

Reply on Grounds

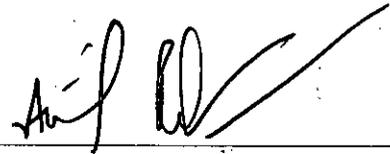
8. Incorrect. The appellant will be promoted to the next higher pay scale in his cadre subject to availability of post under promotion quota by the department concerned.
- A. Incorrect. The appellant has been treated strictly in accordance with law as well as policy of the Provincial Government.
- B. Incorrect. As discussed in Paras 4 & 7 of the facts and Para A of the grounds.
- C. Incorrect. As discussed in Paras 4 & 7 of the facts and Para A of the grounds.
- D. Incorrect. The appellant has never been discriminated and is treated strictly in accordance with Law regulating his services.
- E. The additional grounds if produced by the appellant will be replied at the time of arguments.

The Honorable Tribunal may graciously dismiss the appeal of the appellant with cost.



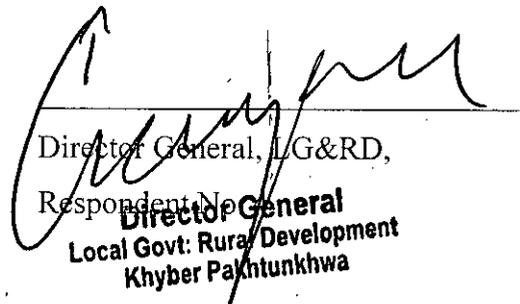
Secretary, LG, E&RDD
Respondent No. 2

(SECRETARY)
Govt. of Khyber Pakhtunkhwa
Local Govt: Elections & Rural Devt.
Department



Secretary, P&D
Khyber Pakhtunkhwa
Respondent No. 3

Secretary to Government of
Khyber Pakhtunkhwa
Planning & Development Department



Director General, LG&RD,
Respondent No. 1

Director General
Local Govt: Rural Development
Khyber Pakhtunkhwa

A



4

9 A

DIRECTORATE GENERAL
 LOCAL GOVERNMENT AND RURAL DEVELOPMENT DEPARTMENT
 N.W.F.P, PESHAWAR

Dated Peshawar, the 24th November, 1990

OFFICE ORDER

No. DG (RWP) "2" (5)/73

Consequent upon their selection by the Public Service Commission, NWFP, Peshawar, the following candidates are hereby appointed as Sub Engineers in BPS-11 (901-46-1830) with effect from the date of taking over the charge of their duties against the place of their postings as mentioned below against each;

<u>SNo.</u>	<u>Name of Candidates with address.</u>	<u>Place of Posting</u>
1.	Mr. Atta Ullah Khan S/O Behram Khan, Village Qasim P/O Tarnab Farm, Tehsil and District Peshawar. Presently he is working as S.E on Farm Water Management Project.	Office of the Assistant Director LG & RDD, Swabi. against vacant post. ✓
2.	Mr. Muhammad Ijaz S/O Muhammad Hayat, Street Jaffar Shah, Moh Milan Khel, Kohat City. Presently working in the office of the Garrison Engr(Army) MES Kohat, Gul Hassn Road, Kohat Cantt.	Office of the Project Manager IRDP Markaz Parachinar against a vacant post. ✓
3.	Mr. Inamullah Jan S/O Mohammad Karim, Mohallah Piran, Village & P/O Utmanzai, Tehsil: and Distt: Charsadda	Office of the AD, LG & RDD, Kurram Agency (Parachinar) against vacant post. ✓
4.	Mr. Mohd. Shakil Ahmad S/O Abdul Aziz, Mohallah Gari ban DI Khan City. Presently serving as Surveyor in the office of the SDO modelling Sub DIV: M & R DI Khan.	Office of the Assistant Director Local Govt and Rural Development Deptt: N. Waziristan Agency against a vacant post. ✓
5.	Mr. Noor Nawaz Khan S/O Gohar Khan, Village, Lakki Ghundaki : PO, Tehsil and Distt : Karak. Presently working as PTC teacher in Education Department.	Office of the Project Manager IRDP Markaz Parachinar against a vacant post.
6.	Mr. Nahid Khan S/O Gulshan: Village and PO Shehbaz Khel Tehsil Lakki Distt: Bannu. Presently working as Sub Engineer in Pakistan Railways.	Office of the Assistant Director Local Govt and Rural Development Department Kohat, against vacant post.

Their appointments will be subject to the production of the following documents.

1. Health and Age certificate.
2. Academic Qualification Certificate.
3. Domicile Certificate.
4. Character Certificate.

Handwritten signature

Attested

9

The appointments are made purely on temporary basis and can be terminated at any time without any assigning reasons or notice. In case in resign to leave the job, they shall either given fifteen days notice in advance or shall deposit fifteen days pay in lieu in.

These appointments will be subject to verification of their antecedents on the policy of the district concern.

--SD--

Director General
Local Government and Rural Development
NWFP Peshawar

No. DG(RWP)"2'(5)/73 dated: Peshawar 24th November 1990

Copy is forwarded to :

1. The Secretary Public Service commission NWFP, Peshawar for information with reference to their letter No. 200-17-SO-90 dated: 7th Nov; 1990.
2. The Section Officer (LG&RDD) Peshawar NWFP.
3. The Divisional Directors (LG&RDD) Mardan Kohat and DI Khan.
4. The Assistant Director LG&RDD Swabi, Kurram Agency (Parachinar), NW Agency (Miran Shah) and Kohat.
5. The Project Manager IRDP Markaz Parachinar.
6. The District Accounts Officer Swabi and Kohat.
7. The Agency Accounts Officer, Kurram Agency and Miran Shah.
8. The Director Water Management NWFP Peshawar for information and with the request to relieve Mr. Attaullah Khan s/o Behram Khan S.E., of his duties enabling him to join his new assignment in this department.
9. Officials Concerned.
10. The Sub Divisional Officer Remodeling Sub Division No. 2 DI Khan for information and with request to relieve Mr. Muhammad Sohail to join his new assignment in this department.
11. The District Education Officer (Male) Karak, with the request to relieve Mr. Noor Nawaz Khan s/o Gohar Khan PTC to enable him to join his new assignment in this department.
- 12-13. Other concerned.
For information and necessary action.

--SD--

Assistant Director (Admn)
Local Government and Rural Development
NWFP Peshawar

Attes. to

5 - Annex "B." 13
13
B

GOVERNMENT OF N.W.F.P.,
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

DATED PESHAWAR THE 21ST JULY, 2001

ORDER.

NO.SO(LG-I)4-116/DG/2001.- In terms of Circular letter No.SOR-I(E&AD)1-200/98. dated 8-6-2001, the Competent Authority is pleased to declare the following Sub-Engineers as surplus with effect from 01-07-2001:-

Sl.No.	Name of Sub-Engineer	BPS	Present place of posting
1.	Muhammad Ziaul Haq	B-11	LG & RDD, Abbottabad.
2.	Faizul Hassan Shah	-do-	LG & RDD, D.I.Khan.
3.	Rehmat Ali Shah.	-do-	LG & RDD, Abbottabad.
4.	Akbar Jan.	-do-	LG & RDD, SW-Agency.
5.	Malik Dad	-do-	LG & RDD, Peshawar.
6.	Hazrat Mir.	-do-	LG & RDD, Nowshera.
7.	Mukhtiar Alam.	-do-	LG & RDD, Charsadda.
8.	Wali Aman Khan.	-do-	LG & RDD, Swabi.
9.	Aminullah	-do-	LG & RDD, Dir (Lower).
10. ✓	Muhammad Ijaz	-do-	LG & RDD, Orakzai Agency.
11.	Attaullah	-do-	LG & RDD, Peshawar (FR).
12.	Nahid Khan	-do-	LG & RDD, Karak.
13.	Noor Nawaz	-do-	LG & RDD, NW-Agency.
14.	Mohd Shakeel Ahmed	-do-	LG & RDD, Bannu.
15.	Inamullah Jan	-do-	LG & RDD, Mardan.
16.	Mian Noor.	-do-	LG & RDD, Lakki.
17.	Mian Sajjad Hayat	-do-	LG & RDD, Kohat.
18.	Afaq Khan	-do-	LG & RDD, Khyber Agency.
19.	Hidayatullah	-do-	LG & RDD, Bajour Agency.
20.	Hazrat Muhammad	-do-	LG & RDD, Kurram Agency.
21.	Abdul Hamid.	-do-	LG & RDD, Battagram.
22.	S.Mehboob Hussain Shah.	-do-	LG & RDD, Mansehra.
23.	Khaliq Noor.	-do-	LG & RDD, NW-Agency.
24.	S.Muneer Hussain Shah	-do-	LG & RDD, Mansehra.
25.	Muhammad Asghar	-do-	LG & RDD, Kohat.
26.	Ejazul Haq	-do-	LG & RDD, Charsadda.
27.	Munir Ahmed,	-do-	LG & RDD, DIKhan (FR).
28.	Fazal Khaliq	B-9	LG & RDD, Dir (Lower).
29.	Habibullah	-do-	LG & RDD, Charsadda.

They should report to the Surplus Pool of Establishment and Administration Department.

SECRETARY TO GOVT. OF NWFP,
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT.

Dated Peshawar the 21st July, 2001

Endst.No.SO(LG-I)4-116./DG/2001

CC.

1. All the Administrative Secretaries to Government of NWFP.
2. The Accountant General, N.W.F.P., Peshawar.
3. All the Assistant Directors, LG & RD NWFP, Peshawar.
4. All the District/Agency Accounts Officers in NWFP.
5. The Section Officer (Surplus Pool) Establishment and Administration Department.
6. The officials concerned.

Attested
/s/

Attested
/s/ Officer
/s/ Officer

6
Annex (P-77)
Annex
P-77

GOVERNMENT OF N.W.F.P.,
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

ORDER

Dated Peshawar, the 15th February, 2006

No.SO(LG-I)4-116/S.Pool/2005.- The Provincial Government in the Local Government, Elections and Rural Development Department is pleased to place services of Mr. Muhammad Ijaz, Sub-Engineer, BPS-11 (employee of LG&RDD) presently working in TMA, Hangu at the disposal of Planning & Development Department, Government of NWFP, Peshawar for further adjustment against the vacant post of Sub-Engineer in the District Setup of P&D Department, Kohat with immediate effect.

SECRETARY TO GOVT. OF NWFP,
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

Encls. No.SO(LG-I)4-116/S.Pool/2005 Dated Peshawar, the 15th February, 2006
Copy is forwarded to:-

1. The Secretary to Government of NWFP, Establishment Department.
2. The Secretary to Government of NWFP, P&D Department with reference to his letter No.SO(ESTT)P&D/087/4-12-DG-Hangu, dated 10-2-2006.
3. The Secretary to Government of NWFP, Finance Department.
4. The Accountant General, NWFP, Peshawar.
5. The Secretary, Local Council Board, NWFP, Peshawar.
6. The District Coordination Officers, Kohat and Hangu.
7. The Section Officer (S.Pool), E&A Department.
8. The Section Officer (General), LG & RDD.
9. The District Accounts Officers, Kohat and Hangu.
10. The PS to Secretary, LG & RDD.
11. The official concerned.

fil Muhammad
(DH. MUHAMMAD)
SECTION OFFICER (ETAB.)

Attested
16.2.06

[Signature]

7
①

**GOVERNMENT OF N.W.F.P.
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(REGULATION WING)**

NO. SOR-I(E&AD)1-200/98,
Dated Peshawar the 8TH June /2001

- To
- 1) All Administrative Secretaries in NWFP.
 - 2) The Secretary to Governor, N.W.F.P.
 - 3) All Commissioners in N.W.F.P.
 - 4) All Heads of Attached Department in N.W.F.P.
 - 5) All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
 - 6) The Registrar, Peshawar High Court, Peshawar.
 - 7) All Districts & Session Judges in NWFP.
 - 8) All Deputy Commissioners/Political Agents in NWFP.
 - 9) The Secretary, NWFP Public Service Commission, Peshawar.
 - 10) The Director, Anti-Corruption Establishment, Peshawar.
 - 11) The Registrar, NWFP Service Tribunal, Peshawar.

**SUBJECT. POLICY FOR DECLARING GOVERNMENT SERVANT AS SURPLUS AND
THEIR SUBSEQUENT ABSORPTION/ ADJUSTMENT**

Sir,

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc:

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL.

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL.

For the purpose of coordination and to ensure proper and expeditious adjustment / absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- | | | |
|--|-------|-----------|
| a. Additional Secretary (Establishment) E&AD | | Chairman. |
| b. Deputy Secretary LG& RD Department. | | Member. |
| c. Deputy Secretary Finance Department. | | Member. |
| d. Deputy Secretary (Establishment) E&AD. | | Secretary |

**CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS
RESULT OF ABOLITION OF POST.**

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of draw of pay and allowances and also for consideration for subsequent adjustment

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES.

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department
- (i) to proceed on retirement with normal retiring benefits under the existing rules;
- OR
- (ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.
- (b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the Surplus Pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustment shall be on seniority-cum-fitness basis. For this purpose the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.
- (c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner: -
- (i) In case of occurrence of vacancies in their corresponding posts in any Government Department/Organization, the senior most employee in the surplus pool should be adjusted first
- (ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.
- (iii) If an employee possess the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.
- (iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

AS SURPLUS

department
be abolished
above for
ent

...shall be adjusted against the prescribed manner after getting clearance from the E&AD.

- (e) Surplus staff should be adjusted preferably in their home District(s). If not possible, then within the same Division, if staff is adjusted away from their District of Domicile in the first instance then on availability of post they should be considered for adjustment near to their home station.
- (f) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of a suitable surplus employee against the said post.
- (g) Unless the surplus employees in Class-IV are fully adjusted/absorbed against their respective graded posts in various Government Department/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs. 2000/- per month for contractual appointed should be restricted to the above extent.

6

FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Department will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) in case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent department or in any other department, he will be placed at the bottom of seniority list.

NOTE:-

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for premature retirement from Government service.

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority

7.

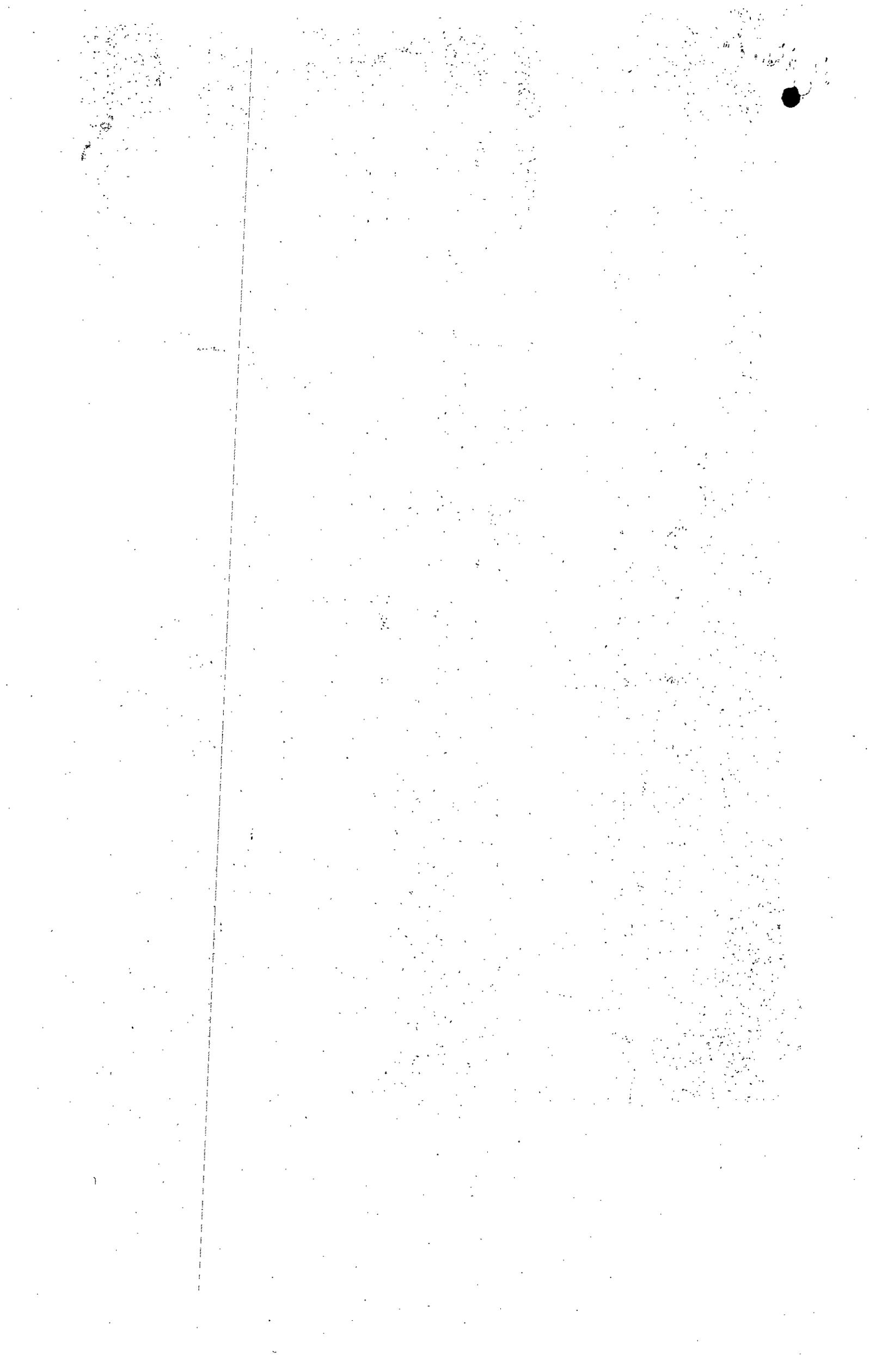
COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employee by the E&AD shall be binding upon the respective appointing authorities.

Yours Obedient Servant


(MUHAMMAD HAMID)
ADDITIONAL



4

Endst even No. & date

Copy forwarded to the:-

1. COS HQ, 11 Corps, Peshawar Cantt.
2. HQ PMCS C/O H2 Engineer 11 Corps, Peshawar Cantt.
3. All Addl/Deputy Secretaries in (Establishment) E&AD.
4. Deputy Secretary (Adm) E&AD.
5. Director, STI, Benevolent Fund Building, Peshawar.
6. The Accountant General, NWFP, Peshawar.
7. Deputy Secretary Benevolent Fund Cell, E&AD.
8. All District Accounts Officers in NWFP.



(GHULAM JILANI ASIF)
DEPUTY SECRETARY (REG-1)

Endst: even No. & date

Copy forwarded to:-

1. All Section Officers in (Establishment) E&AD.
2. All Section Officer in General Administration E&AD.
3. The Estate Officer, E&AD.
4. PS to Chief Secretary, NWFP.
5. PS to Secretary (Establishment) E&AD.
6. PS to Secretary (General Administration) E&AD.
7. Librarian, E&AD.



SECTION OFFICER (REG-1)

11

~~11~~

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL , PESHAWAR

Appeal No. 1459/2018

Muhammad Ijaz Versus Government of Khyber Pakhtunkhwa through Chief Secretary and Others.

..... (PETITIONER)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Local Govt. Elections & Rural Development Department, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Planning and Development Department, Civil Secretariat, Peshawar.
4. The Director General, Local Govt. Election & Rural Development, Department, Peshawar.
5. Nahid Khan, Assistant Engineer (BPS-17, Tribal District Khyber, Khyber House, Peshawar.

AFFIDAVIT

I, Nisar Ahmad Assistant Director (Litigation) office of Director General Local Govt & Rural Development, Peshawar do hereby solemnly affirm and declare on oath that reply to the appeal 1459/2018 Muhammad Ijaz Vs Govt of Khyber Pakhtunkhwa through Chief Secretary and Others are true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Tribunal.



Deponent

CNIC #. 15602-2137950-5

Cell #. 0340-9352221

Identified By

Advocate General
Khyber Pakhtunkhwa

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KoP Service Tribunal, Peshawar

Muhammad Ijaz (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

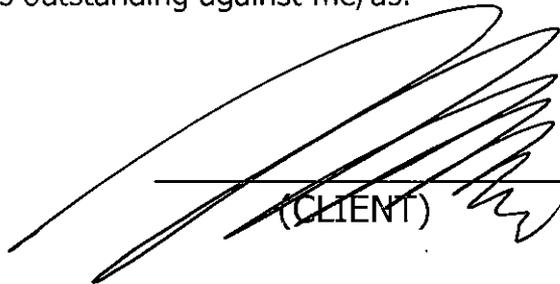
Govt of K-P (Respondent)
(Defendant)

I/We, Nahid Khan (Respondent No. 5)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.
B.C NO# 10-7327
CNIC # 17301-5106574-3

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)


Syed Noman Ali Bukhari
Advocate High Court.

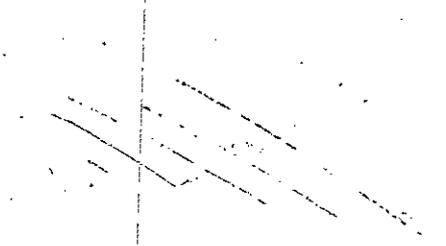
Accepted & Attested

... ..

... ..

... ..

... ..



... ..

... ..

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1049/2015

Date of Institution ... 16.09.2015

Date of Decision ... 10.07.2017

Muhammad Arif Ex-Constable No, 642 son of Naushad Khan,
R/O Khjushgi Payyan, District, Noshera. ... (Appellant)

VERSUS

1. The District Police Officer, Noshera and others. ... (Respondents)

MR. MUHAMMAD ARIF JAN,
Advocate --- For appellant.

MR. KABIRULLAH KHATTAK,
Asstt. Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN ... MEMBER

JUDGMENT

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

FACTS

2. Brief facts giving rise to the present appeal are that the appellant was dismissed from service on 08.07.2015 against which he filed departmental appeal (the date of which is not known to the appellant or respondents). This departmental appeal was decided on 25.08.2015 maintaining the original order of dismissal from service, hence the appellant filed the present appeal on 16.09.2015. The reason for

dismissal of the appellant from service is his involvement in a criminal case which was the basis of the whole proceedings.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was acquitted in the criminal case which was the basis of disciplinary proceedings. That the enquiry officer submitted his report prior to the acquittal of the appellant in which the enquiry officer opined that the complainant of the criminal case was pressurized by the accused in criminal case and that the compromise in the criminal case was not voluntary. The learned counsel for the appellant referred to final order of criminal case dated 13.01.2016 which according to learned counsel for the appellant speaks of acquittal of the accused on merit and is a proof that no undue pressure was applied by the accused. He further argued that after the acquittal in criminal case nothing is left with the department to dismiss the appellant from service as the whole story has been washed out. The learned counsel for the appellant further argued that the principle of fair trial has not been observed by the enquiry officer as his opinion is based on his personal knowledge and no statement of witnesses have been recorded nor any chance of cross-examination was afforded to the appellant. The learned counsel for the appellant relied upon 3 judgments entitled "*Director General Intelligence Bureau, Islamabad Vs. Muhammad Javed and others*" reported as 2012-SCMR-165, "*Malik Azharul Haq Vs. Director of Food, Punjab Lahore and another*" reported as 1991-SCMR-209 and "*Habibullah Bhutto Vs. Director*" reported as 2011-SCMR-1504.

4. On the other hand learned Assistant Advocate General argued that the appellant has failed to provide copy of departmental appeal which can result in presuming that the same was time barred. He further argued that the enquiry officer has duly recorded the statements of all the concerned witnesses by affording the

opportunity of cross-examination to the appellant. That acquittal in criminal case cannot be made ground for exoneration in disciplinary proceedings. In this respect he pressed into service judgments reported in 2006-SCMR-1653 2007-SCMR-563 and 2008-SCMR-1151.

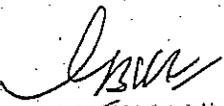
CONCLUSION.

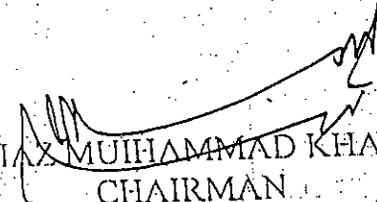
5. After hearing arguments of the learned counsel for both the parties and perusing the record this Tribunal reaches the conclusion that it is by now settled principle of law that departmental proceedings and criminal proceedings can run simultaneously and outcome of one proceeding has got no effect on the other. So much so that a departmental enquiry on the same set of facts in those of criminal proceedings and initiated after the acquittal in the criminal can result in penalty in disciplinary proceedings. This principle has been approved in a judgment by the august Supreme Court of Pakistan in case entitled "*Mian Ghulam Sarwar Vs. Division Superintendent, Multan*" reported as 2013-SCMR-714 and also in cases relied upon by Assistant Advocate General.

6. So far as the first judgment relied upon by the learned counsel for the appellant is concerned it relates to the payment of Diyat which was wrongly equated with conviction in crime which has got no relevancy with the present case. The second ruling is also distinguishable from the facts of the present case because in the reported case the dismissal was based on conviction which is not the present case. In the present case the dismissal was made prior to the order of the criminal court. So far as the third ruling submitted by the learned counsel for the appellant is concerned it pertains to the personal knowledge of the enquiry officer which is not relevant to the present case because the enquiry officer has based his opinion after recording of evidence of the witnesses and conducting the enquiry in disciplinary proceedings. The opinion of the Enquiry Officer regarding pressurizing of

complainant by accused was also the result of his own findings and has got no relevance to the order of the criminal court.

7. As a nutshell of the above discussion no case is made out by the appellant which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(GUL ZEB KHAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED

10.07.2017

notice was issued to the appellant. That in para-4 of the comments of the respondents it has been admitted that the service was made on the father of the appellant and not on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appeal is hopelessly time barred because the departmental appeal was time barred. In this respect he relied upon judgments reported in 2006 SCMR 453 and 2007 SCMR 513. He further argued that the appellant himself admitted in para-4 of the appeal that he could not perform his duty due to family reasons. That the whole proceedings were initiated under the RSO 2000 and only final order was made under the police rules because the RSO did not provide for any penalty in case of willful absence.

CONCLUSION.

5. This Tribunal can enter into the merits of the case only when the appeal is within time. It has been time and against held by the superior courts that if a case is time barred then merit could not be discussed. The present departmental appeal is clearly time barred after having been preferred some 26 months. There is no application for condonation of delay. In accordance with the ruling reported as 2006 SCMR 453 time barred departmental appeal if decided on merits the same cannot be presumed to bring the departmental appeal and for that matter the service appeal within time.

6. As a result of the above discussion, this appeal is hopelessly time barred which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman

(Gul Zeb Khan)
Member

ANNOUNCED
23.10.2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

*Time barred,
appeal case is time barred
when the
merits could not
be discussed.*

Service Appeal No. 325/2011

Date of Institution ... 27.01.2011

Date of decision ... 23.10.2017

Akhtar Wahid S/O Gul Wahid
R/O Village Mohammad Khawaja, Tehsil & District Hangu.

... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2 others.
..... (Respondents)

MR. ABDULLAH QAZI,
Advocate

... For appellant.

MR. ZIAULLAH
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was discharged from service under police rules on 13.10.2008,
against which he filed departmental appeal on 01.12.2010 which was rejected on
27.12.2010 and thereafter the present service appeal on 27.01.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that at the relevant time the Khyber
Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and
the original order was passed under the Police Rules which is illegal. That no show-cause

[Supreme Court of Pakistan]

Present: Javed Iqbal, Muhammad Sair Ali and Anwar Zaheer Jamali, JJ

MUNIR AHMAD---Petitioner.

Versus

CHAIRMAN, WAPDA---Respondent.

Civil Petition No. 497 of 2010, decided on 22nd July, 2010.

(On appeal from the judgment dated 2142-2009 passed by Federal Service Tribunal, Islamabad in Appeals No.710-712 (R)CS/2006).

Service Tribunals Act (LXX of 1973)---

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Appeal---Limitation---Promotion---Grievance of civil servant was with regard to promotion on the basis of Water and Power Development Authority (Water Wing) Subordinate Scientific Staff Service Rules, 1982, which were acted upon in year, 1983, whereas civil servant assailed the promotion in year, 2006---Validity---Civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note---No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach---Question of limitation could not be taken lightly, as in service matters such question should be considered seriously and applied strictly---Civil servant failed to point out any illegality or irregularity in the judgment passed by Service Tribunal and besides that no question of public importance was involved which was sine qua non for invocation of the provisions enumerated in Art. 212 of the Constitution---Leave to appeal was refused.

Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another 1978 SCMR 367; Yousaf Ali v. Muhammad Aslam Zia and 2 others PLD 1958 SC Pak 104; Punjab Province v. The Federation of Pakistan PLD 1956 FC 72; Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97; Chief Kwame Asante v. Chief Kwame Tawia PLD 1949 PC 45; Hussain Bakhsh and others v. Settlement Commissioner and another PLD 1969 Lab. 1039; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other PLD 1975 SC 331; WAPDA v. Abdul Rashid Bhatti 1989 SCMR 467; Federation of Pakistan v. Muhammad Azim Khan 1949 SCMR 1271; Inspector-General of Police, Balochistan v. Jawad Haider and another 1987 SCMR 1606; WAPDA v. Aurangzeb 1988 SCMR 1354; Muhammad Naseem Sipra v. Secretary, Government of Punjab 1989 SCMR 1149; Muhammad Ismail Memon v. Government of Sindh and another 1981 SCMR 244; Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others 1984 SCMR 177; Smith v. East Elloe Rural District Council and others 1956 AC 736; Province of East Pakistan and others v. Muhammad Abdu Miah PLD 1959 SC (Pak), 276; Mehr Muhammad Nawaz and others v. Government of the Punjab and others 1977 PLC (C.S.T.) 165 and Fazal Elahi Siddiqi v. Pakistan PLD 1990 SC 692 rel.

AM
Technicalities / Limitation

invocation of the provisions as enumerated in Article 212 of the Constitution of Islamic Republic of Pakistan. The petition being devoid of merit is dismissed and leave refused.

M.H./M-86/SC

Petition dismissed.

2013 P L C (C.S.) 1071

[Sindh High Court]

Before Naimatullah Phulpoto and Farooq Ali Channa, JJ

KHURSHID ALI JUNEJO

Versus

PROVINCE OF SINDH through Chief Secretary and 5 others

Constitutional Petition No.D-1971 of 2011, decided on 12th December, 2012.

(a) Constitution of Pakistan---

---Arts. 212(3) & 199---Penal Code (XLV of 1860), S.409---Prevention of Corruption Act (II of 1947), S.5(2)---Constitutional petition---Appeal against order of Service Tribunal---Forum---Judgment of Service Tribunal impugned through Constitutional petition before High Court instead of preferring an appeal before the Supreme Court---Maintainability---Accused/petitioner, who was serving in the Food Department, was alleged to have misappropriated bags of wheat---Departmental proceedings were initiated against accused and an F.I.R. was also lodged against him---Accused was removed from service after departmental proceedings and his departmental appeal was also rejected---Service Tribunal converted dismissal of accused to 'compulsory retirement---Accused was, however acquitted from the charges levelled against him in the F.I.R., and as a result moved an application before the Department for his reinstatement---Department contented that judgment of Service Tribunal was impugned through present Constitutional petition instead of preferring an appeal before the Supreme Court, and that departmental proceedings were entirely different from criminal proceedings---Validity---Constitutional jurisdiction of High Court could only be invoked if no other adequate remedy was provided in law---Remedy available with accused against the order of Service Tribunal was to file a petition for leave to appeal before the Supreme Court in terms of Art.212(3) of the Constitution---Article 212(3) of the Constitution ousted the jurisdiction of all other courts--- Criminal proceedings against the accused, from which he was acquitted were neither co-extensive nor interconnected with departmental proceedings initiated against him---Constitutional petition was dismissed in circumstances.

2004 SCMR 540 ref.

(b) Civil service---

---Proceedings against civil servant---Simultaneous departmental and criminal proceedings---Scope--- Departmental proceedings and criminal proceedings were entirely different---Both said proceedings were neither co-extensive nor interconnected.

2004 SCMR 540 rel.

(c) Service Tribunal Act (LXX of 1973)---

---Ss. 3(2) & 4(1) & Preamble---Constitution of Pakistan, Art.199---Constitutional petition--- Maintainability---Appeal against orders of Departmental authority---Forum---Order of Departmental authority, even if passed without jurisdiction, could not be challenged before the High Court, as adequate/alternate remedy had been provided under the law.

(d) Constitution of Pakistan---*original**[Signature]*

---Arts. 212(3) & 199---Constitutional petition---Maintainability---Scope---Civil service--High Court could not exercise jurisdiction in service matters in terms of the ouster clause provided under Art.212(3) of the Constitution.

Saleem Raza Jakhar for Petitioner.

Muhammad Bachal Tunio, Addl. A.-G. for Respondents.

Date of hearing: 12th December, 2012.

ORDER

NAIMATULLAH PHULPOTO, J.- Petitioner Khurshed Ali Junejo has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking following reliefs:---

- (i) That, this Honourable Court may graciously be pleased to declare the departmental action against petitioner is unlawful and without justification of law.
- (ii) That, petitioner may be reinstated in service with all back-benefits.
- (iii) To award cost of this petition to the petitioner.
- (iv) That, grant any equitable relief which this Hon'ble Court deems fit and proper in the circumstances of the petition.

2. Facts in brief leading to filing of petition appear to be that petitioner was serving as Supervisor (BPS-5) in Food Department with honesty and hardworking. F.I.R was registered against petitioner by Anti-Corruption Establishment, Larkana on 8-6-1998, after investigation he was challaned in the Court of Special Judge, Anti-Corruption, Larkana for offence under Section 409, P.P.C. read with section 5(2) Act-II of 1947. Departmental enquiry was conducted against petitioner, according to him, he was exonerated in enquiry. In spite of that, competent authority found petitioner guilty and removed him from service on 2-11-1999. Petitioner's departmental appeal was rejected by Director Food, Government of Sindh vide order dated 29-1-2000. Petitioner filed Appeal No.45 of 2000 before Sindh Services Tribunal, at Karachi, which was dismissed converting the penalty of removal of petitioner from service to compulsory retirement, so also recovery of 239 wheat bags at the rate of Rs.700 per bag vide judgment dated 24-6-2005. It is mentioned in the petition that petitioner has been acquitted of the charge of misappropriation by the Special Judge, Anti-Corruption, in above Anti-Corruption Case by judgment dated 21-9-2010. Petitioner also moved an application for reinstatement to Secretary, Food Department, the same has not yet been decided.

3. Notices were issued to respondents for parawise comments.

4. Secretary, Food Department, Govt. of Sindh, respondent No.2 and Deputy Director Food, Larkana in their parawise comments have stated that petitioner was posted as Food Supervisor as Centre Incharge, WPC Bangul Dero, Larkana. During Crop Season 1996-97 he procured a quantity of 2520 bags of wheat, out of which 1682 bags of wheat were dispatched to Provincial Reserve Centre, whereas remaining 838 bags were misappropriated, therefore, petitioner was suspended. After departmental disciplinary proceedings, petitioner was removed from service on 2-11-1999, his departmental appeal was also rejected by the competent authority. The penalty imposed upon him was assailed and Sindh Services Tribunal while maintaining the penalty converted dismissal of petitioner to "compulsory retirement". It is further stated that departmental and criminal proceedings are neither co-extensive, nor inter-connected. It is stated that petitioner failed to prefer appeal before Hon'ble Supreme Court of Pakistan against the

Judgment of Service Tribunal.

5. We have heard the petitioner in person, Mr. Muhammad Bachal Tunio, Additional Advocate General Sindh for respondents and perused the record.

6. Petitioner was admittedly Food Supervisor (BPS-5) in Food Department, Government of Sindh. Petitioner has invoked the Constitutional jurisdiction of this Court under Article 199 of Constitution. The petitioner has challenged departmental action by which he was removed from service. In order to resolve the controversy/legal issue involved in the present petition, it is essential to decide issue of jurisdiction and maintainability of this writ petition, at the first instance. In this respect, the provisions of Article 199 of Constitution are very much important.

7. Article 199(1) of Constitution of Islamic Republic of Pakistan, 1973 is reproduced hereunder :---

"199. Jurisdiction of High Court.--- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law."

It is evident from the perusal of above mentioned Article that Constitutional jurisdiction of the High Court could only be invoked if no other adequate remedy is provided in law. In the instant case as mentioned earlier petitioner availed remedy after his dismissal from service before Sindh Service Tribunal and his Service Appeal No.45 of 2000 was dismissed, however the penalty was converted to that of compulsory retirement. Petitioner moved an application to the Secretary, Government of Sindh, Food Department, for reinstatement after acquittal in anti-corruption case but his request was turned down while observing that departmental proceedings are entirely different from those of criminal proceedings on criminal charges. Both the proceedings are neither co-extensive nor interconnected. Reference can be made to dictum laid down in a case reported in 2004 SCMR 540, relevant portion is reproduced as under:---

".... There is no bar to proceed departmentally against any civil servant as departmental proceedings are entirely different from that of the criminal proceedings on criminal charges and are neither co-extensive nor inter-connected...."

"In view of the above, since the officers concerned are charged for misappropriation, they can be proceeded against for criminal misappropriation under section 409 of P.P.C. notwithstanding the departmental proceedings being initiated against them under the Removal from Service (Special Powers) Sindh Ordinance, 2000."

8. Remedy available to petitioner under the law was to file a petition for leave to appeal before the Honourable Supreme Court of Pakistan against, the orders of the Sindh Services Tribunal but he failed to do so.

9. In above stated circumstances, the Constitutional jurisdiction of this Court cannot be invoked to get such controversy resolved. The provisions as contained in Article 212 of sub-Article (2) of Islamic Republic of Pakistan oust the jurisdiction of all other Courts. Orders of the Departmental authority, even if without jurisdiction cannot be challenged before this Court because other adequate remedy is provided under the law, as such this Court cannot exercise the jurisdiction in service matters in terms of ouster clause provided under Article 212(2) of the Constitution. The provisions as contained in Article 212(2) of the Constitution and section 6 of the Service Tribunals Act, 1973 make it abundantly clear that after the establishment of Service Tribunal the jurisdiction of all other Courts in service matters has been ousted. Constitutional jurisdiction of High Court, would be declined where the petitioner has not exhausted all remedies available to him before filing of Constitutional petition and aggrieved party must approach specific authority for the redressal of his grievances. Even otherwise where a particular statute provides a self-contained machinery for the determination of question arising under the Act where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief, any indulgence to the

contrary by the High Court is bound to produce a sense of distrust in statutory Tribunal.

10. In view of the above petition is without force and the same is hereby dismissed.

Petition dismissed.

MWA/K-2/K

2013 S C M R 911

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Muhammad Ather Saeed, JJ

ABDUL SATTAR---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

C.P.L.A. No.957-K of 2011, decided on 6th June, 2012.

(On appeal from order of Federal Service Tribunal, Islamabad (Karachi Bench) dated 27-12-2011 passed in Appeal No.27(K)CS/2008.)

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

----S. 4---Filing of appeal before Service Tribunal---Limitation---Successive departmental appeals cannot extend period of limitation (for filing appeal).

1998 SCMR 882; 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862 ref.

(b) Service Tribunals Act (LXX of 1973)---

----S. 4---Filing of appeal before Service Tribunal---Limitation---Significance---Question of limitation should be considered seriously in service matters.

2010 SCMR 1982 rel.

(c) Service Tribunals Act (LXX of 1973)---

----S. 4---Filing of appeal before Service Tribunal---Limitation---Significance--- Question of limitation cannot be considered a technicality simpliciter as it had its own significance and would have substantial bearing on the merits of the case.

2011 SCMR 8 rel.

Ghulam Rasool Mangi, Advocate Supreme Court and Ghulam Qadir Jatui, Advocate-on-Record for Petitioner.

Sanaullah Noor Ghori, Advocate Supreme Court and A.S.K. Ghori, Advocate-on-Record for Respondent No.1.

Ashiq Raza, D.A.-G. for Respondents Nos.2 and 3.

Date of hearing: 6th June, 2012.

*Successive DA**Question of limitation
seriously in service
matters**AAU*

ORDER

ANWAR ZAHEER JAMALI, J.--This petition for leave to appeal assails the order dated 27-10-2011, in Appeal No.27(K)CS/2008, passed by Federal Service Tribunal, Islamabad, Karachi Bench, whereby the said appeal before the Tribunal was dismissed on the ground that it was barred by time. Relevant discussion contained in the impugned order reads as follows:--

"6. We have considered the above arguments and carefully perused the record. Apparently, appeal is time barred, as the appellant has approached this Tribunal on 22-3-2008 against the order dated 15-6-2007 after filing a departmental appeal on 15-7-2007, which remained un-responded. An application for condonation of delay has also been filed along with the appeal wherein no reasonable ground has been taken except that the appellant has been continuously approaching the respondents for promotion in the cadre of Commercial Inspector BS-16 as per merit, but the same remained unresponded. Last application submitted on 20-11-2007, has not been responded to. It may be mentioned here that successive departmental appeal cannot extend period of limitation. We rely on 1998 SCMR 882, 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862. Besides, it has been held in 2010 SCMR 1982 that, "civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note. No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach. Question of limitation could not be taken lightly, as in service matters such question should be considered seriously." In 2011 SCMR 8, it was also held that, "Question of limitation cannot be considered a "technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of case."

2. Learned Advocate Supreme Court for the petitioner has not disputed that in fact the appeal preferred by the petitioner before the Tribunal was barred by time. This being the position, we find no valid reason for interference in the impugned order. Besides, no question of law of public importance is involved in this petition. Dismissed. Leave refused.

MWA/A-3/SC

Petition dismissed.

imitatio:
abstantia

2006 S C M R 453

[Supreme Court of Pakistan]

Present: Hamid Ali Mirza and Saiyed Saeed Ashhad, JJ

N.E.D. UNIVERSITY OF ENGINEERING AND TECHNOLOGY---Petitioner

Versus

Syed ASHFAQ HUSSAIN SHAH---Respondent

C.P. No.772-K of 2004, decided on 20th July, 2005.

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

---S. 4---Appeal---Limitation---Time-barred: departmental appeal---Grievance of authorities was that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service--Validity-Service Tribunal should have taken note of the fact that appeal before departmental authority being time-barred, appeal by civil servant before Service Tribunal was incompetent--Civil servant proceeded on leave preparatory to retirement on 16-12-2002 and preferred appeal before departmental authority on 31-7-2003, which, on the face of record, was time-barred--~~More fact that department did not notice such fact would not make the service appeal of civil servant within time~~--Appeal before Service Tribunal being time-barred and incompetent, Supreme Court converted petition for leave to appeal into appeal and set aside the order passed by Service Tribunal--Appeal was allowed.

The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman and others 2004 SCMR 1426 rel.

Pakistan Automobile Corporation Limited through Chairman v. Mansoor-ul-Haque and 2 others 2004 SCMR 1308 ref.

(b) Civil service---

---Leave preparatory to retirement---Revoking of option---Principle---Where civil servant, after enjoying substantial part of such leave revokes same, such revocation cannot be permitted.

Province of Punjab through the Deputy Director Food, Rawalpindi Region v. Muhammad Iqbal 1998 SCMR 334 and Secretary to Government of Punjab, Food and Cooperative Department v. Shamo Bahadur 1998 SCMR 1536 rel.

Muhammad Tasnim, Advocate Supreme Court and Ahmadullah Faruqi, Advocate-on-Record Petitioner.

Respondent in person.

Date of hearing: 20th July, 2005.

ASH

Limitation
Time barred
Appeal by
Civil Servant
before Service Tribunal
was incompetent

DER

AAMID ALI MIRZA, J.-----This petition for leave to appeal is directed against the judgment, dated 6-10-2003 in Appeal No.213 of 2003 passed by the Sindh Service Tribunal, whereby said appeal filed by the respondent, Syed Ashfaq Hussain Shah was allowed and the impugned orders, dated 18-11-2002 and 30-10-2003 were set aside and he was reinstated in service.

2. Facts of the case need not be reiterated as the same have been stated in the memo. of petition and the impugned judgment.

3. We have heard learned counsel for the petitioners and the respondent in person and perused the record.

4. The learned counsel for the petitioners submitted that the departmental appeal filed by the respondent was time-barred, therefore, his appeal before Service Tribunal was also incompetent and time-barred but the Tribunal erroneously held otherwise and secondly that learned Tribunal erred in holding that the respondent could in the circumstances revoke his option of proceeding on L.P.R. He has placed reliance on Province of Punjab through the Deputy Director Food, Rawalpindi Region v. Muhammad Iqbal 1984 SCMR 334 and Secretary to Government of Punjab, Food and Cooperative Department v. Shamoun Bahadur 1998 SCMR 1536. In support of his second plea he placed reliance on The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman and others 2004 SCMR 1426 at 1436. He submitted that the case-law Pakistan Automobile Corporation Limited through Chairman v. Mansoor-ul-Haque and 2 others 2004 SCMR 1308 referred in the judgment and relied upon by the Tribunal is distinguishable, therefore, inapt to the facts of the present case.

5. The respondent present in person has stated that the impugned order passed by the Tribunal is just, fair and legal and calls for no interference. He further submitted that the department has not held that his appeal before the Department was time-barred, therefore, his appeal before the Service Tribunal was not time-barred as he has preferred the appeal before the Syndicate which was rejected on merits and not being time-barred. He further submitted that the petitioner had treated him harshly as water supply, gas and electricity connections have been disconnected and he was told to vacate the house and his daughter was not given admission in the college though he was employee of the institution whereas other employees children were accommodated in the college. He submitted that the petition filed is liable to be dismissed.

6. We do find substance and merit in the contentions raised by the petitioners that the Service Tribunal could have taken note of the fact that the appeal before the departmental authority was time-barred, therefore, his appeal before the Tribunal was incompetent and time-barred. Admittedly the respondent proceeded on L.P.R. on 16-12-2002 and he preferred appeal before the Syndicate on 31-7-2003 which on the face of record was time-barred but the mere fact that the department did not notice the said appeal would not make his service appeal within time. Consequently, the appeal before the Service Tribunal was time-barred and incompetent in view of the law laid down by this Court in the case of The Chairman P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman and others 2004 SCMR 1426.

7. With regard to the contention that the option exercised by the respondent could be revoked had there been no merit considering the law laid down by this Court in the cases of Province of Punjab through Deputy Director Food, Rawalpindi Region v. Muhammad Iqbal 1984 SCMR 334 and Secretary to Government of Punjab, Food and Cooperative Department v. Shamoun Bahadur 1998 SCMR 1536.

wherein it has been held by this Court that in case the civil servant after enjoying substantial part of leave preparatory to retirement revokes it after its acceptance when the offer was acted upon by both parties the same cannot be permitted to be revoked. In the circumstances the findings of the Tribunal cannot be sustained in law. We find substance in the contention of the learned counsel for the petitioners.

8. Consequently, this petition is converted into appeal and the impugned order is set aside. The appeal is allowed maintaining the orders, dated 18-11-2002 and 30-10-2003 passed by the petitioners. No order as to costs.

M.H./N-65/SC

Appeal allowed.

29/11/2019

Criminal proceeding -
Department proceeding -

2006 S C M R 554
[Supreme Court of Pakistan]

Facilitating ~~convict~~ escape
of convict + Active connivance

Present: Javed Iqbal and Ch. Ijaz Ahmad, JJ

SAMI ULLAH---Petitioner

Versus

INSPECTOR-GENERAL OF POLICE and others-Respondents

Civil Petition No.909-L of 2005, decided on 3rd February, 2006.

(On appeal from the judgment, dated 5-4-2005 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos.2873, 2874 and 2876 of 2004).

(a) Punjab Police (Efficiency and Discipline) Rules, 1975---

---Rr. 3 & 4---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Art.212(3)---Dismissal from service---Police constable---Facilitating escape of convict, charge of---Acquittal of petitioner/constable from criminal case registered against him---Dismissal of appeal of constable by Service Tribunal---Validity---Custody of convict had been handed over to armed police officials with official vehicle to escort prisoners---Petitioner was a member of such police party and had stopped vehicle to facilitate escape of convict on a lame pretext that he wanted to ease himself---Vehicle could have been taken to the nearest police station to avoid any untoward incident---Police party duly armed with sophisticated weapons had remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance---Unarmed and handcuffed convict could not have been escaped without collective connivance and facilitation of police party---No individual member of police party could be absolved from its responsibility---Acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case---Petitioner, after comprehensive inquiry, had been found responsible not only for gross negligence, but active connivance and facilitation resulting in escape of convict---Supreme Court dismissed petition and refused leave to appeal.

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 rel.

(b) Civil service---

---Disciplinary proceedings, initiation of---Acquittal of civil servant from criminal case---

Effect--Such acquittal would have absolutely no bearing on merits of the case.

Muhammad Aslam v. Government of N.-W.F.P. 1998 SCMR 1993; Deputy I.-G. Police v. Anis-ur-Rehman Khan PLD 1985 SC 134; Muhammad Ayub v. Chairman E.B. WAPDA PLD 1987 SC 195 and Muhammad Nazir v. Superintendent of Police 1990 SCMR 1556 ref.

Talal Farooq Sheikh, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 3rd February, 2006.

JUDGMENT

JAVED IQBAL, J.--Pursuant to the proceedings initiated against the petitioner under the Punjab Police (Efficiency and Discipline) Rules, 1975 on account of gross negligence penalty of dismissal from service was imposed by D.P.O. Mianwali vide order dated 28-6-2002. Being aggrieved an appeal was preferred which was also rejected and assailed by way of appeal before the Punjab Service Tribunal but with no avail. It is to be noted that a criminal case under sections 222, 223 and 224, P.P.C. was also got lodged against the petitioner as well as the other accused at Police Station Mitha Tiwana on 3-1-2002 but were acquitted by learned Magistrate Section 30, Khushab vide order, dated 10-3-2004.

2. Show-cause notice which was given to the petitioner is reproduced hereinbelow to appreciate the legal and factual aspects of the controversy:--

"You constables Samr Ullah No.1156; Hidayat Ullah No.86 and Khan Bahadur No.301, District Mianwali did not perform your official duty in a proper and disciplined manner in that as per report of D.S.P.S.D.P.O., Mitha Tiwana received from the Superintendent of Police, Khushab vide his Memo. No.30/PA, dated 5-1-2001, on 2-1-2002, you were detailed to collect two criminals namely Muhammad Ramzan son of Allah Ditta caste Mitra resident of Hamoli involved in case F.I.R. No.92 dated 21-8-1999, under section 302/34, P.P.C. 7-A.T.A., Police Station Piplan from Central Jail, Mianwali to produce them in the Court of Special Judge, A.T.A. Sargodha. Official Vehicle No.4579/MIA was provided to escort the prisoners H.C. Shahbaz Khan No 93 was driver of the said vehicle. The learned Special Judge convicted, and sentenced them to undergo 14/17 years' R.I. each.

Thereafter, you along with above named convicts proceeded to Mianwali. At about 8-45 p.m., the vehicle was intentionally stopped near Tanveer Petroleum in the area of Police Station Mitha Tiwana, District Khushab in order to facilitate the convict Muhammad Ramzan to escape from police custody. As a result of your mala fide intention, he managed to escape from our lawful custody. In this regard, case F.I.R. No.2, dated 3-1-2002, under sections 222/223/224, P.P.C. was registered at Police Station Mitha Tiwana, District Khushab against you and other

police officials which is under investigation and you have been placed under suspension.

It is thus, evident from the facts and circumstances that you all in connivance with each other facilitated the above named Muhammad Ramzan to escape from your lawful custody and also did not make any fruitful efforts to arrest him which amounts to grave misconduct under Punjab Police (E&D) Rules, 1975, warranting disciplinary action against you.

3. Heard Mr. Talat Farooq Sheikh, learned Advocate Supreme Court on behalf of petitioner who mainly argued that no evidence whatsoever has come on record on the basis whereof petitioner could be held responsible for the escape of convict Muhammad Ramzan which aspect of the matter has been ignored by the Police Department as well as learned Service Tribunal which resulted in serious miscarriage of justice. It is next contended that the petitioner could not have been dismissed from service after having clean acquittal from the criminal case got registered against him on the same charges in violative of the dictum as laid down by this Court in Muhammad Aslam v. Government of N.-W.F.P. 1998-SCMR 1993.

4. We have carefully examined the contention as mentioned in the preceding paragraph, thrashed out the entire record and perused the judgment impugned carefully. After having gone through the entire record we are of the view that the factum of gross negligence has been proved. A comprehensive inquiry was got conducted and the petitioner was found responsible not only for gross negligence but active connivance and facilitation which resulted in the escape of convict Muhammad Ramzan who was convicted and sentenced to death with 14 years' R.I. by the learned Special Judge, A.T.A., Sargodha in case got registered vide F.I.R. No.92, dated 21-8-1992 under section 302/34, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. There is no denying the fact that custody of convict Muhammad Ramzan was handed over to the armed police party with official Vehicle No.4579/MIA to escort the prisoners and petitioner was admittedly the member of that police party. The vehicle was stopped without any justification to facilitate the escape of Muhammad Ramzan on a lame pretext that he wanted to ease himself. The vehicle could have been taken to Mitha Tiwana Police Station to avoid any untoward incident which smacks of mala fides. The, police party duly armed with sophisticated weapons remained highly negligent and acted in a very irresponsible manner and failed to perform their duties diligently and with vigilance which speaks a volume about their conduct. How an unarmed and handcuffed convict could have been escaped without the collective connivance and facilitation of police party. It cannot be a case of negligence simpliciter as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner. It hardly matters that the handcuffs of escaped convict was buckled with whose belt as they all were responsible for the safe custody of convicts and being vicarious liability no individual member of the police party can be absolved from its responsibility. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court that after having clean acquittal from the criminal case there was absolutely no lawful justification for the initiation of B disciplinary proceedings which culminated into dismissal from service for the reason that result of criminal

2012 S C M R 195

mt. Rasool
Arch/Lib

~~for Respondent~~

for Respondent

Time barred

[Supreme Court of Pakistan]

Present: Khilji Arif Hussain and Amir Hamid Muslim, JJ

SAJJAD HUSSAIN--Appellant

Versus

SECRETARY, MINISTRY OF RAILWAYS, ISLAMABAD and others--Respondents

Civil Appeal No. 224-K of 2010, decided on 9th August, 2011.

On appeal from the order dated 5-7-2010 of the Federal Service Tribunal, Islamabad passed in Appeal No. 21(K)(CS) of 2010.

Service Tribunals Act (LXX of 1973)

S. 4---Appeal before Service Tribunal---Limitation---Time barred departmental representation dismissed the appeal filed by civil servant as the same was barred by limitation---Departmental appeal filed by civil servant was barred by time, therefore, even if the appeal filed before Service Tribunal was in time, no relief could be granted to him---Judgment passed by Service Tribunal was reasonable and proceeded on cogent ground---Civil servant was unable to establish jurisdictional error or legal infirmity which could justify interference---Appeal was dismissed.

Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Zia-ur-Rehman v. Divisional Superintendent Postal Services, Abbottabad and others 2009 SCMR 1121 rel.

Muhammad Annullah Noor Ghouri, Advocate Supreme Court and Abdul Saeed Khan Ghouri, Advocate-on-Record for Appellant

Munib Ahmed Khan, Advocate Supreme Court and Mazhar Ali B. Chohan, Advocate-on-Record for Respondents

Date of hearing: 9th August, 2011.

ORDER

KHILJI ARIF HUSSAIN, J.---This appeal, with the leave of the Court, is directed against the judgment dated 5-7-2010 of the Federal Service Tribunal, Islamabad whereby appeal filed by appellant was dismissed as the same was hopelessly barred by time.

I have heard the learned counsel for the parties and perused the available record minutely.

It is contended by the learned counsel for the appellant that the appeal filed by the appellant before the Service Tribunal was not barred by time. He has drawn our attention at page 45 of the order passed by the departmental authority dated 30-4-2003 and departmental appeal on 28-6-

Handwritten signature/initials

5)

11

page 52, which admittedly filed much after expiry of 30 days from the order passed by the com authority.

4. We have taken into consideration arguments advanced by the learned counsel for the appellant. From perusal of the record it appears that the departmental appeal of the appellant was barred by time, even if the appeal filed before the Service Tribunal was in time, no relief granted to him. If any case-law is required one can see the cases of Muhammad Aslam v. WAPI others, (2007 SCMR 513) and Zia ur Rehman v. Divisional Superintendent Postal Sd Abbottabad and others, (2009 SCMR 1121).

5. Having considered the matter from all angles in the light of material on file, we are of the view that the impugned judgment of the Federal Service Tribunal is eminently reasonable and procedurally cogent ground. The learned counsel for the appellant was unable to advert jurisdictional error or infirmity, which would justify interference.

In view of the above, we do not find any merit in the listed appeal which is dismissed.

M.H./S-54/SC

Appeal dismissed.

2007 (513)
SCMR

2009 SCMR-11

AAH

to the appellant/accused. In view of judgment reported as 2001-SCMR-218, wherein it has been held that departmental proceedings are civil proceedings and no benefit of doubt can be extended in departmental proceedings because the criteria of evaluation of evidence in criminal cases and in civil cases are different. In criminal cases the criteria is the reasonable doubt to benefit the accused whereas in the civil cases it is the probability of preponderance of evidence. Had there been no enquiry proceedings in the disciplinary proceedings then, of course, there would have been no other material but the decision of criminal case would have been relevant. The judgments referred to by the learned counsel for the appellant relate to such position when the disciplinary proceedings are not independent or are subject to the decision of criminal court. Hence the judgment referred to by the learned counsel for the appellant are not attracted to the present appeal. So far as the objection regarding non opportunity of cross examination or defence is concerned it has categorically been mentioned in the enquiry report that the accused did not avail both these chances. The very reply to the final show cause notice by the appellant is evasive because he had not uttered a single word regarding the findings of the enquiry officer which means that he admitted the enquiry report. He has relied upon his reply already submitted in response to the charge sheet. In this regard this Tribunal has already delivered a judgment in service appeal No. 584/2016 entitled "*Abidur Rahman Vs. IGP and 2 others*". Coming to the objection of personal hearing, the principle of natural justice speaks about personal hearing but it is not mentioned that who will give personal hearing. When the enquiry officer has given personal hearing then the requirement of personal hearing has been fulfilled. The authority had also mentioned in the final show cause notice that the appellant to state whether he wanted to be heard in person and in reply the appellant showed his willingness to be heard in person. In the original order it is not mentioned whether the appellant was given personal hearing by the authority but it does not mean that he was not given personal hearing. Presuming that it was incumbent for the authority to have mentioned the fact of personal hearing specifically in the final order (though this was no requirement) then at another stage of appeal he was afforded

chance of personal hearing and it is mentioned in the appellate order which means that he was given chance twice for personal hearing; one by enquiry officer and another by the appellate authority. Hence the principle of natural justice has been fulfilled.

6. As a result of above discussion, there is no merit in the appeal which is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(GUL ZEB KHAN)
MEMBER

ANNOUNCED
10.10.2017

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

no objection as
reply to show cause
D / proceeding

Appeal No. 776/2014

Date of Institution 03.06.2014

Date of Decision 10.10.2017

Habib Ullah Ex-Constable No. 234, Police Department Kohat S/O Ghulam Hadi
R/O Mansoor Khel Jungle Khel, Tehsil and District, Kohat. (Appellant)

VERSUS

1. Deputy Inspector General of Police, Kohat Region, Kohat and another.
..... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

For appellant.

MR. ZIAULLAH,
Deputy District Attorney

For respondents

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

JUDGMENT

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

FACTS

2. The appellant was dismissed from service on 24.3.2014. Against the impugned order, the appellant filed a departmental appeal on 03.04.2014 which was not responded to and thereafter, the appellant filed the present service appeal on 03.06.2014. The allegation against the appellant was that an FIR No. 24 under Section 9 CNSA was registered against him in P.S City, Kohat on 11.01.2014. The appellant was later on acquitted in the criminal case by the Worthy Peshawar High Court on 04.04.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that when the appellant has been acquitted by the Worthy Peshawar High Court then his dismissal from service should follow the order of acquittal by the court of law. In this regard, the learned counsel for the appellant relied upon judgments reported as PLJ 2012 Tr.C (Services)6, 2002-SCMR-57 and 2012 PLC (C.S) 502 (c). He also argued that no proper enquiry was conducted. No chance of cross examination was afforded to the appellant nor was he given chance of producing defence. In this regard, he relied upon two judgments reported as 2011-PLC (C.S) 1111 and 2008-SCMR-1369. He further argued that the appellant requested for hearing after issuance of final show cause notice which was not afforded.

4. On the other hand, the learned Deputy District Attorney argued that acquittal in criminal case cannot be taken to nullify the order of dismissal in the disciplinary proceedings. He relied upon a judgment reported in 2006-SCMR-554. The learned District Attorney further argued that all the procedural requirements were fulfilled by issuing charge sheet and statement of allegations to the appellant. That it is evident from the departmental enquiry that the appellant was given the chance of defence but he did not produce any evidence in his favour and that he was also given chance of cross examining the witnesses which he did not avail. The learned District Attorney further argued that in reply to the final show cause notice after enquiry report the appellant did not file reply but relied on his earlier reply to the charge sheet which means that he had admitted the findings of the enquiry officer.

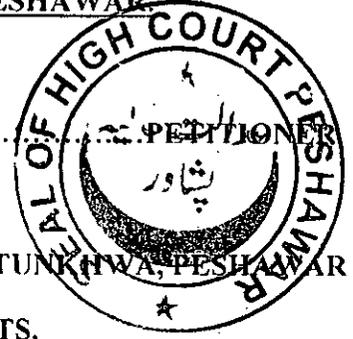
CONCLUSION.

5. It is by now settled, jurisprudential principle of administrative law that departmental proceedings are quite separate from the criminal case. Reliance may be placed on the judgment referred to by the learned Deputy District Attorney. The judgment of acquittal by the Worthy Peshawar High Court speaks about benefit of doubt

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P NO.1529-P/2013

MUHAMMAD IJAZ S/O MUHAMMAD HAYAT.....PETITIONER
VERSUS
CHIEF SECRETARY, GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR
& OTHERSRESPONDENTS.



JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.2 & 4.

PRELIMINARY OBJECTIONS:

1. That the petition is not maintainable in its present form.
2. That the petitioner has got no locus standi to file the instant petition.
3. That the petition is not maintainable due to Mis-Joinder and Non-Joinder of necessary parties.
4. That the petitioner does not come to the Court with clean hands.
5. That the petitioner concealed the material fact from the honourable Court.
6. That the honourable Court has got no Jurisdiction to entertain the present petition.

RESPECTFULLY SHEWETH:

1. Pertain to record.
2. The services of petitioner were placed at the disposal of Planning & Development Department for adjustment against the vacant post of Sub Engineer in District Kohat.
3. Since there is no post of Sub Engineer in the sanctioned strength of P&D Department, therefore, in the framing of revised Service Rules, the post of Sub Engineer was not indicated.
4. Up-gradation Policy is framed by the Finance Department.

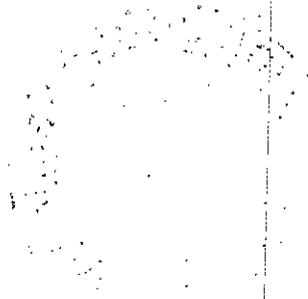
Next Page-2

FILED TODAY

Deputy Registrar

06 FEB 2014

ATTESTED
EXAMINER
Peshawar High Court



1944
1944

20

5. The Additional Charge is given to an officer having the equal scale/status with 20% (not more than Rs.6,000/- pm) of basic pay for three months with concurrence of Finance Department as per Finance Department's circular letter No.FD(SR-I)3-19/92, dated 12/8/1997. The scale/status of both the posts is not equal i.e BPS-11 and BPS-17 (Annexure-A).
6. Up-gradation cases are being dealt with by the Provincial up-gradation Committee of Finance Department. The case of the appellant was placed before the respective forum/committee for consideration (Annexure-B).
7. Did pertain to record.
8. The appeal is being processed departmentally.
9. No injustice has been done to the appellant.

GROUND.

- A) The Provincial Up-gradation Committee of Finance Department correctly considered the case of the appellant and correctly arrived at a decision. Further more holding additional charge of a post do not establish the right of up-gradation in the light of Finance Department's circular letter No.FD(SR-I)3-19/92, dated 12/8/1997.
- B) In the organizational structure of P&D Department, Service Rules of P&D Department and sanctioned strength of P&D Department, there is no post of Sub Engineer, being an irrelevant cadre for P&D Department. As such, no service rules for this post in P&D Department are framed.
- C) The remarks of the up-gradation Committee are advisory and the Committee properly considered the up-gradation case of the petitioner.
- D) That the all acts in the instant case are according to law, rules and natural Justice.
- E) As explained above, for the irrelevant position of Sub Engineer, no service rules of P&D Department could be revised.

DEPUTY REGISTRAR
06 FEB 2014

Next Page-3

ATTESTED
EXAMINER
Peshawar High Court

21

- F) The competent authority i.e Provincial Up-gradation Committee of Finance Department after due consideration, have not agreed to grant personal up-gradation to the appellant further more holding additional charge of a post do not establish any right of up-gradation to the post.
- G) That the petitioner case for up-gradation was properly considered by the up-gradation Committee in Finance Department.

PRAYED:

Keeping in view of the above, it is very humbly prayed that the Writ Petition may graciously be dismissed with cost.


SECRETARY,
PLANNING & DEVELOPMENT DEPTT:
GOVT. OF KHBYER PAKHTUNKHWA.
(Respondent No.2).

Secretary (P&D)


SECRETARY,
ESTABLISHMENT DEPTT:
GOVT. OF KHBYER PAKHTUNKHWA.
(Respondent No.4),
Secretary to Government of
Khyber Pakhtunkhwa
Establishment Department.

06 FEB 2014


ATTESTED
EXAMINER
Peshawar High Court

100-1-1
100-1-1

22

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P NO.1529-P/2013

Muhammad Ijaz s/o Muhammad Hayat.....Petitioner

VERSUS

Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar & others ...Respondents.

AFFIDAVIT

I Mr. Shah Jehan Section Officer (LIT) Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Reply/Statement submitted by Respondents I are true and correct to the best of my knowledge and believe that nothing has been concealed from this Honourable Court.

Shah Jehan

DEPONENT

ID No 17301-7916978-7

Identified

Advocate General
Khyber Pakhtunkhwa, Peshawar.

No. 7494.....
 Certified that the above was verified on solemnly
 affirmation before me in office, this 6th
 day of Feb..... 2019 by Shah Jehan
 s/o Planning and Development Dept Peshawar
 who was identified by A. R.
 Who is personally known to me:
 Oath Commissioner
 Peshawar High Court, Peshawar.

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Qanun-e-shahadat Order 1988

06 NOV 2019

No. 108/14
 Date of Presentation of Application 28/10/19
 No of Pages 4
 Copying fee 16/-
 Total 16/-
 Date of Preparation of Copy 6-11-19
 Date of Delivery of copy 6-11-19
 Received By [Signature]

NO. 108/14
06 NOV 2019

①

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 1529-P of 2013

Mohammad Ijaz S/o Mohammad Hayat R/O House No. 346

Sector-4 KDA Kohat. Petitioner

Versus



1. Chief Secretary Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar
2. Secretary Planning & Development (P & D) Department
Government of Khyber Pakhtunkhwa Civil Secretariat,
Peshawar.
3. Secretary , Finance Department Government of Khyber
Pakhtunkhwa Civil Secretariat, Peshawar.
4. Secretary Establishment & Administration Department
Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
5. Special Secretary, Finance Department Government of Khyber
Pakhtunkhwa Civil Secretariat, Peshawar
6. Additional Finance Secretary (Regulation), Finance Department
Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar
7. Deputy Commissioner Kohat, Near DIG House Rawalpindi
Road Kohat
8. The Section Officer (FR) Finance Department Khyber
Pakhtunkhwa Civil Secretariat, Peshawar
9. The Section Officer (Regulation-III) Establishment Department
Khyber Pakhtunkhwa Civil Secretariat, Peshawar
10. The Section Officer (Estt) Planning & Development Department
Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
11. District Officer Finance & Planning (F & P)
Near Gate No. 2 KDA, Kohat
12. Planning Officer, Planning & Development (P & D)
Near Gate No. 2 KDA, Kohat

.....Respondents

Registry Registrar

31 MAY 2013

ATTESTED

EXAMINER
Peshawar High Court

M/No
178/115

2

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973**

Respectfully Sheweth:

1. That petitioner was selected by the then NWFP Public Service Commission now KPK Public Service Commission and has been appointed as Sub Engineer BPS- 11 in the year 1990 vide office order bearing No. DG(RWP)12(5)/73 Dated 24/11/1990 but later on his services were declared surplus vide order bearing No. SO(LG-1)4-116/DG/2001 dated 21st July 2001 . (Copy of orders are attached as Annexure "A" and "B" respectively)
2. That thereafter petitioner was temporary adjusted in TMA, Hangu but through orders bearing No. SO(LG-1)4-116/S.Pool/2005 dated Peshawar the 15th February, 2006 and SO(ESTT) P& D/4-12/DG/Hangu dated Peshawar the February 25, 2006 the services of the petitioner were transferred to planning and Development (P & D) Department.(Copy of the orders are attached as Annexure "C" & "D")
3. That respondent department i.e Planning & Development framed Service rules for recruitment, Promotion, qualification and other conditions of the officers & officials of P& D Department but there was no mentioning of post of Sub- Engineer for the promotion to the post of Technical Officer/ Planning Officer / Research Officer or as the case may be. Thereafter several correspondent were made by the respondents for inclusion of post of Sub- Engineer P & DD in the service rules earlier notified but of no avail. (Copy of the notification and other corresponding are attached as Annexure "E" "F")
4. That the Finance Department Government of Khyber Pakhtunkhwa had notified a revised policy & criteria for up-radation of posts of the civil servant who do not have further promotion chances and have remained on the same position for reasonably long time circulated vide Finance Department letter bearing No. SO(FR)/FD/7-2/2008 dated Peshawar, the 11th October, 2010. (Copy of the policy is attached as Annexure "G")

ATTESTED
EXAMINER
Peshawar High Court

3

9

5. That petitioner has been assigned additional charge of Technical Officer in addition to his own duties vide DCO Kohat notification bearing No. 1596-1605/24/P &D/KT dated 21/06/2010 and since then he is performing his duties on the said new post. (Copy of the Notification and assumption of charge are attached as Annexure "H")

6. That petitioner filed an application before the worthy the then DCO Kohat for personal up-gradation which was properly forwarded to respondent No. 2 along with factual position corresponding to the up-gradation policy vide letter bearing No. 4763-86/39/DCO/KT dated 14/07/2011 and subsequently forwarded to respondent No. 10 vide letter No. 5507-09/39/P& D/ KT dated 01/11/2011.

(Copy of letters are attached as Annexure "I")

7. That after long correspondence a meeting of the committee comprising of respondent No. 5,6, 8 and 9 was held on 01/08/2012 to discuss the case , but the case was refused with remarks that the case is not feasible for up-gradation and suggest that personal up-gradation of the post is not a viable solution of the issue. Further the committee advised the Administrative Department to amend the service rules in such a manner as to provide opening/ prospect of promotion not only to the excising incumbent but the future entrants as well in order to avoid recurring of hardship in future. Minutes of the meeting endorsed by respondent No. 6 vide office letter bearing No. SO(E) P& D /050/5-15/2012 Dated Peshawar , December 18, 2012. (Copy of the letter and minutes of the meeting are attached as Annexure "J")

8. That petitioner filed an application bearing No. 295/39/P& D/DCO/KT dated 13/02/2013 to respondent No. 7 who forwarded the same to respondent No. 2 vide letter bearing No. 296-97/39/P&D/ DCO/KT dated 13/02/2013 but so for the same has not been replied. (Copies of the letters are attached as Annexure "K")

FILED TODAY

Deputy Registrar

31 MAY 2013

ATTESTED
EXAMINER
Peshawar High Court

DELETED
REMAKE
FROM THE ORIGINAL

(4)

10

9. That petitioner being aggrieved and dissatisfied by the actions and inactions, misuse of power, illegality and irregularity, non implementation of their own policy of the respondents, and having no other alternative remedy, seeks the indulgence of this of this Hon'ble Court, inter alia, on the following grounds:

GROUND S:

- A) That respondents are violating their own rule and regulation and policy by not giving the benefit of personal up-gradation to the petitioner although he has been working as Technical Officer as additional charge, since last three years.
- B) That petitioner has requested respondent for inclusion of Sub Engineer post in the Service Rules in the year 2006 but the said request was not honored and now after the passage of long period of more than 6 years, same advice is made by the committee, in minutes of its meeting and totally ignored the personal up-gradation policy, which has been circulated for this specific purpose, hence the manner in which the petitioner has been treated need indulgence of this Hon'ble Court.
- C) That it is very much evident from the perusal of the revised policy / criteria for up-gradation that those civil servant who have no further promotion chances and have stayed on one position for reasonably long time, will be placed before the committee for consideration but the committee instead of giving finding on petitioner case advised to amend the service rules, which is totally against the purpose of the policy.
- D) That because the impugned actions and inactions are blatantly against all norms of justice and principles of reasonability.
- E) That the application of petitioner was not taken into consideration earlier back in the year 2006 when he requested time and again for making necessary amendment in the service rules but now when the case of petitioner covers under the revised policy of up-gradation the committee refused the rights accrued to the petitioner.

ATTESTED

EXAMINER
Peshawar High Court

FILED TODAY

Deputy Registrar

31 MAY 2013

5

F. That petitioner is fully entitled for up-gradation as he has been working as Technical Officer since 2010 and performing his duties to the entire satisfaction of his superior.

G. That if the case of petitioner for personal up-gradation is not considered then his future is looking very dark as he has spent more than 22 years on the same position beside the fact that he has improved his qualification with Bachelor of Technology (B. Tech) Honor equivalent to B.S Engineering.

It is, therefore, respectfully prayed that on accepting this Writ Petition respondent may please be directed;

I) To up-grade the post of petitioner from BPS-11 to BPS-17 as per policy endorsed vide letter bearing No. SO(FR)/FD/7-2/2008 dated Peshawar, the 11th October, 2010 and correspondence made thereof.

II) To declare the finding of up-gradation Committee held on 01/08/2012 illegal, without jurisdiction and against the spirits of revised policy of up-gradation, to the extent of petitioner's case.

III) Any other relief not specifically prayed for deem appropriate in the circumstance of the case may also be granted.

Petitioner

Through

SHAHID QAYUM KHATTAK
Advocate, Peshawar

Certificate:-

Certified (as per information provided by petitioner) that no such Writ Petition has previously been filed by the petitioner before this Hon'ble court.

List of Books:-

1. Constitution of Islamic Republic of Pakistan, 1973
2. Revised up-gradation policy
3. Any other book according to need.

Advocate

ATTESTED

EXAMINER
Peshawar High Court

Advocate

31 MAY 2011.

RECEIVED
EXAMINER
NATIONAL BUREAU OF STANDARDS

6

12

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 1529-P of 2013

Mohammad Ijaz Petitioner

Versus

Chief Secretary Government of KPK and others..... Respondents

AFFIDAVIT

I, Mohammad Ijaz S/o Mohammad Hayat R/O House No. 346 Sector-4 KDA Kohat do hereby solemnly affirm and declare on Oath that the contents of the accompanying **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT

Identified by:

NIC NO: 14301-0799154-7

Shahid Qayum Khattak
Advocate

No: <u>12693</u>
Certified that the above was verified on solemnly affirmation before me in office, this <u>30th</u> day of <u>May</u> 20 <u>13</u> by <u>Mohammad Ijaz</u> s/o <u>Mohammad Hayat Kohat</u> who was identified by <u>Shahid Qayum Khattak</u> Who is personally known to me:
 Oath Commissioner Peshawar High Court, Peshawar.

ATTESTED

EXAMINER
Peshawar High Court

30 MAY 2013

(7)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 1529-P of 2013

Mohammad Ijaz Petitioner

Versus

Chief Secretary Government of KPK and others..... Respondents

ADDRESSES OF THE PARTIES

PETITIONER

Mohammad Ijaz S/o Mohammad Hayat R/0 House No. 346
Sector-4 KDA Kohat

RESPONDENTS

ATTESTED

EXAMINER
Peshawar High Court

1. Chief Secretary Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar
2. Secretary Planning & Development (P & D) Department
Government of Khyber Pakhtunkhwa Civil Secretariat,
Peshawar.

FILED TODAY

Deputy Registrar

31 MAY 2013

Secretary , Finance Department Government of Khyber
Pakhtunkhwa Civil Secretariat, Peshawar.

⑧

4. Secretary Establishment & Administration Department
Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
5. Special Secretary, Finance Department Government of Khyber
Pakhtunkhwa Civil Secretariat, Peshawar
6. Additional Finance Secretary (Regulation), Finance Department
Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar
7. Deputy Commissioner Kohat, Near DIG House Rawalpindi
Road Kohat.
8. The Section Officer (FR) Finance Department
Khyber Pakhtunkhwa Civil Secretariat, Peshawar
9. The Section Officer (Regulation-III) Establishment Department
Khyber Pakhtunkhwa Civil Secretariat, Peshawar
10. The Section Officer (Estt) Planning & Development Department
Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
11. District Officer Finance & Planning (F & P)
Near Gate No. 2 KDA, Kohat.
12. Planning Officer, Planning & Development (P & D)
Near Gate No. 2 KDA, Kohat

ATTESTED
EXAMINER
Peshawar High Court

Petitioner

Through

SHAHID QAYUM KHATTAK
Advocate, Peshawar

RECEIVED TODAY
Deputy Registrar

31 MAY 2013

63

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.



W.P.NO.1529-P/2013

Muhammad Ijaz S/O Muhammad Hayat.....Petitioner.

VERSUS

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

INDEX.

S.No.	Particular	Annexure	Page No.
1	Para-wise comments		01
2	Affidavit		02
3	Minutes of the meeting	1 & 11	03-4

ATTESTED

EXAMINER
Peshawar High Court

FILED TODAY

Deputy Registrar

16 JAN 2014

I

64

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

W.P. No. 1529-P/2013

Muhammad Ijaz S/O M. Hayat **Petitioner**

...Versus...

Govt of Khyber Pakhtunkhwa & Others **Respondents**

**PARAWISE COMMENTS FOR & ON BEHALF OF SECRETARY FINANCE
DEPARTMENT (RESPONDENT NO. 3)**

Preliminary Objections.

- i. That the petition is time barred.
- ii. That the petitioner has not come to this Honorable Court with clean hands.
- iii. That the petitioner has got no cause of action to file this writ petition.
- iv. That the petitioner has concealed material facts from this Honorable Court.
- v. That the petition is bad for non-joinder and mis-joinder of necessary parties.
- vi. Being service matter, the petitioner is required to approach Peshawar Pakhtunkhwa Service Tribunal as per Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.

FACTS

1. Pertains to office record.
2. Pertains to office record.
3. Related to Respondent No. 2 i.e. P & D Department.
4. Correct
5. Related to respondent No. 4.
6. Related to Respondent No. 2 & 10.
7. Correct Minutes of the meeting are at Annex-I. However it is clarified that the Upgradation Committee thoroughly discussed as per para-3 of the minutes.
8. Related to Respondent No. 2
9. No comments.

GROUND

- A. No rule violated by the respondents as the case was thoroughly discussed in the Upgradation Committee wherein the Committee decided the issue taking into the consideration all aspects in light of the upgradation policy.
- B. As explained in para-A above.
- C. The Committee instead of giving interim relief to the petitioner suggested to provide regular promotion chances to the petitioner in order to avoid recurring of hardship in future Annex-II.
- D. No injustice was done to the petitioner by the respondents.
- E. As explained in para-A above.
- F. As explained in para-A & C above.
- G. Related to Respondent No. 1.

ATTESTED
EXAMINER
Peshawar High Court

In view of the above explanation, it is humbly prayed that the instant petition being devoid of merits may be dismissed.

FILED TODAY

Deputy Registrar

16 JAN 2014


Secretary to Govt; of Khyber Pakhtunkhwa
Finance Department
(Respondent No. 3)

65

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

W.P.NO.1529-P/2013

Muhammad Ijaz S/O Muhammad Hayat.....Petitioner.

VERSUS

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

AFFIDAVIT

I Amanatullah Qureshi , Section Officer (Lit-I) Government of Khyber Pakhtunkhwa Finance Department do hereby solemnly affirm and declare on oath that the contents of Para-wise comments on behalf of Respondents No.03 are true and correct to the best of my knowledge and belief and that nothing has been concealed from the Honorable Court .

[Signature]
DEPONENT SECTION OFFICER (Lit-I)
Finance Department
Khyber Pakhtunkhwa

No. <u>6661-</u> Certified that the above was verified on solemnly affirmation before me in office, this <u>16th</u> day of <u>Jan</u> 20 <u>14</u> by <u>Amanatullah Qureshi</u> s/o <u>Finance Dept. Peshawar</u> who was identified by <u>A. Ijaz</u> Who is personally known to me: <p style="text-align: right;"><i>[Signature]</i> Oath Commissioner Peshawar High Court Peshawar.</p>
--

Identified by

[Signature]
Advocate General

Khyber Pakhtunkhwa Peshawar

ATTESTED

[Signature]
EXAMINER
Peshawar High Court

FILED TODAY
Deputy Registrar
16 JAN 2014

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No.1529-P/2013

glo

Mohammad Ijaz S/O Mohammad Hayat R/O House No.346 Sector-4 KDA Kohat.....Petitioner

VERSUS

Chief Secretary & Others.....Respondent

Subject: PARAWISE COMMENTS FROM THE RESPONDENT No. 7

RESPECTFULLY SHEWETH:-

1. That the Para No.1 in the knowledge of the respondent is correct to the extent that the petitioner was selected by the NWFP, Public Service Commission and has been working here as Sub Engineer since 2/2006 however, the other contents of the Para relate to the record concerned.
2. It is correct to the extent that the Petitioner was transferred from Hangu to the office of P&D Kohat and has been working here since 22.02.2006.
3. Correct.
4. Relates to the record concerned.
5. Correct. The petitioner had been assigned additional charge too. In addition the petitioner proved himself to be a very honest official. Not only he, performed his original duty in good and very honest way but also the additional charge was also fantastically and skillfully handled by the petitioner.
6. It is correct that the said application was moved to respondent No.7 for consideration.
7. The Para relates to the record concerned. However, if the petitioner is upgraded the respondent No.7 would have no objection.
8. Correct.
9. Not related.

20975
 FILED TODAY
 Deputy Registrar
 26 DEC 2013

RE-FILED TODAY
 Deputy Registrar
 11 FEB 2014

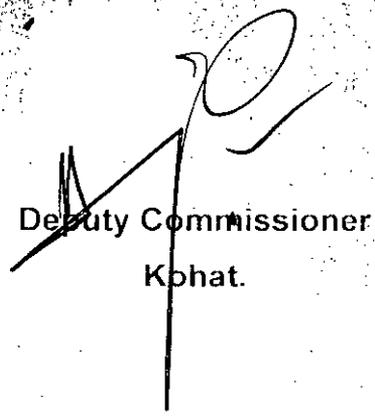
ATTESTED
 EXAMINER
 Peshawar High Court

TESTED
EXAMINER
COURT REPORTER

GRUNDS.

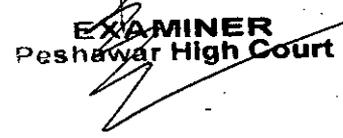
- A. It is correct that the official has worked as Technical Officer in addition to his own duties for the last three years.
 - B. Relates to the record concerned.
 - C. Relates to the record concerned.
 - D,E,F & G. The Para's relates to record.
- Submitted for further consideration.

gr



Deputy Commissioner
Kohat.

ATTESTED



EXAMINER
Peshawar High Court

FILED TODAY
Deputy Registrar
26 DEC 2013

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Write Petition No.1529-P/2013.

Muhammad Ijaz S/O Muhammad Hayat R/O House No.346 Sector-4 KDA
KohatPetitioner

82

VERSUS.

Chief Secretary & Others Respondent.

COUNTER AFFIDAVIT ON REPRESENTATIVE OF THE RESPONDENT NO.7

1. Wahid Rehman, District Officer (F&P) Kohat do hereby solemnly affirm and declare that the contents of the accompanying report and Para-wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

DISTRICT OFFICER
FINANCE & PLANNING
KOHAT

[Signature]
DISTRICT OFFICER
(FINANCE & PLANNING)
KOHAT

RESPONDENT NO.7
AUTHORIZED PERSON

7732

I declare that the contents were verified on solemnly
affirmation before me on this date, this.....*11 Feb*
day of *Feb*.....*11* by *Muhammad Rehman*
District Officer Kohat
who was identified by *gudh*
who is personally known to me:

[Signature]
Oath Commissioner
Peshawar High Court, Peshawar.

ATTESTED
[Signature]
EXAMINER
Peshawar High Court

RE-FILED TODAY

Deputy Registrar
11 FEB 2014

a1

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

*Writ Petition No.1529-RB/14**
Date of hearing.....27.02.2015.

Muhammad Ijaz
Vs

Chief Secretary Government of KPK & others

Petitioner (s) by Mr. Shahid Qayyum Khattak, Advocate.

Respondent/State(s) by Mr. Rab Nawaz Khan, AAG.

IRSHAD QAISER, J:- Through this writ petition, the petitioner Muhammad Ijaz s/o Muhammad Hayat has asked for issuance of appropriate writ declaring the finding of up-gradation Committee held on 01.08.2012 illegal, without jurisdiction and against the spirits of revised policy of up-gradation, to the extent of petitioner's case. It is prayed that the post of petitioner may be up-graded from BPS-11 to BPS-17 as per policy endorsed vide letter No.SO(FD)/FD/7-2/2008 dated Peshawar, the 11th October, 2010 and correspondence made thereof.

2. In essence, the grievance of the petitioner are that vide office order dated

ATTESTED
EXAMINER
Peshawar High

24.11.1990, he along with five others were selected by Public Service Commission, NWFP, Peshawar and had been appointed as Sub-Engineer in BPS-11 on temporary basis. Later on vide order dated 21.07.2001 he and 28 others Sub-Engineers were declared surplus. Thereafter he was temporarily adjusted in TMA, Hangu, but through order dated 15.02.2006 and 25.02.2006 his services were transferred/adjusted to Planning and Development (P&D) Department. Vide notification dated 05.07.2006 the (P&D) Department framed Service Rules for recruitment, qualification and other conditions of the Officers/Officials of the Department, but the post of Sub-Engineer for the promotion to the post of Technical Officer/Planning Officer/Research Officer etc has not been mentioned/included. In spite of several efforts and correspondents made with the respondents for inclusion of the post of Sub-Engineer P&D Department in service rules, earlier notified, no positive result was achieved and the seniority list as well as service structure of Sub-Engineer have not been framed in P&D Department and there is no setup for the promotion of Sub-Engineer of

ATTESTED
EXAMINER
Peshawar High Court

93

P&D Department at district level. It is further contended that vide letter dated 21.06.2010 additional change of Technical Officer in addition to his duties has been assigned to him and since then he is performing his duties on the said new post. That petitioner filed an application for personal up-gradation. On 01.08.2012 a meeting of up-gradation was held, but the same was refused. That the petitioner is fully entitled for up-gradation as he has been working as Technical Officer since 2010 and performing his duties to the entire satisfaction of his superior. It is contended that since his rights have been infringed and he has been discriminated, therefore he filed present writ petition.

3. The respondents while submitting their comments denied the contention of petitioner with the preliminary objection that being service matter this Court has no jurisdiction under article 212 of the Constitution of Islamic Republic of Pakistan, 1973. While justifying the minutes of the meeting it is stated that the Committee instead of giving interim relief to the petitioner suggested to provide

ATTESTED
EXAMINER
Peshawar High Court

regular promotion chances to the petitioner to avoid recurring of hardship in future.

Arguments heard and record perused.

4. Admittedly the services of petitioner were placed at the disposal of Planning & Development Department for adjustment against the vacant post of Sub-Engineer in District Kohat. Since the post of Sub-Engineer was not at the sanctioned strength of P&D Department, therefore it was not indicated in the framing of revised Service Rules and being single cadre post there is no chance of his promotion. When the petitioner submitted an application for personal up-gradation, the same was thoroughly considered by competent authority including the concerned officers of Finance, Establishment and P&D Department and a meeting of up-gradation Committee was held on 01.08.2012 under the Chairmanship of special Secretary of KPK Finance Department. After thorough discussion they found that the case of the petitioner is not feasible for up-gradation and suggested that the present up-gradation of the post is not the viable solution of the issue and it

ATTESTED
EXAMINER
Peshawar High Court

1730001 High Court
EXAMINER
FILED

45

advised the Administrative Department to amend Service Rules in such a manner as to provide opening/prospect of promotion not only to the existing incumbent, but to the future entrants as well in order to avoid recurring hardship in future.

5. Learned counsel for the petitioner could not point out any illegality or jurisdictional defect in the findings of the up-gradation Committee held on 01.08.2012.

6. The petitioner also claimed up-gradation on the ground that he was assigned additional charge of Technical Officer in additional to his duties vide order dated 21.06.2010 and since then he is performing his duties on the new post with full satisfaction of his high-up. This plea has also no force as it was a stop gap arrangement/interment arrangement and on the transfer of Muhammad Zafar T.O, P&D Department, petitioner was authorized to look after the office of Technical Officer till further order. Furthermore holding of additional charge of a post do not establish the right of up-gradation in the light of Finance Department's circular letter

J.S.

ATTESTED**EXAMINER**
Peshawar High Court

RECEIVED
EXAMINER
General High Court

ab

No.FD(SR-1)3-1992 dated 12.08.1997. There is also force in the objection raised by respondents with regard to the bar of jurisdiction of this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In view of the judgment of Apex Court as well as this Court it is clear that whenever a matter relating to a terms and condition of civil servant inducting the question of vires of law or rules or malafide action, the service tribunal has the exclusive jurisdiction in the matter.

Thus for the reasons discussed above, instant petition being without force, is hereby dismissed. ✓

Sd/ Nizam Hussain
Sd/ Ishtiaq Qureshi

[Signature]
JUDGE

[Signature]
JUDGE

Announced.

27.01.2015.

No. 2501

Date of Presentation of Application 31/5/14

No of Pages 20

Copying fee 800

Total 800

Date of Preparation of Copy 05/9/14

Date of delivery of copy 05/9/14

Received by [Signature]

[Signature]
CERTIFIED TO BE TRUE COPY
Examiner
 Peshawar High Court, Peshawar
 Authorised Under Article 8.7 01
 The Qanun-e-Shahadat Order 1984

