no
possibility of conviction of accused facing trial in the instant case. Their
further trial becomes useless. Accused facing trial, namely Khurram
Shahzad, Amjad Mehmood and Nadir Khan are therefore, acquitted
from the charge levelled against him u/s 265-K Cr.P.C. in case FIR
No.331 dated 08.06.2010 u/s 302/324/34 PPC of PS Cantt, Kohat. Their
bail bonds are cancelled and sureties are discharged from the liabilities
under the bail bonds.

Case properly be disposed off after expiry of period for
appeal/revision.

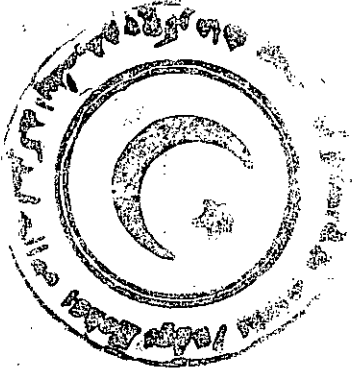
File be consigned to record room after its necessary compilation
and completion.

Announced
16.01.2017

(Ishaem Abdul Khan)
Addl: Sessions Judge-V, Kohat

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EXAMINED
COPING BRANCH KOHAT



P-13

بخدمت جناب ڈسٹرکٹ سیشن جج صاحب کوہاٹ

عنوان :- درخواست بمراد بحالی ملازمت

Annex - F

جناب عالی!

گزارش کی جاتی ہے

- 1- کہ سائل 28-04-2009 کو بطور جونیئر کلرک BPS-7 کچہری ہذا میں تعینات ہوا۔ (لف بے)
 - 2- بعد ازاں بہتر کارڈگی کی بناء پر بطور ٹینوٹا پوسٹ BPS-12 مورخہ 30-05-2009 تعینات ہوا۔ (لف بے)
 - 3- سائل کو مورخہ 08-06-2010 کو ایک جھوٹے مقدمے میں ملوث کیا گیا۔ ایف۔ آئی۔ آر نمبر 331
 - 4- سائل اب مقدمہ مذکورہ میں باعزت طور پر بری ہو چکا ہے۔ (تعلیٰ فیصلہ لف بے)
 - 5- سائل بوجہ مقدمہ اپنی جانی حفاظت کی بنا پر روپوش ہوا جس کے بنا پر اپنی فرائض منصبی ادا کرنے سے قاصر رہا۔
 - 6- سائل کی مذکورہ غیر حاضری جان بوج کر نہ تھی بلکہ بوجہ مجبوری تھی۔
 - 7- سائل قابل معافی اور بحالی ملازمت کا مستحق ہے۔
 - 8- سائل آپ سے متذکرہ بالا ملازمت پر بحالی کی پرزور اپیل کرتا ہے۔
- لہذا استدعا ہے کہ حسب مضمون درخواست سائل کے بحالی کے احکامات صادر فرمائیں۔ سائل تاحیات احسان مند رہے گا۔

مورخہ: 04-08-2017

سائل خرم شہزاد ولد نادرخان

شناختی کارڈ نمبر 7-14301-2029876

موبائل نمبر: 0312-5694181

For Report.

District & Sessions Judge,
Kohat

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COPING BRANCH KOHAT

25/7/18



The PESHAWAR HIGH COURT



All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58
Off: 9210135
Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

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No. 4777 / Admn:

Dated Pesh the 31 / 3 / 2018

To:

The District & Sessions Judge,
Kohat.

Annex - G

Subject: **GUIDANCE.**

Dear Sir,

Reference your letter No.465 dated 15.03.2018. The matter was examined and it was found that the services of Mr. Khurram Shehzad, Ex-Steno were terminated for cogent reasons at that time and once Authority exercised his power for sufficient reasons, the same could not be revoked by an order of subsequent Authority in light of fresh circumstances developed later on. During probation period, a Government Servant has to remain within legal bounds and having failed to stay within limits, entailing due punishment, new grounds cannot absolve his offence.

In view of the above, you may consider the application as per law/rules, please.

Sincerely yours,

Muhammad Salim Khan
(MUHAMMAD SALIM KHAN)
PAS
REGISTRAR

Put copy with relevant file

[Signature]
District & Session Judge,
Kohat

6-4-18

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25-4-18

P-15



DISTRICT JUDICIARY KHYBER PAKHTUNKHWA, KOHAT
OFFICE OF THE DISTRICT & SESSIONS JUDGE KOHAT

Phn# 0922-9260041
Fax# 0922-9260216

Email: dsjkohat@yahoo.com

Amey - H

Dated: 19.04.2018

ORDER

In light of guidance/guidelines received from the Worthy Registrar, Peshawar High Court, Peshawar vide letter No.4777 dated 31.03.2018, the application of petitioner Khurram Shahzad dated 04.08.2017 for his reinstatement against the post of steno-typist stands rejected with advice to approach the proper forum.



(Signature)

(SHOAIB KHAN)
DISTRICT & SESSIONS JUDGE,
KOHAT

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**EXAMINE
COPING BRANCH KOHAT**

25/4/18

ایڈوکیٹ:	 	39476
بار کونسل ایسوسی ایشن نمبر: ۵۷-۱۶-۲۰۲۶		
رابطہ نمبر: ۵۳۳۶۳۵۳۶۶۸۵	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب: سر سید مسیحیوں صبر پختونخواہ

مخاب: ایڈوکیٹ	دعوی:
حرم شہزاد	علت نمبر:
بنام	مورخہ:
دستر جاری ہندو سیشن کو حاکم	جرم:
	تھانہ:

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کے لیے اطمینان کے ساتھ نواز (مسنجر ایگرو) کو وکیل 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 جواب دعویٰ اقبال دعویٰ 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 منسوخ، نیز دائر کرنے اپیل نگرانی و نظرتانی 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختہ 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

المرقوم: 23-05-2018

المقام

پشاور

Accepted

S. S.

2012 P L C (C.S.) 913

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Amir Hani Muslim, JJ

DIRECTOR-GENERAL, INTELLIGENCE BUREAU, ISLAMABAD

versus

MUHAMMAD JAVED and others

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

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

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

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

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

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

Respondents Nos. 2 and 3, Pro forma Respondents.

Date of hearing: 21st July, 2011.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---By leave of the court, this civil appeal, at the instance of Director General, Intelligence Bureau, Islamabad, is directed against the judgment dated 30-3-2010, in Appeal No.56(K)(CS) of 2008, passed by Federal Service Tribunal, Karachi (in short the Tribunal), whereby the said appeal, preferred by respondent Muhammad Javed against his dismissal from service under the Removal from Service (Special Powers) Ordinance 2000, vide order dated 12-3-2008, after no response of his departmental appeal dated 27-3-2008, was allowed, consequently order dated 12-3-2008 was set aside and his reinstatement in service was ordered, treating the intervening period of his absence as leave of the kind due.

2. Mr. Ashiq Raza, learned Deputy Attorney-General for the appellant, after brief narration of relevant facts, contended that respondent was involved in a murder case arising out of F.I.R.

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No.76 of 2004, Police Station Gharibabad Cantt. Hyderabad, which was subsequently compromised upon payment of diyat amount to the opposite party, therefore, it shall be equated as his conviction in the said crime, but the Tribunal ignoring this material aspect of the case, has ordered his reinstatement in service. He, however, did not dispute that the period of his absence from duty with effect from 3-9-2004 to 6-3-2005, which basically formed basis of such departmental action, was treated by the competent authority as extraordinary leave.

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

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

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

M.H./D-11/SC

Appeal dismissed.