

| Sl. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|----------------------------|--|
| 1 | 2 | 3 |
| | 04.11.2019 | <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>AT CAMP COURT SWAT</u></p> <p style="text-align: center;"><u>Appeal No.1439/2018</u></p> <p style="text-align: center;">Date of Institution ... 29.11.2018 Date of Decision ... 04.11.2019</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Javed Iqbal Senior Clerk Government Degree College Chakesar, District Shangla ----- Appellant</p> <p style="text-align: center;"><u>Versus</u></p> <p style="text-align: center;">The Secretary Higher Education Department Government of Khyber Pakhtunkhwa Peshawar and (01) other ----- Respondents</p> <p style="text-align: center;">Muhammad Amin Khan Kundi.....Member(J) Mr. Hussain ShahMember (E)</p> <p><u>JUDGMENT</u></p> <p><u>Mr. HUSSAIN SHAH:-</u>Learned counsel for the appellant and Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present.</p> <p>2. The appellant is a senior clerk in the respondent department. A major penalty of dismissal from service was imposed upon him on 01.03.2017 on the grounds of the sentence of imprisonment imposed by the Session Judge Court Swat in a criminal case. On 14.03.2017 the appellant was acquitted by the Dar-ul-Qaza Swat Bench of the Peshawar High Court. After being acquitted by the High Court the penalty of dismissal from service was withdrawn by respondent No.2 on 01.06.2017. On 15.08.2018 the appellant preferred a departmental appeal for the payment of salary for the period from 01.07 2017 to 31.05.2017 which was not decided within stipulated period of time hence the instant service appeal on 29.11.2018 with the prayers that the responding authorities may be directed to release the salary to the appellant for the period of 01.03.2017 till 31.05.2017.</p> |

3. The learned Counsel of the appellant contended that the imposition of major penalty of dismissal was imposed by Respondent No 2 on the ground of one year imprisonment and PKR. 5000/- awarded in the narcotics trafficking case by Session/Zilla Qazi Court Swat on 06.01.2016. The appellant was released on bail since 14.01.2016 by the Hon'ble High Court. The Hon'ble High Court Peshawar, Mingora Bench, Dar-ul-Qaza Swat acquitted the appellant in its judgment dated 14.03-2017. Pursuant to the acquittal in the criminal case the Respondent No. 2 withdrew the order of dismissal, of dated 01.03,2017, from service on 31.05.2017. Further contended that the dismissal order of the Respondent No.2 dated 01.03.2017 has been Withdrawn vide order dated 31.05.2017 issued on 01.06.2017 which means that the order of dismissal from service by the competent authority has no effect as regarding the continuation of service and the salary of the appellant for the intervening period of 01.03.2017 to 31.05.2017, between the two (02) orders hence the appellant is entitled for the relief/prayer in the appeal. He relied upon the judgment of August Supreme Court of Pakistan reported on 2013 SCMR 752 and the judgment of Punjab Service Tribunal reported on 2008 PLC (C.S) 301.

4. The learned Assistant Advocate General contested the facts, grounds of the appeal and arguments of the learned counsel for the appellant and stated that the appellant did not performed his duties during the termination period w.e.f 01.03.2017 to 31.05.2017 as such he is not entitled to the salary for the said period as per the relevant rule and according to the preposition held by the Supreme Court of Pakistan in its judgment 2003 SCMR 228 which is that when there is no work there is no pay. Further stated that the major penalty of dismissal from service order dated 01.03.2017 was issued consequent to the judgment of the

Session/Zilla Qazi/Judge Special Court Swat in Criminal case of Trafficking of Narcotics. He pleaded that in view of the dismissal from the service the appellant did not performed duties hence the Hon'ble Supreme Court judgment reported on 2003 SCMR 228 the appellant is not entitled for the salary for the period he remained dismissed from service hence the appeal may be dismissed with appropriate costs.

5. Arguments heard. File perused.

6. Perusal of record reveals that the appellant was serving as senior clerk in the Higher Education Department. He was involved in criminal case for trafficking of Narcotics. The appellant was convicted by Trial court and sentenced for one year imprisonment and also to pay Rs. Five Thousands (5000). Therefore on the basis of aforesaid conviction the competent authority imposed major penalty of dismissal from service under rules 8 (a) of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Disciplinary) rules 2011 vide order dated 01.03.2017. The appellant challenged the aforesaid conviction in the worthy Peshawar High Court Mingora Bench Dar-ul-Qaza Swat and the worthy High Court accepted his appeal and acquitted him from the charge leveled against him vide detailed judgment dated 14.03.2017, on acquittal the competent authority withdrawn his dismissal from service order dated 01.03.2017 vide order dated 01.06.2017. The appellant filed departmental appeal for release of salary with effect from 01.03.2017 to 31.05.2017 to respondent No.2 i.e. Director Higher Education Department Government of Khyber Pakhtunkhwa on 15.08.2017 but the same was not respondent within a statutory period. Hence filed the present appeal. Admittedly the service appeal is to be preferred against original or final order of the respondent department under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 but in the present service appeal neither any original nor any

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final order has been passed by the department regarding the release of salary of the appellant therefore we deem it appropriate to direct the respondent No.2 to decide departmental appeal dated 15.08.2017 through speaking order particularly within a period of sixty (60) days after receipt of copy of this judgment strictly in accordance with rules and also communicate the same to the appellant and thereafter if the appellant was aggrieved from the said order. He is at liberty to avail proper forum subject to all legal objections. The appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Amin Khan Kundi)

Member
At Camp Court Swat



(Hussain Shah)
Member
At Camp Court Swat

ANNOUNCED

04.11.2019

08.10.2019

Counsel for the appellant and Mian Amir Qadir, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 04.11.2019 for arguments before D.B at Camp Court Swat.



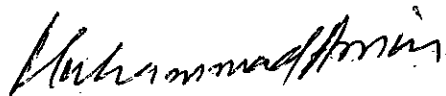
(Hussain Shah)
Member
At Camp Court Swat



(Muhammad Amin Khan Kundi)
Member
At Camp Court Swat

04.11.2019

Learned counsel for the appellant and Mr. Riaz Khan Painsakhel learned Assistant Advocate General present. Vide our detail judgment of today of this Tribunal placed on file, we deem it appropriate to direct the respondent No.2 to decide departmental appeal dated 15.08.2017 through speaking order particularly within a period of sixty (60) days after receipt of copy of this judgment strictly in accordance with rules and also communicate the same to the appellant and thereafter if the appellant was aggrieved from the said order. He is at liberty to avail proper forum subject to all legal objections. The appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Amin Khan Kundi)
Member
At Camp Court Swat

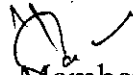


(Hussain Shah)
Member
At Camp Court Swat

ANNOUNCED
04.11.2019

07.05.2019


Learned counsel for the appellant and Mr. Mian Amir Qadir learned District Attorney alongwith Khushi Muhammad SO present. Written reply submitted. To come up for rejoinder, if any, and arguments on 02.07.2019 before D.B at Camp Court, Swat.


Member
Camp Court, Swat.

02.07.2019

Clerk to counsel for the appellant present. Mian Amir Qadir, DDA for respondent present. Arguments could not be heard due to general strike of the Bar. Adjourned Case to come up for arguments on 03.09.2019 before D.B at camp court Swat.


Member


Member
Camp Court Swat

03.09.2019

Counsel for the appellant present. Mian Amir Qadir, DDA alongwith Mr. Qazi Muhammad Ayaz, Litigation Officer for respondents present. Learned counsel for the appellant submitted rejoinder on behalf of the appellant which is placed on file. To come up for arguments on 08.10.2019 before D.B at camp court Swat.


Member


Member

08.02.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Senior Clerk) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act. 1974 for release of his salaries for the period from 01.03.2017 till 31.05.2017.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 02.04.2019 before S.B at Camp Court Swat.

Appellant deposited
Security & Process Fee


Member

Camp Court, Swat

02.04.2019

Learned counsel for the appellant present. Written reply not submitted. Irfan AD representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 07.05.2019 before S.B at Camp Court Swat.


Member

Camp Court, Swat.

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1439 /2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 29/11/2018 | <p>The appeal of Mr. Javiad Iqbal presented today by Mr. Azizur-Rehman 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;"><i>[Signature]</i> REGISTRAR 29/11/18</p> |
| 2- | 12-12-2018 | <p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>06-02-2019</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> |
| | 06.02.2019 | <p>Clerk to counsel for the appellant present and seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on <u>08.02.2019</u> before S.B at camp Court Swat.</p> <p style="text-align: right;"><i>[Signature]</i> Member Camp Court Swat.</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1439 of 2018

Javid Iqbal Senior Clerk Government Degree College Cakesar, District Shangla.

...Appellant

VERSUS


The Secretary Higher Education Department Government of Khyber
Pakhtunkhwa, Peshawar and Another.

...Respondents

INDEX

| S # | Description of documents | Annexure | Pages |
|-----|---------------------------------------|----------|-------|
| 1. | Memo of Appeal | | 1-5 |
| 2. | Affidavit | | 6 |
| 3. | Addresses of the parties | | 7 |
| 4. | Copy of the Order dated 01-03-2017 | A | 8 |
| 5. | Copy of the Judgment dated 14-03-2017 | B | 9-18 |
| 6. | Copy of the Order dated 01-06-2017 | C | 19 |
| 7. | Copy of the Departmental Appeal | D | 20-21 |
| 8. | Vakalat Nama | | 22 |

Appellant Through

 Aziz-ur-Rahman
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,
Mingora Swat, Cell 0333 929 7746

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1439 of 2018

Javid Iqbal Senior Clerk Government Degree College
Cakesar, District Shangla.

Khyber Pakhtunkhwa
...Appellant Service Tribunal

Diary No. 1688

Dated 29-11-2018

VERSUS

1. The Secretary Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar.

...Respondents

SERVICE APPEAL UNDER SECTION 4
OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR
THE RELEASE OF THE SALARY FOR
THE PERIOD FROM 01-03-2017 TILL 31-
05-2017, FOR WHICH THE APPELLANT
HAS FILED A DEPARTMENTAL
APPEAL, BUT THE SAME IS NOT
RESPONDED DESPITE THE LAPSE OF
STATUTORY PERIOD OF TIME.

Filed to-day

Registrar

29/11/18

Prayer:

That on acceptance of this service appeal the
salaries for the period from 01-03-2017 till 31-05-2017
may very kindly be ordered to be released.

Respectfully Sheweth:

Facts:

- 2
- i. That the appellant is presently a Senior Clerk in the respondent department and is performing his duties to the best of his abilities without any complaint either by the authorities or the public.
 - ii. That the appellant was falsely inducted in a criminal case for being involved in trafficking of narcotics, on the basis of which major penalty of Dismissal from Service was imposed upon the appellant vide order dated 01-03-2017, copy of which was received by the appellant on 22-03-2017. Copy of the order dated 01-03-2017 is enclosed as Annexure "A".
 - iii. That initially the appellant was sentenced with one year of imprisonment along with fine of PKR 5000/-, which order was challenged before the Honourable Peshawar High Court, Mingora Bench, Dar-ul-Qaza Swat in Cr.A. No. 3-M/2016 which was decided on 14-03-2017 and the appellant was acquitted. Copy of the Judgment is enclosed as Annexure "B".
 - iv. That as a result of the acquittal of the appellant in the criminal case the termination order dated 01-03-2017 was cancelled vide order Endst: No. 15082-84 dated 01-06-2017 from the date of issue and thus the appellant remained in service without any break. Copy of the order dated 01-06-2017 is enclosed as Annexure "C".
 - v. That as the order of termination is cancelled and there is no break in the service of the appellant,

moreover there is no willful absence on the part of the appellant as well.

- vi. That the appellant being acquitted on one hand while on the other hand his order of termination issued by the respondent department is canceled by the department itself, thus the appellant has the right to be paid the salaries for the period.
- vii. That feeling aggrieved the appellant preferred a departmental appeal, but the same was not responded to despite the lapse of statutory period of time, hence this service appeal for the redressal of the grievances on the following grounds. Copy of the departmental appeal is enclosed as Annexure "D".

Grounds:

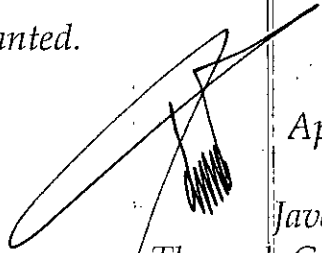
- a. That the appellant was illegally kept away from his office by bulldozing all the law, rules, without adopting the due course of law, which is never approved by the law.
- b. That it is the vested right of every employee to be paid salary and the denial of which is amounting to forced labor and denial of the vested rights as well.
- c. That the appellant has not been treated in accordance with the law and rules on the subject as when there is no dismissal order in the field so the denial of the salary is against the law and rules on

the subject emanating from the commands of the constitution.

- d. That the appellant has been discriminated with as all the employees are being paid salaries while in service whereas the appellant has been denied the same and thus is being discriminated.
- e. That the department firstly terminated the service of the appellant in a very arbitrary manner by bulldozing all the relevant laws and rules while the same time making good their mistake deprived the appellant of his vested rights to his utter detriment.
- f. That the appellant has not committed any act of commission or omission which may constitute any offence under any law.
- g. That the appellant has never absented himself willfully and it was due to the lapse and colorful exercise of the authority by the respondents for which the appellant is made a scape goat and that too to his detriment.
- h. That the appellant has never been gainfully employed anywhere for the whole period he was kept away from his office.

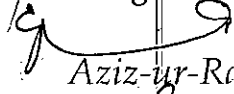
It is, therefore, very respectfully prayed that on acceptance of this service appeal the respondents may very kindly be directed to release the salaries of the appellant for the period of 01-03-2017 till 31-05-2017.

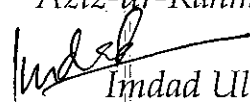
Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.



Appellant

Javed Iqbal
Through Counsels,

 Aziz-ur-Rahman


Imdad Ullah
Advocates Swat

6

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Javid Iqbal Senior Clerk Government Degree College
Cakesar, District Shangla.

...Appellant

VERSUS

The Secretary Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar and
Another.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this service appeal are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.

Deponent

Javi Iqbal.

ATTESTED

UR

UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Swat.

No. 359 Date 28/11/18

7

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2018

Javid Iqbal Senior Clerk Government Degree College
Cakesar, District Shangla.

...Appellant

VERSUS

The Secretary Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar and
Another.

...Respondents

ADDRESSES OF THE PARTIES

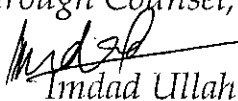
Appellant:

Javid Iqbal Senior Clerk Government Degree College
Cakesar, District Shangla.

Respondents:

1. The Secretary Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director Higher Education Department
Government of Khyber Pakhtunkhwa, Peshawar.

Appellant

Through Counsel,

Imdad Ullah

Advocate Swat



DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA, Annexure A
KHYBER ROAD PESHAWAR

Phone # 091-9210242, 9211025/Fax # 9210215

Dated Peshawar the 01/03/2017

8

ORDER

Consequent upon the judgment of Session Judge/Zila Qazi/Judge Special Court, Swat. The Competent Authority is pleased to "Dismiss the services" of Mr. Javid Iqbal Senior Clerk, GGDC, Khawaza Khela(Swat) in exercise of the powers conferred under Rules-8(a) of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

Endst.No

6046-50

DIRECTOR, HIGHER EDUCATION

Copy of the above is forwarded to the.

- 1) Principal, GGDC, Khawaza Khela(Swat) w/r to her letter NO.324-25 dated 28.12.2016.
- 2) District Police Officer, Swat w/r to his letter No.734/GB dated 16.01.2017.
- 3) SDPO, Khawazakhela.
- 4) District Accounts Officer concerned.
- 5) Mr. Javid Iqbal, Senior Clerk, GGDC, Khawaz Khela(Swat)

S. Bahi
1/3/17

DY: DIRECTOR (ESTABLISHMENT)

*I Received the order
from the Principal GGDC
Khawaza Khela Swat
on; 22/03/2017*

Javid Iqbal
[Signature]
108/2017

Attested

[Signature]
Advocate

JUDGMENT SHEET

Annexure B

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

9

Cr.A. No. 3-M/2016

JUDGMENT

Date of hearing: 14.3.2017.

Appellant:- (Javaid Iqbal) by Mr. Murad Akmal,
Advocate.

Respondents:- (the State & 1 another) by Mr. Rafiq
Ahmad, Asstt: Advocate General for the State.

MOHAMMAD IBRAHIM KHAN, J.- There is under serial No. 8 of the judgment contained in CNSA case No. 20 of the year 2014 titled "the State vs Javaid Iqbal" for determination points (i) to (x) decided by the learned Sessions Judge/Zila Qazi/Judge Special Court Swat vide his judgment dated 06.01.2016 held the accused/Appellant to have committed the offence falling under section 9 (B) of the Control of Narcotics Substance Act 1997 for the recovery effected from his personal possession of 500 grams 'Charas'. Thus he was convicted and sentenced to one year rigorous imprisonment with imposition of fine of Rs. 5,000/-, in default of the payment the accused/Appellant have to further undergo 15 days S.I. However, benefit of Section 382-B Cr.P.C was extended to him.

Attested

Murad
Advocate

ATTESTED

[Signature]

EXAMINER
Peshawar High Court Bench
Mingora/Dar-ul-Qaza, Swat.

2. These findings were assailed in this Criminal Appeal bearing No. 3-M of 2016 for setting aside the conviction and sentence in view of the grounds taken from (a) to (m) as set-out in the memorandum of this appeal.

3. On 10.11.2014 the learned Sessions Judge/Zila Qazi/Judge Special Court Swat charge-sheeted this accused/Appellant under the allegations that on 09.9.2014 at 1600 hours on the road 'Rawinda' (رونده) Hingaro Dehrai which fall within the criminal jurisdiction of Police Station Banr, on his personal search 500 grams 'Charas' was recovered, thus accused/Appellant is said to have committed an offence under section 9 (B) CNSA. Besides the accused/Appellant has earlier been involved in similar nature of case bearing FIR No. 434 dated 22.7.2014 under section 4 PHO registered in the same Police Station, therefore he is liable to punishment under section 24 of the PHO.

4. These allegations were not acceptable to the accused/Appellant, hence trial was claimed. In order to bring home charges the prosecution examined Muhammad Anwar Khan, SI/SHO PS Banr as PW-1, who is stated to have recovered 500 grams 'Charas' from the person of the accused/Appellant, this stuff was

placed in the pocket of his undergarment (دٲٲان). Out of which 5 grams were separated for chemical analysis while 495 grams were sealed in another parcel (Ex. P-1). The recovered *Charas* was taken into possession vide recovery memo Ex. PW-1/1. Then there is statement of PW-2 Constable Hus-nul Mahab No. 298, who is witness to the recovery memo Ex. PW-1/1. PW-3 is Sohrab Khan HC No. 1147 PS Banr to whom different parcels were handed over: He has sent parcel No. 1 to the FSL for chemical analysis while rest of the parcels were consigned to '*Mall Khana*' (مال خانہ). PW-3 is Ayaz Ahmad ASI PS Ghaligay who is author of Ex. PA which is '*Murasila*' later on sent to the PS concerned for lodging of the First Information Report. PW-5 is Yascen Constable No. 13 PS Banr who had handed over the parcel containing 5 grams *Charas* to the FSL Peshawar. PW-6 is Nijad Khan SI/CI PS Banr at present posted as SHO at Kanju *Chowki* who has conducted the investigation, prepared site plan Ex. PW-6/1, recorded statements of the PWs under section 161 Cr.P.C and has issued '*Parwana*'/notice in respect of previous conviction of the accused/Appellant which is placed on record as Ex. PW-6/2. He has produced the accused for obtaining judicial remand through an application Ex. PW-6/3 and on receipt of the FSL

ATTESTED
 Examiner
 Peshwar High Court Bench
 Wazirabad, Dera Ismail Khan, Swat

(Signature)

Attested
(Signature)
Advocate

"Nawab"

report/opinion the same has been placed on record as Ex. PW-6/4. On completion of the investigation, complete *challan* has been submitted to the SHO concerned for onward submission to the Court.

5. After closure of the prosecution evidence, the accused/Appellant was examined under section 342, Cr.P.C, wherein he denied the charges, posed innocence and stated to have falsely been implicated in the case. He however wished to produce no defence, nor to examine himself on oath as required under section 340(2), Cr.P.C. After hearing the parties at length the decision under conviction for the sentences was delivered.

6. Having heard arguments of learned counsel for the accused/Appellant and learned A.A.G. for the State, record with their valuable assistance gone through.

7. In the case in hand, no doubt there is recovery of 500 grams '*Charas*' and the accused/Appellant has been charged under section 9 (B) of the Control of Narcotics Substance Act 1997, but one of the important prosecution witness by the

21

Attested
[Signature]
Advocate

name Muhammad Anwar Khan SI, who has initially 13
searched the accused/Appellant for recovery of 500
grams 'Charas' clearly admitted as under:

یہ درست ہے کہ ملازم سابقہ منشیات کے مقدمات میں پولیس کو
کو مطلوب نہ تھا۔

8. It is of much significance that under
second head of charge on the basis of previous
conviction of the accused/Appellant in alike nature of
case bearing FIR No. 434 dated 22.7.2014, he was held
to be punished under section 24 PHO. This statement
when further put in *juxta* position with the statement of
PW-6 Nijad Ali, whereby he has stated that the
accused/Appellant has previously been convicted in
other criminal case registered against him, but in cross-
examination he made an admission in the following
words:

میں نے اپنے تفتیش میں ملازم کے سابقہ سزایابی کی نسبت نہ ایف
آئی آر مسل پر لگا یا ہے اور نہ ہی مجاز عدالت کے حکم سزایابی
شامل مسل کیا ہے۔

9. Thus there is grave legal flaw in the
statements of the prosecution witnesses to this effect
particularly when the accused/Appellant was examined

"Nawab"

Attested
[Signature]
Advocate

under section 342 Cr. P.C, he was put a question No. 2

as under:-

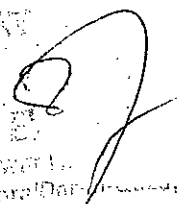
شہادت استغاثہ کے مطابق تم ملزم موجودہ مقدمہ سے پہلے بھی
منشیات کے ایک اور مقدمہ علت نمبر 434 مورخہ 22.7.14
بجرم PHO 4 تھانہ بنڑ سزایاب ہو چکے ہو۔ جس کے متعلق
پروانہ اور محررہ رپورٹ Ex. PW-6/2 ہے، اس بارے میں
تم کیا کہتے ہو؟

In response to this question the answer has

come as below:-

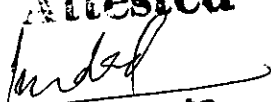
یہ غلط ہے میرے خلاف کوئی ایف آئی آر درج نہیں ہو ابے
اور نہ میں سابقہ سزایافتہ ہوں۔ نیز رپورٹ محررہ سرے سے
مظہر شدہ نہ ہے اور نہ ہی ایف آئی آر یا کوئی متعلقہ مجاز
عدالت حکم صفحہ مسل پر موجود ہے، بدین وجہ میرے خلاف
بطور شہادت استعمال نہیں ہو سکتا۔

10. If at all the accused/Appellant was
previously booked in such like recovery of narcotics
from his personal possession vide FIR No. 434 dated
22.7.2014 registered at the same police station, it is
beyond understanding as to how record pertaining to
the said case has not been exhibited during trial. Had it
been produced then the accused/Appellant should have
never denied the existence of this fact, meaning
thereby, that either the Investigating Officer has
developed soft corner for the accused/Appellant by
giving him clean chit to escape from conviction being


Advocate



"Nawab"

Attested

Advocate

Head Clerk/Government Official in the Education Department or it was lethargicness on the part of prosecution.

11. It is also a matter of much importance that had there been any previous history of the accused/Appellant then the following mentioned admission would have never come on the part of PW-1 Muhammad Anwar Khan SI, who being an eyewitness to the very recovery memo in shape Ex. PW-1/1 on the basis of which the whole edifice of the prosecution lies.

میں نے اپنے تفتیش میں ملزم کے سابقہ سزایابی کی نسبت نہ ایف
آئی آر مسل پر لگایا ہے اور نہ ہی مجاز عدالت کے حکم سزایابی
شامل مسل کیا ہے۔

12. One another important piece of evidence which has altogether never been considered to bring home charges against the accused/Appellant as undergarment (بنیان) ought to have been taken into possession. There is no recovery memo available on file as to justify that the recovery effected from the pocket of the said undergarment (بنیان) has either been

ATTESTED
Examiner
Peshawar High Court Bench
Mingora/Dar-ul-Qaza, Swat

taken into possession, so, this aspect of the case also give a chance to the accused/Appellant to escape from the recovery effected from his person.

13. Moreover, as per site plan Ex. PW-6/1 the place on occurrence is admittedly a populated area, then the prosecution was bound to have associated some independent or private witnesses from the locality with the recovery process, but this vital aspect of the case also gone bagging due to lack of interest in the investigation proceedings on the part of prosecution.

14. There is no better opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons alongwith guilty one by the prosecution. Otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the

ATTESTED

Examiner

Peshawar High Court Bench
Mingora Bar of Qaza, Swat.

Attested
Purdas
Advocate

accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of "Riaz Masih alias Mithoo Vs. State" (NLR 1995 Cr.SC 694).

15. In the above backdrop, we after reappraisal of entire evidence are of the firm view that the prosecution case against the Accused/ appellant has not been proved beyond reasonable doubt and the judgment of learned trial Court is based on wrong appreciation of evidence and the law on the subject. Hence, we accept this appeal and set aside the impugned judgment rendered by the learned ^{no} trial Court. Ergo the accused/Appellant is acquitted of the charge leveled against him.

16. Since accused/Appellant has already been released on bail by this Court within the meaning of Section 426 Cr.P.C on 14.01.2016.

"Nawab"

Attested

Advocate

therefore his sureties are also discharged from the liability of bail bonds.

Sd. Musarat Hllali

Sd. Mohammed Ibrahim Khan

Announced.

Dt: 14.03.2017

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08/04/17
W/R

2182

00P/11

27-03-17

08-04-17

14P

28

08-04-17

... to be true copy

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08-04-17

Attested

[Handwritten signature]

Advocate



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

19

Phone # 091-9210242, 9211025/Fax # 9210215

Dated Peshawar the 1/06/2017

CANCELLATION

In pursuance of the judgment dated 14.03.2017 of Peshawar High Court Peshawar Mingora Bench (Dar-ul-Qaza) Swat, the dismissal from service of Mr. Javid Iqbal, Senior Clerk, Govt. Girls Degree College, Khawaza Khela (Swat) issued vide this office order bearing endst.No. 6046-50 dated 01.03.2017 is hereby withdrawn.

Endst.No. 15082-84

DIRECTOR, HIGHER EDUCATION

Copy of the above is forwarded to the.

- 1) Principal, Govt. Girls Degree College, Khawaza Khela (Swat).
- 2) District Accounts Officer, Swat.
- 3) Mr. Javid Iqbal, Senior Clerk, Govt. Girls Degree College, Khawaza Khela (Swat)

BY: *[Signature]*
DIRECTOR ESTABLISHMENT

Attested
[Signature]
Advocate

To:

The Director
Higher Education
Khyber Pakhtunkhwa,
Peshawar.

Annexure ²⁰ D

20

Subject: APPLICATION FOR RELEASE OF THREE MONTHS
SALARY WITH EFFECT FROM 01.03.2017 TO 31.05.2017

Dear Sir,

It is submitted that I have been dismissed from service on 01.03.2017 and was reinstated in service on 01.06.2017 with all back benefits by your good office (copies of dismissal and reinstatement orders are attached). The outstanding amount I have been received but only the salary for the period mentioned in the subject has not yet been paid to me.

It is added here that the dismissal order has been communized to me on 22.03.2017 but I was unaware about my dismissal order. From 01.03.2017 to 22.03.2017 I have performed my duty regularly and your honour can check the attendance register and also bio metric attendance.

The Principal of Govt. Girls Degree College Khwazakhela Swat has sent to your honour letter No. 972/PF Javed Iqbal Senior clerk dated 16.07.2018, where she has wrote that Javed Iqbal has not performed duty for the period from 01.03.2017 to 31.05.2017. But it is wrong. I request your honour to check private fund register, which I have maintained

Honourable sir prior this I have sent to your honour an appeal on 19.07.2017, but the response of the same has not yet been received by your office. Subsequently I sent to your honour another appeal on 15.05.2018, but response of the same has also not given to me till date.

Now I am sending this appeal and enclosing herewith all the relevant documents. My all back benefits have been approved by your good office, so I deserve person to receive all back benefits.

Moreover your honour when sending letter in this connection, then for my information copy of the same may be endorsed to me. Because the Principal is now showing me the letter.

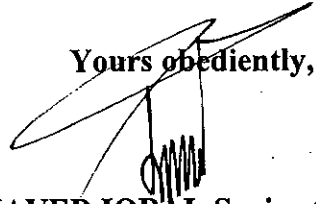
Attested
[Signature]
Advocate

It is stated here that I have not received the charcoal payment for the year 2018 as yet. If the principal has returned the charcoal amount to the government then show the same to us otherwise make payment of charcoal to me.

Honourable sir if you have not decided my this case, then I shall go to service tribunal / Peshawar High Court against the Principal of Govt. Girls Degree College Khwazakhela Swat and Director Higher Education Khyber Pakhtunkhwa Peshawar.

Thanks.

Yours obediently,



JAVED IQBAL Senior Clerk,
Govt. Girls Degree College,
Khwazakhela Swat.
Mob. 03465675100

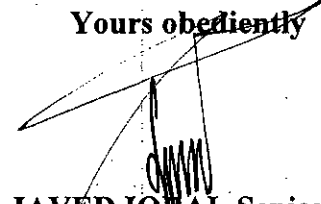
Encl: as above

Dated 15/08/2018


Copy for information forwarded to:

1. Secretary Higher Education Khyber Pakhtunkhwa Peshawar.
2. Principal Govt. Post Graduate Jahanzeb College Saidu Sharif Swat.
3. Principal Govt. Girls Degree College Khwazakhela, Swat.

Yours obediently



JAVED IQBAL Senior Clerk,
Govt. Girls Degree College,
Khwazakhela Swat.
Mob. 03465675100

Attested

Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

22

In the matter of:-

Javid Iqbal Appellant

VERSUS

The Govt. K.A. through
Secretary HED and Amolts Respondents

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

AZIZ-UR-RAHMAN and IMDAD ULLAH

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 17 day of 11 2018.

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk

G.T. Road Mingora, District Swat.

Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT

SA No. 1439/2018

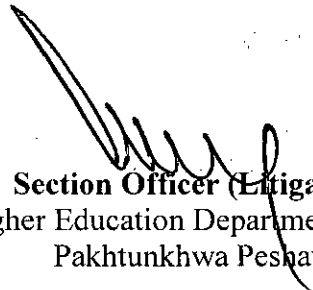
Javed Iqbal Appellant

VS

Govt. of Khyber Pakhtunkhwa & others Respondents

INDEX

| S No. | Description of Documents | Annexure | Pages |
|-------|---|----------------|-------|
| 1. | Joint Parawise comments | | 1 |
| 2. | Affidavit | | 2 |
| 3. | Directorate of Higher Education cancellation Order dated 01-06-2017 | Annex-A | 3 |
| 4. | Copy of Supreme Court Judgment (2003 SCMR 228) | Annex-B | 4-6 |


Section Officer (Litigation)
Higher Education Department Khyber
Pakhtunkhwa Peshawar.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT, SWAT

SA#1439/2018

Javid Iqbal Appellant
Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education Department
And others..... Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 AND 2

Respectfully Sheweth: -

Preliminary Objections: -

1. That the Appellant has got neither cause of action nor locus standi to file the instant service appeal.
2. That the Appellant has not come to the Honourable Tribunal with clean hands and is trying to conceal material facts.
3. That the instant service appeal is hit by doctrine of laches.
4. That the Appellant is estopped by his own conduct to file the instant service appeal.

Facts: -

1. Correct
2. Correct to the extent that a major penalty of removal from service was imposed upon the appellant vide order dated: 01-03-2017.
3. Correct
4. Correct to the extent that as a result of acquittal of the appellant in the criminal case, the termination order dated: 01-03-2017 was cancelled vide order dated: 01-06-2017 (copy attached as **Annex-A**)
5. Incorrect. That the appellant did not perform his duties during the termination period with effect from 01-03-2017 to 31-05-2017, thus according to the rules, he is not entitled to the salary for the said period. Moreover the Supreme Court of Pakistan held in its judgment when there is no work, there is no pay. (**Copy attached as Annex-B**)
6. Incorrect as already explained in the preceding paras.
7. Needs no comments.

Grounds: -

- A. Incorrect as already explained in the preceding paras of facts.
- B. Needs no comments.
- C. Incorrect as already explained in the preceding paras of facts.
- D. Incorrect as already explained in the preceding paras of facts.
- E. Incorrect as already explained in the preceding paras of facts.
- F. Needs no comments.
- G. Incorrect as already explained in the preceding paras of facts.
- H. Incorrect as already explained in the preceding paras of facts.

Prayers: -

It is, therefore, humbly prayed that the instant Service appeal is devoid of merit, hence may graciously be dismissed with appropriate costs.



Secretary

Higher Education, Archives & Libraries
Department, Khyber Pakhtunkhwa
Respondent No. 01



Director,

Higher Education Department
Respondent No. 02

3/25/19.

2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT

SA No. 1439/2018

Javed Iqbal.....Appellant

VS

Govt. of Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, Khush Muhammad Khan, Section Officer (Litigation), Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the Parawise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.


Deponent

CNIC No. 17101-0298815-3

Annexure *[Signature]*



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

19

Phone # 091-9210242, 9211025/Fax # 9210215
Dated Peshawar the 1/06/2017

CANCELLATION

In pursuance of the judgment dated 14.03.2017 of Peshawar High Court Peshawar Mingora Bench (Dar-ul-Qaza) Swat, the dismissal from service of Mr. Javid Iqbal, Senior Clerk, Govt. Girls Degree College, Khawaza Khela (Swat) issued vide this office order bearing endst.No. 6046-50 dated 01.03.2017 is hereby withdrawn.

Endst.No. 15082-84

DIRECTOR, HIGHER EDUCATION

Copy of the above is forwarded to the.

- 1) Principal, Govt. Girls Degree College, Khawaza Khela (Swat).
- 2) District Accounts Officer, Swat.
- 3) Mr. Javid Iqbal, Senior Clerk, Govt. Girls Degree College, Khawaza Khela (Swat)

[Signature]
BY: DIRECTOR (ESTABLISHMENT)

Attested
[Signature]
Advocate

8/10

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1439/2018

Javid Iqbal.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Higher Education Department and Others.

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless and against the law, rules and Shariah, hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this honourable Tribunal well within time with clean hands and this honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

1. Para 1 of the comments being admission, hence needs no comments.
2. Para 2 of the comments also being admission needs no reply.

3. Para 3 of the comments also needs no reply being admission.
4. Para 4 of the comments also amounts to admission, hence needs no comments.
5. Para 5 of the comments as drafted is incorrect, whimsical and misconstrued, moreover the same is against the law and rules on the subject, thus the same is denied.
6. Para 6 of the comments is vague, evasive and devoid of merits, thus is denied as well.
7. Para 7 of the comments also being admission, hence no comments.

On Grounds:

- A. Ground A of the comments as drafted is vague, evasive and devoid of merits thus the same is denied.
- B. Ground B of the comments amounts to admission, hence needs no comments.
- C. Ground C of the comments as drafted also vague, evasive and devoid of merits, thus the same is denied as well.
- D. Ground D of the comments as drafted also is vague, evasive and devoid of merits, thus needs no reply.

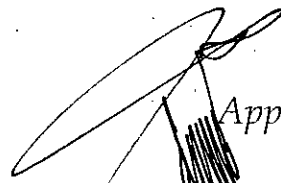

E. Ground E of the comments as drafted also is denied being vague, evasive and devoid of merits.

F. Ground F of the comments amounts to admission, hence no comments.

G. Ground G of the comments also needs no comments being vague, evasive and devoid of merits as well.

H. Ground H of the comments also being devoid of merits, vague and evasive, thus needs no reply.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.


Appellant
Javid Iqbal
Through Counsel,

Imdad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1439/2018

Javid Iqbal.

...Appellant

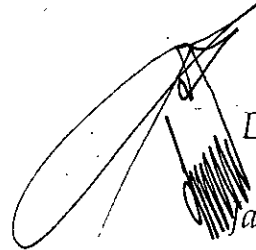
VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Higher Education Department and Others.

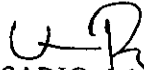
...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.


Deponent
Javid Iqbal

ATTESTED


UMAR SADIQ Advocate,
OATH COMMISSIONER
Distt: Courts Syvat
No. 40 Date 2/9/19

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1439/2018

Javid Iqbal.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Higher Education Department and Others.

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless and against the law, rules and Shariah, hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this honourable Tribunal well within time with clean hands and this honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

1. Para 1 of the comments being admission, hence needs no comments.
2. Para 2 of the comments also being admission needs no reply.

3. *Para 3 of the comments also needs no reply being admission.*
4. *Para 4 of the comments also amounts to admission, hence needs no comments.*
5. *Para 5 of the comments as drafted is incorrect, whimsical and misconstrued, moreover the same is against the law and rules on the subject, thus the same is denied.*
6. *Para 6 of the comments is vague, evasive and devoid of merits, thus is denied as well.*
7. *Para 7 of the comments also being admission, hence no comments.*

On Grounds:

- A. *Ground A of the comments as drafted is vague, evasive and devoid of merits thus the same is denied.*
- B. *Ground B of the comments amounts to admission, hence needs no comments.*
- C. *Ground C of the comments as drafted also vague, evasive and devoid of merits, thus the same is denied as well.*
- D. *Ground D of the comments as drafted also is vague, evasive and devoid of merits, thus needs no reply.*

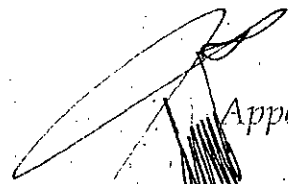
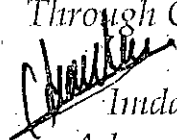
E. Ground E of the comments as drafted also is denied being vague, evasive and devoid of merits.

F. Ground F of the comments amounts to admission, hence no comments.

G. Ground G of the comments also needs no comments being vague, evasive and devoid of merits as well.

H. Ground H of the comments also being devoid of merits, vague and evasive, thus needs no reply.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.


Appellant
Javid Iqbal
Through Counsel,

Indad Ullah
Advocate Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1439/2018

Javid Iqbal.

...Appellant

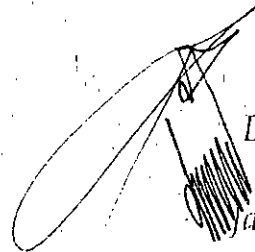
VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Higher Education Department and Others.

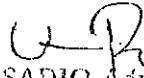
...Respondents

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knowledge and belief and nothing has either been
misstated or kept concealed before this Honourable
Tribunal.


Deponent
Javid Iqbal

ATTESTED


UMAR SADIQ, Advocate,
OATH COMMISSIONER

Distt: Courts Swat
No. 40 Date: 2/9/19

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 2021 /ST

Dated 19 / 11 / 2019

AWAR
19

To


The Director Higher Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1439/2018; MR. JAVED IOBAL.

I am directed to forward herewith a certified copy of Judgement dated 04.11.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.