

04th July, 2022

Counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. Adjourned. To come up for written reply/comments on 05.09.2022 before S.B.



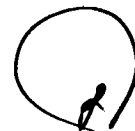
(Kalim Arshad Khan)
Chairman

05.09.2022

Appellant in person present.

Kabir Ullah Khattak, learned Additional Advocate General alongwith Sajjad Amir Assistant for respondents present.

Reply on behalf of respondents was not submitted. Representative of respondents requested for time to submit reply/comments. Last chance is given. To come up for reply/comments on 30.09.2022 before S.B.

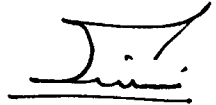


(Rozina Rehman)
Member(J)

10.01.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration, hence the appeal in hand is admitted to regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments on 15.03.2022 before the S.B.



(Salah-Ud-Din)
Member (J)

15.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 06.6.2022. for the same as before.



Reader.

06.06.2022

Clerk to counsel for the appellant present.

Security and process fee has not been deposited. Clerk of learned counsel for the appellant submitted application for time to deposit security and process fee. Application is allowed with direction to deposit the same by today. Where-after, notices be issued to respondents for submission of comments for 04.07.2022 before SB.

Rs-600/-
Appellant Deposited
Security & Process Fee

A. [Signature]
10/06/22

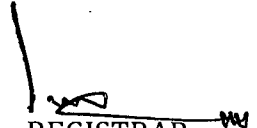



(Rozina Rehman)
Member (J)

FORM OF ORDER SHEET

Court of _____

Case No.- 7764/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/11/2021	<p>The appeal of Mr. Asfandyar presented today by Mr. Amin-Ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR </p> <p>2-</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>10/01/22</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7764 2021

Asfandyar..... Appellant

....VERSUS....

Government of Khyber Pakhtunkhwa & 3 others..... Respondents

I N D E X

S.No	Description of documents	Annex	Pages
1.	Grounds of Appeal		1-4
2.	Affidavit		5
3.	Application for grant of status quo		6
4.	Addresses of the parties		7
5.	Copy of Notice / Office letter dated: 07.01.2014	A	8
6.	Copy of Office Order dated: 24.01.2014	B	9
7.	Copy of Departmental Appeal dated: 03.02.2014	C	10-11
8.	Copy of Service Appeal No.769/14, dated: 30.05.2014	D	12-14
9.	Copy of Office Order dated: 20.06.2014 alongwith charge sheet/ statement of allegations dated: 04.03.2014 with reply	E	15-20
10.	Copy of Departmental Appeal dated: 22.07.2014	F	21-22
11.	Copy of Service Appeal No.1350/14, dated: 20.11.2014	G	23-25
12.	Copy of Consolidated Judgment dated: 16.07.2019	H	26-29
13.	Copy of Arrival Report on 01.08.2019	I	30
14.	Copy of Application dated: 26.06.2020 alongwith order sheets of this Hon'ble Tribunal	J	31-35
15.	Copy of Office Order dated: 01.02.2021	K	36
16.	Copy of Office Order dated: 03.02.2021	L	37
17.	Copy of Office Letter/Order dated: 18.06.2021 of Respondent No.2 alongwith inquiry report	M	38-41
18.	Copy of Departmental Appeal dated: 15.07.2021	N	42
19.	Copy of Decision / office letter dated: 26.10.2021	O	43
20.	Copy of Office Order dated: 08.11.2021	P	44
21.	Wakalatnama		45

Asfandyar
Appellant
Through

Amin ur Rehman Yusufzai

Sajjad Mehsud

Khalid Khan Mehmood

&

Muhammad Kareem Afridi
Muhammad Kareem Afridi
Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

Dated: 12.11.2021

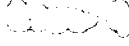
Cell No.0321-9022964, 0333-9981464 & 0342-9101124

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.____/2021

Asfandyar (Royalty Inspector) S/O Sabz Ali Khan
R/O Mohallah Landi Khel, Village & PO Rashaki,
Tehsil & District Nowshera. Appellant

....VERSUS....

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, , Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Mines & Minerals Department, Civil Secretariat, Peshawar.
3. Director General, Mines & Minerals Department, Civil Secretariat, Peshawar.
4. Deputy Director (Tech)/Inquiry Officer, Directorate General, Mines & Minerals Department, Civil Secretariat, Peshawar. Respondents

Accepted

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, READ WITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, AGAINST DECISION/ORDER DATED: 26.10.2021 OF THE APPELLATE AUTHORITY/RESPONDENT NO.2 AND SUBSEQUENT OFFICE ORDER DATED: 08.11.2021 OF RESPONDENT NO.3, ALONGWITH PRE/POST PROCEEDINGS THERETO, INCLUDING DENOVO INQUIRY AND ITS APPROVAL DATED: 18.06.2021.

PRAYER-IN-APPEAL:

On acceptance of instant appeal, impugned decision/order dated: 26.10.2021 of the appellate authority/ Respondent No.2 and subsequent Office Order dated: 08.11.2021 of Respondent No.3, alongwith pre/post proceedings thereto, including denovo inquiry and its approval dated: 18.06.2021, may be declared as illegal, unlawful, without lawful authority, void ab-initio and of no legal effect, hence be set at naught and appellant may be exonerated from the charges leveled against him and be declared entitled of all back benefits, within the meaning of consolidated Judgment dated: 16.07.2019 of this Hon'ble Tribunal, so as to secure the ends of justice.

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

Respectfully Sheweth:

1. That appellant is MA, LL.B. qualified and, on the recommendations of Khyber Pakhtunkhwa Public Service Commission, was appointed as Royalty Inspector (BS-11), on 03.04.2010.
2. That appellant was served with Notice/Office letter dated: 07.01.2014, for recovery of Rs.135856/-, on the allegations of willful absence from duty, with effect from 01.04.2013 to 22.12.2013 i.e. 8 months & 21 days, followed by Office Order dated: 24.01.2014, vide which the aforementioned period of willful absence from duty was converted into extra ordinary leave (without pay), against which Departmental Appeal dated: 03.02.2014 was preferred to Respondent No.2, however, not considered, resultantly appellant approached this Hon'ble Tribunal through Service Appeal No.769/14, dated: 30.05.2014, with the following prayer:

"It is prayed that on acceptance of this appeal, the impugned order may be set aside with costs of this appeal against the Respondents".

(Copies of Notice / Office letter dated: 07.01.2014, Office Order dated: 24.01.2014, Departmental Appeal dated: 03.02.2014 and Service Appeal No:769/14, dated: 30.05.2014, are attached as Annexures "A", "B", "C" & "D" respectively).

3. That Respondent Department, during pendency of Service Appeal No.769/14 supra, issued Office Order dated: 20.06.2014, vide which major penalty of removal from service was imposed upon appellant, on the strength of charge sheet/statement of allegations dated: 04.03.2014, against which Departmental Appeal dated: 22.07.2014 was preferred to the Competent Authority but was not considered, eventually appellant approached this Hon'ble Tribunal through Service Appeal No.1350/14, dated: 20.11.2014, with the following prayer:

"It is prayed that on acceptance of this appeal, the impugned order may be set aside and the appellant may be reinstated in service with back service benefits and with costs of this appeal against the Respondents".

(Copies of Office Order dated: 20.06.2014 alongwith charge sheet/statement of allegations dated: 04.03.2014 with reply, Departmental Appeal dated: 22.07.2014 and Service Appeal No.1350/14, dated: 20.11.2014, are attached as Annexures "E", "F" & "G" respectively).

4. That both the aforementioned Service Appeals were clubbed together and partially allowed, through consolidated Judgment dated: 16.07.2019, operative part whereof is reproduced as under:

"The record reveals that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor the appellant was associated in any inquiry proceedings nor the appellant was handed over show cause notice alongwith copy of inquiry report nor the appellant was provided opportunity of personal hearing before passing the impugned orders. Same way neither absence notice was issued at the home address of the appellant by the Competent Authority nor any absence notice was published in two newspapers as required under Rule 9 of KP Government Servants (Efficiency & Disciplinary) Rules, 2011. Meaning thereby that the appellant was condemned unheard which has rendered the whole proceedings illegal and liable to be set aside. As such, was partially accept both the appeals, set aside the impugned orders, re-instate the appellant into service with the directions to Respondent Department to conduct one denovo inquiry (as the allegation in both the aforesaid appeals are one and the same) in the mode and manner prescribed under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 and thereafter, pass an order deem appropriate. The issue of back benefits will be subject to the outcome of denovo inquiry."

(Copy of consolidated Judgment dated: 16.07.2019 is attached as Annexure "H")

5. That appellant, pursuant to consolidated Judgment dated: 16.07.2019 supra, of this Hon'ble Tribunal, submitted Arrival Report on 01.08.2019, through Diary No.13184, through received by the Competent Authority/ Director General M&M Khyber Pakhtunkhwa, but neither his re-instatement order was issued nor he was allowed to perform duties.

(Copy of Arrival Report on 01.08.2019 is attached as Annexure "I").

6. That appellant exhausted all possible measures for implementation of consolidated Judgment dated: 16.07.2019 supra of this Hon'ble Tribunal, however, all his cries fell on deaf ear, eventually he left with no other option but to invoke jurisdiction of this Hon'ble Tribunal under section 7(2)(d) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (KP Act No.1 of 1974) dated: 26.06.2020, which is still pending adjudication and date: 22.11.2021 is fixed therein for onward proceedings.

(Copy of application dated: 26.06.2020 alongwith order sheets of this Hon'ble Tribunal, is attached as Annexure "J").

7. That during pendency of execution application dated: 26.06.2020 supra, appellant was re-instated in service vide order dated: 01.02.2021, but with immediate effect, notice whereof has already been taken by this Hon'ble Tribunal, evident from order dated: 02.08.2021 (already annexed alongwith "J") and final order has yet to be passed.

(Copy of Office Order dated: 01.02.2021 is attached as Annexure "K").

8. That denovo inquiry was started, in compliance with consolidated Judgment dated: 16.07.2019 supra of this Hon'ble Tribunal and appellant was directed to appear before the Inquiry Officer on 11.02.2021 at 11:00 a.m. for personal hearing, evident from Office Order dated: 03.02.2021, eventually, appellant appeared before the Inquiry Officer on

the date and time fixed and, after hearing him at some length, he was advised to wait for the statement of allegations / charge sheet.
(Copy of Office Order dated: 03.02.2021 is attached as Annexure "L").

9. That the Inquiry Officer finalized inquiry, without issuing charge sheet/statement of allegation, with the following recommendations:

"After considering the background of the case, relevant documents and personal hearing of the accused it is recommended that:

- i. The pay and allowances drawn by the accused during the period of his willful absence may be recovered from him.
- ii. The accused may be banned for posting at regional office for period of at least one year and his official duty / performance may be regularly monitored."

On approval of the recommendations ibid of the Inquiry Officer, appellant was directed to deposit the amount of Rs.135,856/- in department head of account positively, evident from office letter / order dated: 18.06.2021.

(Copy of office letter / order dated: 18.06.2021 of Respondent No.2 alongwith inquiry report is attached as Annexure "M").

10. That appellant assailed office letter / order dated: 18.06.2021 of Respondent No.3, alongwith inquiry report supra, before Respondent No.2, through departmental appeal dated: 15.07.2021, which has also been decided unilaterally and dismissed, vide decision/office letter dated: 26.10.2021, endorsed by Respondent No.3, vide Office Order dated: 08.11.2021.

(Copies of Departmental Appeal dated: 15.07.2021, decision / office letter dated: 26.10.2021 & Office Order dated: 08.11.2021, are as Annexures "N", "O" & "P" respectively).

11. That appellant, being aggrieved of decision/order dated: 26.10.2021 of the Appellate Authority/Respondent No.2 and subsequent Office Order dated: 08.11.2021 of Respondent No.3, alongwith pre/post proceedings thereof, including denovo inquiry and its approval dated: 18.06.2021, approaches this Hon'ble Tribunal, inter-alia, on the following grounds:

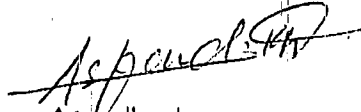
G R O U N D S:

- A. That impugned decision/order dated: 26.10.2021 of the appellate authority/ Respondent No.2 and subsequent Office Order dated: 08.11.2021 of Respondent No.3, alongwith pre/post proceedings thereof, including denovo inquiry and its approval dated: 18.06.2021, are against the law, facts and peculiar circumstances of the case of appellant, hence untenable.
- B. That Respondent Department has neither complied with directions rendered by this Hon'ble Tribunal, vide consolidated Judgment dated: 16.10.2019 supra, nor treated appellant in accordance with law, nor he has been extended equal protection of law, which has caused grave miscarriage of justice.
- C. That, though denovo inquiry was conducted but without issuing either charge sheet/statement of allegations or mandatory show cause notice, rather appellant has neither been associated with the denovo inquiry proceedings nor was granted opportunity of proper hearing, contemplated from Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, hence has been condemned unheard, which attracts the doctrine of audi alteram partem.
- D. That the impugned proceedings have been carried out in utter disregard to law/rules governing the subject, hence carry no legal weight.

- E. That facts and circumstances of the case of appellant has not be appreciated by the Competent Authority in its true perspective, hence arrived at a wrong conclusion.
- F. That allegation of willful absence from duty of appellant from 01.04.2013 to 22.12.2013 was primarily leveled by Respondent No.3, vide office letter dated: 07.01.2014, however, subsequently converted into leave without pay, by the Competent Authority, vide Office Order dated: 24.01.2014 (already annexed), but this aspect of the case has escaped sight of the Respondent Department, hence indulgence of this Hon'ble Tribunal is imminent to ensure fair play and justice.
- G. That any other ground, with the permission of this Hon'ble Tribunal, will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant appeal, impugned decision/order dated: 26.10.2021 of the Appellate Authority/ Respondent No.2 and subsequent Office Order dated: 08.11.2021 of Respondent No.3, alongwith pre/post proceedings thereto, including denovo inquiry and its approval dated: 18.06.2021, may be declared as illegal, unlawful, without lawful authority, void ab-initio and of no legal effect, hence be set at naught and appellant may be exonerated from the charges leveled against him and be declared entitled of all back benefits, within the meaning of consolidated Judgment dated: 16.07.2019 of this Hon'ble Tribunal, so as to secure the ends of justice.

Any other relief, not specifically prayed for and deemed appropriate by this Hon'ble Tribunal in circumstances of the case, may also be granted.


Appellant

Through

Arnin ur Rehman Yusufzai

Sajjad Mehsud

Khalid Khan Mohmand

&

Muhammad Kareem Afridi

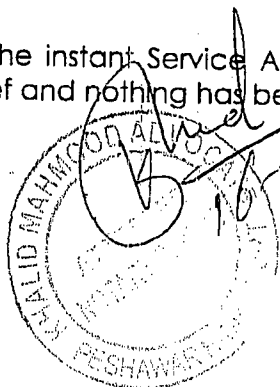
Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

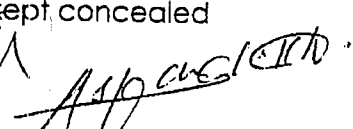
Cell No.0321-9022964, 0333-9981464 & 0342-9101124

Dated: 12.11.2021

VERIFICATION:

Verified on oath that the content of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.




Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. ____/2021

Asfandyar..... **Appellant**

....**VERSUS**....

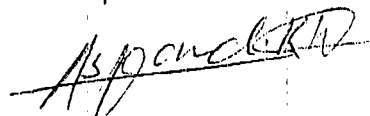
Government of Khyber Pakhtunkhwa & 3 others..... **Respondents**

AFFIDAVIT

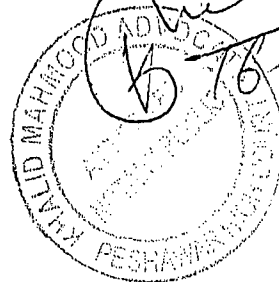
I, **Asfandyar** S/O Sabz Ali Khan (Royalty Inspector) R/O Mohallah Landi Khel, Village & PO Rashaki, Tehsil & District Nowshera, do hereby solemnly affirm declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief, and that nothing has been kept concealed from this Hon'ble Tribunal.

Identified By:

Amin-ur Rehman Yusufzai
Advocate, Peshawar



DEPONENT
CNIC #: 17201-4951905-9



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Civil Misc. No. _____ of 2021

IN

Service Appeal No. ____/2021

Asfandyar..... **Appellant**

....**VERSUS**....

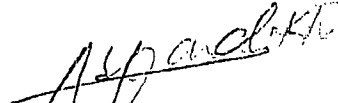
Government of Khyber Pakhtunkhwa & 3 others..... **Respondents**

APPLICATION FOR AND ON BEHALF OF APPELLANT, FOR GRANT OF STATUS QUO, TILL FINAL DECISION OF THE TITLED APPEAL.

Respectfully Sheweth:

1. That appellant has filed instant appeal before this Hon'ble Tribunal wherein no date of hearing has yet been fixed.
2. That facts and grounds of the titled appeal may be considered as integral part and parcel of instant application.
3. That valuable rights of applicant are involved into the matter and, if the subject relief has not been granted, appellant will suffer irreparable loss.
4. That applicant has got good prima facie case in his favour and is very much sanguine of its success moreover balance of convenience also lies in his favour.

It is, therefore, most humbly prayed that on acceptance of instant application, status quo may be ordered to be maintained, till final decision of the titled appeal.


Appellant


Through


Amin ur Rehman Yusufzai


Sajjad Mehsud


Khalid Khan Mehmood

&


Muhammad Kareem Afridi
Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

Cell No.0321-9022964, 0333-9981464 & 0342-9101124

Dated: 12.11.2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.____/2021

Asfandiyar..... Appellant

....VERSUS....

Government of Khyber Pakhtunkhwa & 3 others..... Respondents

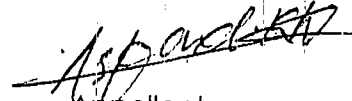
ADDRESSES OF THE PARTIES

APPELLANT:

Asfandiyar S/O Sabz Ali Khan
(Royalty Inspector)
R/O Mohallah Landi Khel, Village & PO Rashaki,
Tehsil & District Nowshera

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Mines & Minerals Department, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Mines & Minerals Department, Civil Secretariat, Peshawar.
3. Director General, Mines & Minerals Department, Civil Secretariat, Peshawar.
4. Deputy Director (Tech)/Inquiry Officer, Directorate General, Mines & Minerals Department, Civil Secretariat, Peshawar.



Appellant


Through


Amin ur Rehman Yusufzai


Sajjad Mehsud


Khalid Khan Mohammadi

&


Muhammad Kareem Afridi
Advocates, Peshawar
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

Cell No.0321-9022964, 0333-9981464 & 0342-9101124

Dated: 12.11.2021



Annex = "A" ⑧

DIRECTORATE GENERAL MINES AND MINERALS
KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENTS COMPLEX, KHYBER ROAD, PESHAWAR

No. 374 /DGMM/2/1136/Admn:


Dated 7 /01/2014

To:

Mr. Asfandyar,
Royalty Inspector, H/Q Office,
Peshawar.

Subject: RECOVERY OF WILFUL ABSENCE PERIOD AMOUNT OF RS.135856/-

I am directed to refer to the above noted subject and to state that you were remained absent from duty from 01.04.2013 to 22.04 2013 without the prior approval of the Competent Authority. The Competent Authority has, therefore, considered the willful absence period as Extra Ordinary Leave (without pay). As such you are advised to deposit the amount of Rs.135856/- in lumpsum under proper Head of Account and send the original Treasury Challan for record of this office, so that further action could be taken accordingly.


Assistant Director (Administration)
For Director General

ATTESTED

Annex = "B" (9)



DIRECTORATE GENERAL MINES & MINERALS
KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX,
KHYBER ROAD, PESHAWAR CANTT
Phone: 091-9210275 - 9211140

No. 1119/2/1136/DGMM/Admn

Date: 24/01/2014

OFFICE ORDER

The willful absence's period from 01/04/2013 to 22/12/2013 (266 days) of Mr. Asfandyar, Royalty Inspector Headquarter Office is hereby converted into Extra Ordinary Leave (without pay) by the Competent Authority.

-Sd-

Director General, Mines & Minerals
Khyber Pakhtunkhwa, Peshawar.

No. _____/2/1136/DGMM/Admn

Dated _____/01/2014

A copy of the above is forwarded to the:

- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- Assistant Director (Accounts) Headquarter Office, Peshawar.
- Mr. Asfandyar, Royalty Inspector, Headquarter Office, Peshawar.
- File No. 2/1134-DGMM/Admn

24/1
Assistant Director (Admn)
Directorate General, Mines & Minerals
Khyber Pakhtunkhwa, Peshawar.

24/1
ATTESTED

ATTESTED

3

1. That the verbal orders issued by the EX DG were ignored and my 8 months and 23 days of duty was considered as willful absence from duty.

Now I make my appeal on the following points:

Due to all these circumstances, I became a patient of "ACT. TE LUMBAGO SCIATICA" and has applied for medical leave to the serving DG. (copy of medical certificate attached)

I was suffering from such distress and painful situation but in the meanwhile, I came to know that a departmental inquiry has been conducted against me on the ground that I was willfully absent from my duty for 8 months and 23 days i.e. from 1st April, 2013 to Dec 23, 2013 and the calculated salary for the said duration is approx. 135,000 - which is to be paid by me in lump sum. Further my salary has been blocked from 19th of Dec, 2013.

I started my duty in the office of the AD, Mines & Minerals (Chital) but after a week I got a call from my family that my mother is severely suffering from sickness and has been hospitalized. I reached the hospital and looked after my mother but unfortunately my mother died after some time which gave me a great mental shock. In the meanwhile my father was also not feeling well and just after 15 days of the demise of my mother he got a severe heart attack and remained in the ICU of RMI for ten days. My father recovered to some extent but suddenly died due to heart attack and gave us a great mental shock. So in just four months of time I lost my parents.

With due regards it is humbly stated that I am serving as Royalty Inspector in the Mines & Minerals Directorate Peshawar since April, 2010. In January, 2012 I made a request to the EX DG for some time to a cold area like Swat or Chital. But as there was no vacant post transferred for some time to a cold area like Swat or Chital. But as there was no vacant post in Swat, therefore the EX DG gave me verbal orders to perform my duty in Chital because all types of transfers were banned at that time by the Provincial Government.

Respected Sir,

Subject: Appeal to exempt the recovery amount calculated under a one sided inquiry by the Department.

Peshawar,

Mines & Mineral Headquarter,

The Secretary (General)

To

10

Amrude = C

To

The Secretary General,
Mines & Mineral Headquarter,
Peshawar.

Subject: Appeal to exempt the recovery amount calculated under a one sided inquiry by the Department.

Respected Sir,

With due regards it is humbly stated that I am serving as Royalty Inspector in the Mines & Minerals Directorate Peshawar Since April, 2010. In January, 2012 I made a request to the Ex DG Mian Muhammad Farooq that due to some skin problem to my hands. I want to be transferred for some time to a cold area like Swat or Chitral. But as there was no vacant post in Swat, therefore the EX DG gave me verbal orders to perform my duty in Chitral because all types of transfers were banned at that time by the Provincial Government.

I started my duty in the Office of the AD Mines & Minerals chitral but after a week I got a call from my family that my mother is severely suffering from sickness and has been hospitalized. I reached the hospital and looked after my mother but unluckily my mother died after some time which gave me a great mental shock. In the meanwhile my father was also not feeling well and just after 15 days of the demise of my mother. He got a severe heart attack and remained in the ICU of RMI for ten days. My father recovered to some extent but suddenly died due to heart attack and gave us a great mental shock. So in just four months of time I lost my parents.

I was suffering from such distress and painful situation but in the meanwhile, I came to know that a departmental inquiry has been conducted against me on the ground that I was willfully absent from my duty for 8 months and 23 days i-e from 1st April, 2013 to Dec 23,2013 and the calculated salary for the said duration is approx., 135,000, Which is to be paid by me in lump sum. Further my salary has been blocked from 19th of Dec, 2013.

Due to all these circumstances, I became a patient of "ACUTE LUMBAGO SCIATICA" and has applied for medical leave to the serving DG. (Copy of medical Certificate attached).

Now I make my appeal on the following points:

1. That the Verbal orders issued by the EX DG were ignored and my 8 months and 23 days of duty was considered as willful absence from duty.

ATTESTED

D. No. 809
03.02.2014

Dated: 30/01/2014 ✓

Peshawar.

Directorate General of Mines & Minerals

Royalty Inspector

Adv. Astandyan Khatak

Yours Faithfully,

I shall be highly thankful to you for this kindness of yours.

- A. That my 8 months and 23 days of duty is to be considered as full pay duty and I shall be exempted from the recovery amount of 135,000/-
- B. That my salary is to be released with immediate effect from 20th of Dec. 2013.
- C. That as I am suffering from "ACUTE LEUKAEMIA SCITATICA" therefore, my medical leave is to be accepted.

Keeping in view all these circumstances, I make a humble appeal and request from your highness for the following three points.

1. That the writral absence from duty according to the inquiry officer was now officially transformed into duty without pay (copy of letter attached).
2. That a one sided departmental home inquiry was conducted in which no need was felt to hear me orally or in writing.
3. I have not been called by the inquiry officer to record my statement and is able to know about my circumstances.
4. When I had no other option but to save my job, I made a written request to the serving DGT to recover the calculated amount of 135,000/- from my salary in small installments but that request was totally refused.
5. When I had no other option but to save my job, I made a written request to the serving DGT to recover the calculated amount of 135,000/- from my salary in small installments but that request was totally refused.

Before The Service Tribunal, Peshawar.

Annexure = "D"

Service Appeal No. 769 /2014.

(12)

Asfandyar khattak s/o Sabz Ali khan (Royalty inspector office of The Director General, Mines and Minerals Deptt, Peshawar) Mohallah Landi khel village Rashakai, Nowshera.

Appellant.

Versus

~~815~~
815
02-6-2014

1. The Secretary, the Mines and Minerals Deptt, Peshawar.
2. The Director General, the Mines and Minerals Deptt, Peshawar.
3. The Assistant Director (Administration), the Mines and Minerals Deptt, Peshawar.

Respondents.

Appeal under Section-4 of the Service Tribunal Act, 1974 against the order of The D.G/Respondent No.2, Contained in Letter No.1120-23/2/1136/29-MM/Admn, dated 24.01.2014, treating the period from 1.4.2013 to 22.12.2013 as leave without pay.

1. That Appellant is employed as "Royalty/inspector" (BPS-11) under the Respondents since the month of April, 2010.
2. That the D.G/Respondent No.2 served the Appellant with the charge-sheet vide Endst No. 2738-40 dated 04.03.2014, with statement of allegations, charged the Appellant with the following charges:-

(1). That you does not perform official duties according to the Rules and Regulations,

(2). That you avail frequent leave on one and other pretext.

Copy Annexure- "A".

ATTESTED

(13)

That the statement of allegations, contained the allegations of:-

- (1). Not taking keen interest in performing of office duties, and
- (2). Avails frequent leave on one & other pretext.

Copy is Annexure- "B".

That Appellant submitted reply there-to, refuting the allegations.

Copy Annexure- "C".

That the D.G/Respondent.No.2 awarded the Appellant with the punishment of "treating the period from 01.04.2013 to 22.12.2013 (266 days) into leave without pay" vide Letter No. 1120-23/2/1136/DGMM/Admn dated 24.01.2014.

Copy Annexure- "D".

That grieved there from, the Appellant preferred Representation dated 30.01.2014 to the Secretary /Respondent No.1 vide receipt dairy No.809 dated 03.02.2014.

Copy Annexure- "E".

That the representation in question is unresponded.

Grounds:-

The impugned order is unjustified, illegal and against the principles of natural justice. Thus, the same is liable to be set-aside, on the following amongst many other grounds:-

- (I). That the charges as levelled against the Appellant are incorrect, false and evasive in nature.
- (II) That the Charge No.1 in the Charge Sheet is different from the Charge as mentioned in the statement of allegations.
- (III) That the Appellant has never committed the alleged offences.
- (IV) That the details of lacunas and instances of the duties, which were not performed according to the rules and regulations, are not pin-pointed, to enable the Appellant for proper defence there-against.
- (V) That the Appellant has always performed his duties with great zeal of mind and honestly.
- (VI) That the details of the leave, as questioned in the second Charge, are not pin-pointed, enabling the Appellant for proper defence reply.

ATTESTED

- (VII) That the Appellant had always tried to avail leave according to his requirements and according to Leave Rules.
- (VIII) That the Appellant has never availed unnecessary leave. But, when it was unavoidable.
- (IX) That the Appellant had never absented himself from duty unauthorisedly during the period as mentioned in the impugned order i.e; from 01.04.2013 to 22.12.2013.
- (X) That even the said period was not mentioned in the Charge-Sheet, as well as, in the Statement of allegations.
- (XI) That the Appellant is condemned unheard in-connection with the allegations of alleged absence during the period from 01.04.2013 to 22.12.2013.
- (XII) That Appellant had been attending his duties that no witness, as to the allegations of alleged absence was examined in the presence of Appellant.
- (XIII) That the Appellant was not served with the final Show cause notice not supplied the Copy of the enquiry report.
- (XIV) That the Respondents No.2 & 3 have assessed the amount of salary for the said period as Rs1,35,856/00 and pressing for the refund thereof vide Letter No. 374/DGMM/ 2/1136/Admn, dated 07.01.2014.

Copy Annexure- "F".

- (XV) That the Appellant is condemned unheard through-out.
- (XVI) That the Appellant seeks leave of this Honourable Tribunal to urge further grounds also.

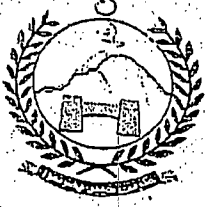
It is prayed that on acceptance of this Appeal, the impugned order may be set-aside, with Costs of this Appeal against the Respondents.

Date 31.05.2014.
(Saturday)

Appellant:
Asfandyar Khattak
(Asfandyar khattak)

Through: *Muhammad Adam Khan*
ADAM KHAN
B.A LLB Advocate
H.H Court MARDAN
Muhammad Adam Khan
Advocate, Mardan.

Asfandyar Khattak
ATTESTED



Annex = "E"

(15)

Directorate General of Mines and Minerals
KHYBER PAKHTUNKHWA
Attached Departments Complex Khyber Road Peshawar

No. 8428/DGMM/2/1134/Admn:

Dated 2016/2014

OFFICE ORDER

Having been found guilty of mis-conduct (willful absence from official duty), Mr. Asfandiyar, Royalty Inspector, Headquarter Office, Peshawar, is hereby removed from service with effect from 01.04.2013.

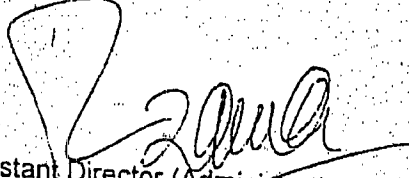
Sd/-
Director General Mines and Minerals
Khyber Pakhtunkhwa


Endst: No. _____/DGMM/2/1134/Admn:

Dated _____/06/2014

A copy of the above is forwarded to:

1. PA to Director General Mines and Minerals, Khyber Pakhtunkhwa.
2. The Accountant General Khyber Pakhtunkhwa Peshawar.
3. The Assistant Director (Accounts), HQ Office Peshawar.
4. Mr. Asfandiyar (Royalty Inspector) S/o Sabz Ali Khan, Mohallah Landi Khel Village and PO Rashaki Tehsil and District Nowshera.


Assistant Director (Administration)
For Director General


19/6

ATTESTED

CHARGE SHEET

16

I, Mustafa Kamal Shah, Director General, Mines and Minerals, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Asfandyar, Royalty Inspector, as follows:

That you, while posted as Royalty Inspector at H/Q Office, committed the following irregularities:

- (a) that you does not perform official duties according to the Rules and Regulation.
- (b) that you avail frequent leave on one and other pretext.
- (c)

2. By reason of the above, you appear to be guilty of Mis-conduct (availing frequent leave) under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. You are; therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the inquiry officer, as the case may be.

4. Your written defence, if any, should reach the inquiry officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

ATTESTED


(COMPETENT AUTHORITY)

Endst: No. 2738-40- /DGMM/2/1134-Admn:

Dated. 4 /03/2014

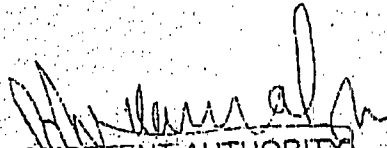
17

A copy of the above is forwarded to:-

- 1- PA to Director General, Mines and Minerals, Khyber Pakhtunkhwa.
- 2- Mr. Fazli Wahid, Deputy Director (Technical), H/Q Office, Peshawar (Inquiry Officer) for initiating proceedings against the accused under provisions of the Khyber Pakhtunkhwa, Efficiency and Discipline rules, 2011.
- 3- Mr. Asfandyar, Royalty Inspector, H/Q Office, Peshawar with the direction to appear before the Inquiry Officer, on the date, time and place fixed by the Inquiry Officer for the purposes of the inquiry proceedings.

Address

14. Asfandyar S/O
Sabz Ali (son)
Mohammad Landi Khel
Mikhe 2 Post 7th
Rashaki Tehsil 2
Dist. Nowshera


(COMPETENT AUTHORITY)

ATTESTED

DISCIPLINARY ACTION

18

I, Mustafa Kamal Shah, Director General, Mines and Minerals, Khyber Pakhtunkhwa, as competent authority, am of the opinion that Mr. Asfandyar, Royalty Inspector, has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

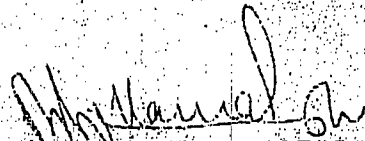
- i) that he does not take keen interest in performing of office duties.
- ii) that he avails frequent leave on one & other pretext.
- iii) _____

2. For the purpose of inquiry against the said accused with reference to the above allegations, as inquiry officer, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules:

- i) Mr. Fazli Wahid, Deputy Director (Technical)
- ii) _____

3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer.


(COMPETENT AUTHORITY)

ATTESTED

B

To,

The Director General
Mines and minerals, Khyber Pakhtunkhwa,
Peshawar.

19

Subject: REPLY TO CHARGE SHEET DATED 04.03.2014

Respected Sir,

In reply to the charge sheet dated 04/03/2014 received on 10/03/14, I humbly submit the following few lines for your kind and sympathetic consideration.

1. That I at the very outset deny the allegations leveled against me as false and baseless. That having topped the Public Service Commission Exams, I was initially appointed as Royalty inspector (BPS-11). Ever since my appointment I am performing my duties with zeal, devotion and sincerity and have always tried my best not to give any chance of complaint regarding my performance.
2. That the charges leveled against me are baseless and having no footing, moreover the same are ambiguous in nature too, as in the statement of allegations it is alleged that "*that I do not take keen interest in performing of office duties*" while on the other hand in the Charge sheet it is alleged that "*I do not perform official duties according to the rules and regulations*".
3. That with regard to the charge (a) leveled against me in the charge sheet, it is humbly submitted that I have performed my duties as assigned to me with zeal and zest and have never disregarded or violated any rule regulations, nor have ever shown disinterest in the performance of my duties. Moreover this charge is also general in nature and no specific instance has been shown wherein I have been found to have not performed my duties in accordance with rules and regulations or have ever shown disinterest in the performance of my duties.
4. That in reply to Charge (b) it is submitted that initially after my appointment, I applied for extra ordinary leave for Higher Studies at abroad which was duly sanctioned to me vide in the month of August 2010, resultantly I remained on studies leave for two ~~years~~ ^{years and four months}. On completion of my leave I duly reported for duties and have performed my duties at Chatral upon verbal orders of Ex- DG Mines and Minerals, however due to the death of my beloved parents in span of four months, I received great mental shock and due to extreme stress and strain I ^{have} become patient of acute lumbago sciatica,

ATTESTED

thus I applied for medical leave for four moths from January to April 2014.

- 5. That I have never committed act or omission which could be termed as misconduct.
- 6. That I have a spotless service career, moreover I am young and energetic and wants to serve for my department.
- 7. That I also desire to be heard in person.

It is, therefore, humbly requested that on acceptance this reply of the subject Charge Sheet may please be dropped and I may be exonerated of the charges leveled me.

Yours Obediently

Asfandiar Khattak
17/03/2014

(ASFANDIAR KHATTAK)
Royalty Inspector (BPS-11)
Directorate General of Mines & Minerals
Khyber Pakhtunkhwa, Peshawar.

Dated; 17 /03/2014.

ATTESTED

2057
 Date... 17/3/2014

To,

The Secretary,
The Mines and Mineral Department,
KPK, Peshawar.

Annex = "F" (21)

THROUGH PROPER CHANEL

Subject:

REPRESENTATION AGAINST THE ORDER OF THE DG MINES
& MINERALS DEPARTMENT, PESHAWAR DATED 20-06-2014,
CONTAINING REMOVAL FROM SERVICE.

Respected Sir,

With reference to letter No. 8429-32/DGMM/2/1134/Admn, dated 20-06-2014 (received on 23-06-2014), issued by The Director General, Mines & Minerals Department, Peshawar, whereby I am awarded the punishment of removal from service with immediate effect from 01-04-2013. (Copy attached)

It is submitted that the impugned order is illegal, void, unjustified and against the principles of natural justice. Hence, the same is liable to be set-aside:

1. That my absence was not willful. But, it was on account of illness i.e. Sciatica & Typhoid fever form.
2. That I remained under treatment & even, remained admitted to the hospital twice, which is evident from medical prescriptions and admission / discharge certificates. (Copies are attached herewith)
3. That I was advised rest by the doctor concerned.
4. That I am still under treatment.
5. That no proper chance of defense is provided to me and I am condemned unheard, throughout.
6. That my service record is clean throughout.

ATTESTED

7. That I was awarded the punishment on the same allegation, treating the leave period as leave without pay and the recovery of Rs. 1,35,856.00, which is challenged by me in the Service Tribunal, Peshawar in Service Appeal No. 769/2014 fixed for hearing on 27-10-2014. Thus, I am subject to double Jeopardy for one and the same allegation.

It is prayed that setting-aside the impugned order, I may be re-instated in to service with retrospective effect and oblige.

Dated: 22-07-2014

Yours Obediently,

Asfandyar Khattak

Asfandyar Khattak
Ex-Royal Inspector
Office of the Director General
Head Quarter Office,
Peshawar.

R/o Mohallah Landi Khel
Village Rashakai,
District Nowshera.

ATTESTED

Before The Service Tribunal, Peshawar.

Annex = "G"

23

Service Appeal No. 1350 /2014.

1383
21-11-2014

Asfandyar khattak s/o Sabz Ali khan (Royalty inspector office of The Director General, Mines and Minerals Deptt, Peshawar) Mohallah Landi khel village Rashakai, Nowshera.

Appellant.

Versus

1. The Secretary, the Mines and Minerals Deptt, Peshawar.
2. The Director General, the Mines and Minerals Deptt, Peshawar.
3. The Assistant Director (Administration), the Mines and Minerals Deptt, Peshawar.

Respondents.

Appeal under Section-4 of the Service Tribunal Act, 1974 against the order of The D.G/Respondent No.2, Contained in Letter No. 8429-32/DGMM/2/1134/Admn; dated 20.06.2014, awarding the punishment of the removal from service.

1. that Appellant is employed as "Royalty/inspector" (BPS-11) under the Respondents since the month of April, 2010.

2. that the Director General/the Respondent No.2 awarded the Appellant with the punishment of removal from service vide letter No.8429-32/DGMM/2/1134/Admn dated 20.06.2014 on the alleged grounds of "willful from official duty", which was received by Appellant on 23.06.2014.

Copy is Annexure-A.

ATTESTED

3. that grieved therefrom, the Appellant preferred the representation to the Secretary/ Respondent NO.1 on 22.07.2014 through Registered A/D post.

24

Copy Annexure- "B to D".

4. That the representation in question is unresponded.

Grounds:-

The impugned order is unjustified, illegal and against the principles of natural justice. Thus, the same is liable to be set-aside, on the following amongst many other grounds:-

(I). That the charges as levelled against the Appellant in the impugned order are incorrect, false and evasive in nature.

(II). That no chargesheet or show cause notice was issued to Appellant, concerning his alleged absence from duty before the impugned order. Thus, Appellant is condemned unheard.

(III) That the Appellant was/is seriously ill, he has never absented himself from duty willfully and without just cause. The illness was beyond his control.

The copies of medical prescriptions with advice for rest are Annexure-"E to E/--

(VI) That the details of the alleged absence are not mentioned mentioned in the impugned order.

ATTESTED

(VII) That the Appellant is condemned unheard in-connection with the charge of alleged absence.

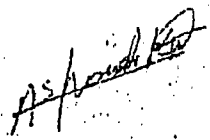
25

(VIII) That the Appellant is condemned unheard through-out.

(IX) That the Appellant seeks leave of this Honourable Tribunal to urge further grounds also.

It is prayed that on acceptance of this Appeal, the impugned order may be set-aside and the Appellant may be reinstated in service with back service benefits and with Costs of this Appeal against the Respondents.


Dated 20.11.2014.



Appellant:

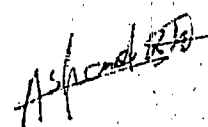
(Asfandiyar khattak)

Through:


Muhammad Adam Khan
Advocate, Mardan.
MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

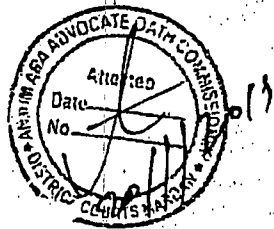
Affidavit

I, Asfandiyar Khattak/the Appellant do hereby state on solemn affirmation that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



Deponent: _____

Asfandiyar Khattak



ATTESTED

Annex = "H"

26

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 769/2014

Date of institution ... 02.06.2014

Date of judgment ... 16.07.2019



Asfandyar Khattak S/o Sabz Ali Khan (Royalty Inspector office of the Director
General, Mines and Minerals Department Peshawar)
Mohallah Landi Khel Village Rashakai, Nowshera.

... (Appellant)

VERSUS

1. The Secretary, the Mines and Minerals Department, Peshawar.
2. The Director General, the Mines and Minerals Department, Peshawar.
3. The Assistant Director (Administration), the Mines and Minerals Department, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER OF THE
D.G/RESPONDENT NO. 2, CONTAINED IN LETTER NO.
1120-23/2/113/29-MM/ADMN, DATED 24.01.2014, TREATING
THE PERIOD FROM 01.04.2013 TO 22.12.2013 AS LEAVE
WITHOUT PAY.

Mr. Amin-ur-Rehman Yousafzai, Advocate.

For appellant.

Mr. Riaz Ahmad Paindakheil, Assistant Advocate General

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

[Signature]
Muhammad Amin Khan Kundi
Member (Judicial)
Peshawar

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Our this

judgment shall dispose of the aforesaid service appeal as well as connected
Service Appeal No. 1350/2014 titled "Asfandyar Khattak Versus The Secretary,
the Mines and Minerals Department, Peshawar and two others" as common
question of law and facts are involved in the both the service appeals.

[Signature]

ATTESTED

2. Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith Mr. Muhammad Iqbal, Superintendent for the respondents present. Arguments heard and record perused.

3. Brief facts of the Service Appeal No. 769/2014 are that the appellant was serving in Mines and Minerals Department as Royalty Inspector (BPS-11). He was allegedly absent from 01.04.2013 to 22.12.2013 (266 days) and the competent authority vide order dated 24.01.2014 converted the aforesaid absence period into extra-ordinary leave without pay. The appellant filed departmental appeal on 03.02.2014 against the aforesaid order which was not responded hence, the present service appeal on 02.06.2014.

4. Same way the facts of the Service Appeal No. 1350/2014 are that the appellant was serving as Royalty Inspector in Mines and Minerals Department. He was removed from service vide order dated 20.06.2014 on the allegation of absence from duty with effect from 01.04.2013 which was received by the appellant on 23.06.2014 as per para no. 2 of service appeal. The appellant filed departmental appeal on 22.07.2014 which was not responded, hence, the present service appeal on 21.11.2014.

ATTESTED

Respondents were summoned who contested the appeal by filing of written reply/comments.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

6. Learned counsel for the appellant contended that in both the appeals the allegation leveled against the appellant is one and same i.e absence from duty with effect from 01.04.2013 to 22.12.2013 but the respondent-department has imposed two penalties on the same allegation therefore, the appellant was twice punished for the same allegation. It was further contended that in Service Appeal No. 769/2014, the respondent-department has converted the absence period of 01.04.2013 to 22.12.2013 into extra-ordinary leave without pay vide order dated 24.01.2014 and thereafter, charge sheet, statement of allegation was

Attested
[Signature]

ATTESTED

framed on 04.06.2014 which was also replied by the appellant but thereafter further proceeding was stopped for the reason best known to the respondent-department. It was further contended that in Service Appeal no. 1350/2014, the respondent-department also imposed major penalty of removal from service vide order dated 20.06.2014 on the same allegation with effect from 01.04.2013 but neither the respondent-department have framed charge sheet, statement of allegation against the appellant nor regular inquiry was conducted nor the appellant was associated in any regular inquiry nor the appellant was issued any absence notice at his home address nor any absence notice was published in two newspaper as required under rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and prayed for acceptance of appeal.

7. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that converting of absence period into extra-ordinary leave by the competent authority vide order dated 24.01.2014 does not falls within the ambit of punishment under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 therefore, it cannot be said that the appellant was twice punished for same allegation. It was also contended that the appellant remained absent from duty therefore, the respondent-department has rightly imposed major penalty of removal from service after fulfilling all the codal formalities and prayed for dismissal of both the appeals.

8. Perusal of the record of Service Appeal No. 769/2014 reveals that the appellant was serving as Royalty Inspector in the Mines and Minerals Department Peshawar. He was allegedly absent from duty therefore, the competent authority converted the absence period of the appellant from

M. Anwar
15-7-2019

ATTESTED
 98
 Government of Khyber Pakhtunkhwa
 Peshawar

Attested
[Signature]

ATTESTED

01.04.2013 to 22.2013 into extra-ordinary leave vide order dated 24.01.2014. In Service Appeal No. 1350/2014, the competent authority has imposed major penalty of removal from service upon the appellant on the allegation of absence from duty with effect from 01.04.2013 vide order dated 20.06.2014 but both the orders dated 24.01.2014 and 20.06.2014 have been passed by the competent authority without fulfilling codal formalities as required under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. Though both the aforesaid orders have been passed by the competent authority on the same allegation i.e absence from duty with effect from 01.04.2013 but it cannot be said that the appellant was twice punished for the same allegation as conversion of absence period into extra-ordinary leave does not falls within the ambit of punishment under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. However, the record reveals that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was associated in any inquiry proceeding nor the appellant was handed over show-cause notice alongwith copy of inquiry report nor the appellant was provided opportunity of personal hearing before passing the impugned orders. Same way neither any absence notice was issued at the home address of the appellant by the competent authority nor any absence notice was published in two newspaper as required under rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. Meaning thereby, that the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept both the appeals, set-aside the impugned orders, reinstate the appellant into service with the direction to respondent-department to conduct one de-novo inquiry (as the allegation in both the aforesaid appeals are one and same) in the mode and manner prescribed under

M. H. Khan
16.7.2019

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[Signature]
 Director of Administration
 Government of Khyber Pakhtunkhwa

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Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 and thereafter, pass an order deem appropriate. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.07.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
(HUSSAIN SHAH)
MEMBER

Certified to be true copy
S
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	30-7-2019
Number of Words	2400
Copying Fee	28-00
Urgent	4-00
Total	32-00
Name of Copyist	<i>S</i>
Date of Completion of Copy	30-7-2019
Date of Delivery of Copy	30-7-2019

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Annex "I"

To
The Director General,
Mines And Minerals, KPK,
Peshawar.

30

Subject: Endorsement Of Arrival on Duty.

Respected Sir,

It is humbly submitted that I Asfandiyar Khattak S/o Sabz Ali Khan had been removed from the post of Royalty Inspector in June 2014 by the then Competent Authority

I filed an appeal in the Honorable Services Tribunal KPK Peshawar in July, 2014. The Honorable Services Tribunal passed an order on 16/07/2019 and I was reinstated on my original designation. (Attested Copy of the Order of the Tribunal is attached herewith)

Now I Asfandiyar Khattak have arrived to join/ perform my duty in this honorable office from 01/08/2019.

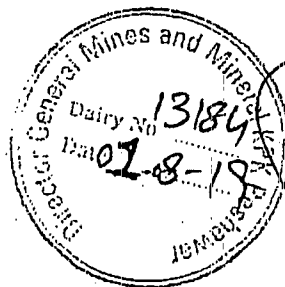
I is kindly submitted to endorse my arrival on 01/08/2019 according to the order/ directions of the Honorable Services Tribunal of KPK Peshawar.

I shall be highly thankful to you for this kindness.

Your,s Faithfully,
Asfandiyar Khattak
Asfandiyar Khattak.

ATTESTED

Attested
[Signature]



Annexure = "J" (31)

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

Misc. Application No. 98 of 2020
Service Appeal No. 769 of 2014

Khyber Pakhtunkhwa Service Tribunal
Diary No. 480
Dated 26-6-2020

Asfandiyar Khattak ...VERSUS... Secretary to Govt. of KP & 2 others

APPLICATION U/S 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT, 1974 (KP ACT NO.1 OF 1974), READ WITH ALL ENABLING PROVISIONS OF LAW GOVERNING THE SUBJECT, FOR EXECUTION/ IMPLEMENTATION OF CONSOLIDATED JUDGMENT DATED: 16.07.2019 IN THE TITLED APPEAL.

=====

Respectfully Sheweth:

1. That Applicant approached this Hon'ble Tribunal through 2 Service Appeals, bearing Nos.769 & 1350 of 2014, which were heard together and decided through a single consolidated Judgment dated: 16.07.2019, vide which both the appeals of applicant have been partially accepted, impugned orders have been set aside, applicant has been re-instated into service with the directions to Respondent Department to conduct one denovo inquiry into his alleged acquisition, in the mode and manner prescribed under KP Government Servants (E&D) Rules, 2011. (Copy of consolidated Judgment dated: 16.07.2019 alongwith Service Appeal No.769/2014 is attached as Annexure "A").
2. That applicant, in pursuance of consolidated Judgment dated: 16.07.2019 supra, submitted arrival report to the Respondent Department on 01.08.2019, which was acknowledged vide Diary No.13184, dated: 01.08.2019, however, the same has not been given effect so far, within the meaning of consolidated Judgment dated: 16.07.2019 ibid of this Hon'ble Tribunal, hence the instant application. (Copy of arrival report dated: 01.08.2019 is Annexure "B").
3. That more than 11 months' time has been elapsed, however, Respondent Department is reluctant to implement consolidated Judgment dated: 16.07.2019 of this Hon'ble Tribunal in letter and spirit, which has caused grave miscarriage of justice; moreover, this Hon'ble Tribunal has got ample jurisdiction to implement the Judgment ibid, by issuing appropriate directions to the delinquents for the desired relief.
4. That any other ground with the permission of this Hon'ble Tribunal will be taken at the time of arguments.

It is, therefore, most humbly, prayed that on acceptance of instant application, Consolidated Judgment dated: 16.07.2019 of this Hon'ble Tribunal may be implemented in letter and spirit, within the shortest possible time, deemed appropriate to this Hon'ble Tribunal, in the best interest of justice and equity.

Asfandiyar Khattak
Applicant

Through

Amin ur Rehman Yusufzai

Sajjad Mehsud

Khalid Khan
Advocates, Peshawar

AFFIDAVIT

Stated on oath that contents of Instant Application are true and correct to the best of knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Asfandiyar Khattak
Deponent
26-6-2020
MAHMOOD ABU
ATTESSED
NOTARY
PUBLIC
PESHAWAR HIGH COURT

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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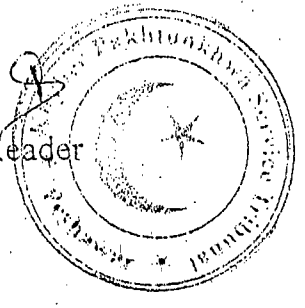
16.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 13.04.2021.


Reader

13.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 02.08.2021 for the same as before.

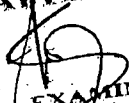

Reader


02.08.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Munammad Iqbal, Superintendent for the respondents present.

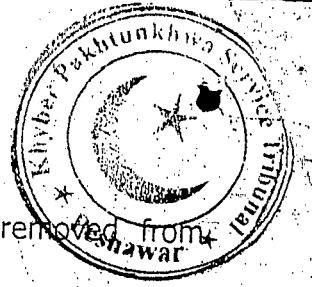
Counsel for the petitioner contended that the judgment of this Tribunal has been implemented by issuing order dated 01.02.2021 is likely to give rise to multiplicity of proceedings. He has furnished the spare copy of departmental appeal filed by the petitioner against the order dated 01.02.2021 which was duly received in the department vide Diary No. 2041 dated 15.07.2021. The pertinent points raised in the said departmental appeal include:-

1. That the order dated 01.02.2021 relating to reinstatement of the petitioner may be antedated to

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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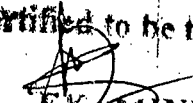
30.06.2014 when the petitioner was removed from service.

2. That the pay and allowances of Rs. 1,35,856/- drawn by the appellant i.e. present petitioner during the period of leave without pay may be exempted from recovery in purview of consolidated judgment dated 16.07.2019.

As far as the second point is concerned, it is outcome of the denovo enquiry and does not make a question requiring determination in relation to implementation of the judgment. However, the first point very obviously constitutes a question that when the order dated 20.06.2014 in respect of removal of the petitioner from service was set aside by the Tribunal vide judgment dated 16.07.2019 and remained intact in consequence of denovo enquiry, how the period in between 30.06.2014 till reinstatement order dated 01.02.2021 spent by appellant in pursuit of departmental and judicial remedy is to be dealt with. Let the respondents come up with their view point about the said question for determination. Case to come up on 09.09.2021 before S.B.

Date of Presentation of Application 03/8/21
Number of Words 1200
Copying Fee 14/-
Urgent 4/-
Total 18/-
Name of Copy/jest _____
Date of Completion of Copy 03/8/21
Date of Delivery of Copy 03/8/21


Chairman

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


ATTESTED

30.09.2021

Petitioner in person present.

34



Mr. Kabir Ullah Khattak, Addl. AG for the respondents present.

Learned A.A.G seeks time for arguments; after getting feedback from the department. Request is accorded. To come up on 30.09.2021 before S.B.

Chairman

30.09.2021

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Petitioner requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for further proceedings before the S.B on 21.10.2021

(MIAN MUHAMMAD)
MEMBER (E)

Date of Presentation of Application 20/10/21
 Number of Words 800
 Copying Fee 70/-
 Urgent 4/2
 Total 14/2
 Name of Officer _____
 Date of Completion of Copy 20/10/21
 Date of Delivery of Copy 20/10/21

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EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

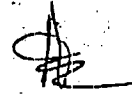
ATTESTED

09.09.2021

Petitioner in person present.

Mr. Kabir Ullah Khattak, Addl. AG for the respondents present.

Learned A.A.G seeks time for arguments after getting feedback from the department. Request is accorded. To come up on 30.09.2021 before S.B.

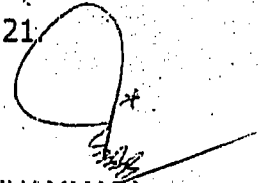


Chairman

30.09.2021

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Petitioner requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for further proceedings before the S.B on 21.10.2021.



(MIAN MUHAMMAD)
MEMBER (E)

21.10.2021.

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Iqbal, Superintendent for the respondents present.

Learned AAG seeks time to contact the respondents. On assurance of the learned AAG, another chance is given to the respondents to implement the judgment in letter & spirit and submit report on next date. Case to come up on 22.11.2021 before S.B.

Certified to be true copy

Chairman

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Recd. Application of Applicant 27/10/21
200
10-01
Date of Copy 27/10/21
Date of Delivery of Copy 27/10/21



Annex = "K" (36)

DIRECTORATE GENERAL OF MINES AND MINERALS
KHYBER PAKHTUNKHWA

Attached Departments Complex Khyber Road Peshawar
Phone: & Fax # 091-9210236

No. /2/1134/DGMM/Admin Dated /01/2021

OFFICE ORDER

In supersession of this Directorate Office Order No. 407/2/1134/DGMM/Admin dated: 07/01/2020 and No 34/2/1134/DGMM/Admin dated: 01/01/2021 and in pursuance of the decision of Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.769/2014 dated: 16/07/2019, the Competent Authority is pleased to reinstate Mr. Asfandyar Khattak Royalty Inspector (BPS-12) in to Govt. Service with immediate effect.

Sd/-
Director General Mines & Minerals
Khyber Pakhtunkhwa

Dated: 01/01/2021

Endst No. ~~3606-14~~ /2/1134/DGMM/Admin:

Copy to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. PA to Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
3. The Section Officer (Litigation) Minerals Development Department, Peshawar.
4. Mr. Ashfaq Ahmad Saleem, Deputy Director Litigation, H/Q office, Peshawar.
5. Mr. Muhammad Zulkifil Khan Deputy Director (Tech)/Inquiry officer H/Q Office, Peshawar with the advice to conduct De-No'vo inquiry against the official concerned already communicated vide office order Endst No. 16169 74/2/1134/DGMM/Admin dated: 11/09/2020 and Endst No. 35-40/2/1134/DGMM/Admin dated: 01/01/2021 and submit his report alongwith recommendations within fortnight please.
6. The Assistant Director (Accounts) H/Q Office, Peshawar.
7. Mr. Asfandyar S/O Sabz Ali Khan Ex-Royalty Inspector, Mohallah Landi Khel, village & P/O Rashaki Tehsil & District Nowshera.
8. Master File/DGMM/Admn/2021.

Assistant Director (Admin)
H/Q Office, Peshawar

ATTESTED

Annex = "L"



DIRECTORATE GENERAL

MINES & MINERALS, KHYBER PAKHTUNKHWA
ATTACHED DEPARTMENT NEAR JUDICIAL COMPLEX, KHYBER ROAD,
PESHAWAR, CANTT.

Phone: 091-9210275 - 9211140 Fax: 091 9210230

37

No. 2864 /DD/Asfandiyar Khattak Enquiry/2020

Dated. 03 /02/2021

To

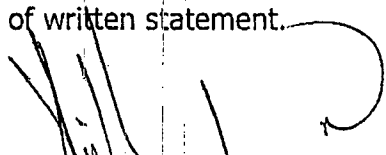
Mr. Asfandiyar S/O Mr. Sabz Ali (Ex-Royalty Inspector),
R/O Mohallah landi Khel Village & P/O Rashakai,
Tehsil & District Nowshera.

Subject: **OFFICE ORDER**

The undersigned has been nominated as Enquiry Officer by the Competent Authority vide office order Endst No. 2606-14/2/1134/DGMM/Admin dated 01-02-2021 to conduct denovo Enquiry against you in the mode and manner prescribed under the Khyber Pakhtunkhwa Servant (Efficiency & Disciplinary Rules 2011).

You are, therefore, advise to appear before the undersigned on 11-02-2021 at 11:00 AM for personal hearing and recording / submission of written statement.

Encl:- As Above.


(Muhammad Zulkifal Khan)
Deputy Director (Tech)
H/Q Office Peshawar.

Endst No. _____ /DD/Asfandiyar Khattak Enquiry/2020

Dated. _____ /02/2021

Copy to:-

- 1- PA to Directorate General Mines & Minerals Khyber Pakhtunkhwa Peshawar.
- 2- The Assistant Director (Accounts) with reference to his letter referred to above with the advice to attend the enquiry proceeding on the scheduled dated & time along-with relevant record.

(Muhammad Zulkifal Khan)
Deputy Director (Tech)
H/Q Office Peshawar.

ATTESTED



Annex - M

(38)

DIRECTORATE GENERAL OF MINES AND MINERALS
KHYBER PAKHTUNKHWA

Attached Departments Complex Khyber Road Peshawar

Phone: & Fax # 091-9210216

No. 16560 /2/1134/DGMM/Admin.

Dated 18 /06/2021

To

✓
Mr. Asfandyar
Royalty Inspector (BPS-12)
Litigation Cell, H/Q Office, Peshawar.

Subject: DE-NOVO INQUIRY REPORT.

In pursuance of recommendations of de-novo inquiry report submitted by Mr. Muhammad Zulkifal Khan Deputy Director (Tech)/Inquiry Officer, II/Q Office, Peshawar. In the instant case, the Competent Authority/Director General Mines & Mineral, Khyber Pakhtunkhwa approved the recommendations of the Inquiry Officer, which are placed below:

- (i) The pay and allowances drawn by the accused during the period of his willful absence may be recovered from him.
- (ii) The accused may be banned for posting at regional office for period of at least one year and his official duty/performance may be regularly monitored.

In view of above, you are therefore directed to deposit the amount of Rs.135,856/- in Department Head of account within 15-days positively.

Assistant Director (Admin)
II/Q Office, Peshawar.

Dated: ___/06/2021

Endst No. ___/2/1134/DGMM/Admin.

Copy to: -

1. PA to Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Ihsan-ud-Din, Deputy Director Litigation, II/Q office, Peshawar.
3. Muhammad Zulkifal Khan Dy. Director (Tech)/Inquiry Officer II/Q Office, Peshawar.
4. The Assistant Director (Accounts), II/Q Office, Peshawar with the advice to collect the said amount from the official concerned.
5. Master File/DGMM/Admn/2021.

Assistant Director (Admin)
II/Q Office, Peshawar

ATTESTED

INQUIRY REPORT

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The Director General Mines & Mineral nominated the undersigned vide office order Endst No.26064-14/12/1134/DGMM/Admn dated 01-02-2021 to conduct de-novo inquiry against the official and submit report.

BACKGROUND OF THE CASE

Mr. Asfandyar was appointed as Royalty Inspector on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide letter dated 03-04-2010 (**Copy Annexed "I"**). He submitted application for ex-Pakistan leave for period of 1095 days (**Copy Annexed "II"**). The Competent Authority vide letter dated 23-07-2010 (**Copy Annexed "III"**) granted 730 days Extra ordinary leave (without pay) w.e.f 01-08-2010 to 30-07-2012. After expiry of the leave he failed to resume his duty. Notice dated 02-08-2012 (**Copy Annexed "IV"**) followed by reminders dated 03-09-2012, 28-12-2012 and 29-01-2013 were issued to the accused. He resumed his duty on 31-01-2013 (**Copy Annexed "V"**). His absence w.e.f 31-07-2012 to 31-01-2013 was converted into extra ordinary leave (without pay) vide order dated 07-02-2013 (**Copy Annexed "VI"**) and was posted in Royalty section H/Q office.

On 20-03-2013, he submitted application (**Copy Annexed "VII"**) with the request to transfer him to Chitral and was instructed to perform duty at Chitral. Later on he was directed vide letter dated 29-08-2013 (**Copy Annexed "VIII"**) to perform duty at Swat office, during the leave period of Mr. Yousaf Ali Royalty Inspector Swat, but the accused also failed to perform duty at Swat office as evident from the letter dated 23-10-2013 of the Assistant Director Mineral Swat (**Copy Annexed "IX"**). The Director General Mines & Mineral vide order dated 20-11-2013 (**Copy Annexed "X"**) stopped his pay and allowances and vide order dated 28-11-2013 nominated Mr.Saeed Khan Assistant Director (Account) to inquire whether the accused has been performing duties at Chitral and Swat or not. Inlight of recommendation of the Inquiry officer the willful absence of the accused w.e.f 01-04-2013 to 22-12-2013 was converted into extra ordinary leave (without pay) by the Competent Authority vide order dated 24-01-2014 (**Copy Annexed "XI"**). The accused was also advised vide letter dated 07-01-2014 (**Copy Annexed "XII"**) to deposit Rs. 135856/- in lump sum under proper head of accounts. In response he submitted an application (**Copy Annexed "XIII"**) that the amount may be recovered from his salary in installment of Rs.2000/- per month. The accused was again advised to deposit the amount of Rs. 135856/- and perform duty at royalty section H/Q office failing which the matter will be dealt under E & D rules.

ATTESTED

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On 15-01-2014, the accused submitted application for three months medical leave (Copy Annexed "XIV"). In response he was advised to get the medical certificate countersigned from the medical Superintendent / Civil Surgeon and resubmit for necessary action, but he failed to do so. He filed an appeal before the Secretary Minerals Development Department on 30-01-2014 (Copy Annexed "XV") with request to exempt him from recovery and consider the leave period as full pay, his salary may be released and medical leave may be accepted. The Directorate vide letter dated 17-02-2014 forward the said appeal along with inquiry report to Section Officer (Establishment) with request to file the appeal. In response the Section Officer (Establishment) vide letter dated 11-03-2014 (Copy Annexed "XVI") directed that action may be taken in light of the finding / recommendations of the inquiry officer.

On 04-03-2014, charge sheet was issued to the accused and Mr. Fazal-e-Wahid Deputy Director Mineral (Tech) Now (Director Licensing) was nominated as inquiry officer (Copy Annexed "XVII"). The accused furnished reply of the charge sheet but failed to appear before the inquiry officer despite of repeated notices, dated 06-03-2014, 26-03-2014 and 03-04-2014, therefore the inquiry officer proposed that Ex-party proceeding under E & D rules may be initiated against the accused. A notice was published in the leading newspaper to resume on 30-04-2014, but he again failed to resume his duty. Therefore the accused was removed from service vide order dated 20-06-2014 (Copy Annexed "XVIII").

The accused filed two appeal before the service tribunal one against the removal order and other against the recovery of amount of Rs. 135856/-. The Service tribunal partially accepted both the appeal in favour of the accused vide Judgment dated 16-07-2019 (Copy Annexed "XIX"), set-aside the impugned orders, reinstate the appellant into Service with direction to the department to conduct one de-novo inquiry (as the allegation in both the aforesaid appeals are one and same) in mode and manner prescribed in Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 and thereafter, pass an order deem appropriate. The issue of back benefit will be subject to outcome of the de-novo inquiry.

PROCEEDING.

To begin with inquiry process, the accused was advised to attend the office for personal hearing and submission of written statement vide letter dated 03-02-2021 (Copy Annexed "XX").

On 11-02-2021 the accused attend the office, Muhammad Iqbal Superintendent Admn Section was also present along with record during the hearing. The accused was heard and was given sufficient time to explain his position with regard to the charges

ATTESTED

leveled against him and the ensuing questions. Later on he submitted written statement which is annexed as **Annexure "XXI"**.

OBSERVATION

During his initial posting at Mardan the accused performed duty but later on after availing extra ordinary leave w.e.f 01-08-2010 to 31-01-2013 he failed to performed duty at Royalty section Head Quarter office which shows his causal approach towards the official duty.

Moreover it was also noticed that his application for transferred to Chitral on basis of Skin disease seems to be escape from the official duty as he give a vague response and did not clarify when asked about the disease

FINDING

After careful examination of the available record, written statement of the accused and points raised during personal hearing, it can be stated that:

- i. The accused neither performed duty at Chitral or Swat w.e.f 01-04-2013 to 22-12-2013 as he failed to provide any evidence regarding his official duty.
- ii. The application of the accused wherein he requested that the amount (Rs.135856/-) be recovered from his salary in installments also affirms that the notice for recovery of the pay and allowances drawn during his willful absences period has rightly been issued.
- iii. The accused failed to honor the instructions of the Department issued to him from time to time.

RECOMMENDATION:

After considering the background of the case, relevant documents and personal hearing of the accused it is recommended that:

- i. The pay and allowances drawn by the accused during the period of his will full absence may be recovered from him.
- ii. The accused may be banned for posting at regional office for period of at least one year and his official duty / performance may be regularly monitored.

(Signature)
Muhammad Zuikifal Khan
 Deputy Director Mineral (Tech) /
 Enquiry Officer H/Q office Peshawar

ATTESTED

Annex = "N"

42

BEFORE THE WORTHY SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
MINES & MINERALS DEVELOPMENT DEPARTMENT, PESHAWAR

Subject: APPEAL AGAINST DECISION/ OFFICE LETTER DATED 18.06.2021 ALONG WITH
REINSTATEMENT ORDER DATED: 01.02.2021 OF DIRECTOR GENERAL MINES
AND MINERALS KHYBER PAKHTUNKHWA.

Respected Sir,

1. That appellant was removed from service, vide order dated: 20.06.2014, on the pretext of unauthorized absence from duty, eventually re-instated in service, vide office order dated: 01.02.2021, in compliance with the consolidated judgement dated: 16.07.2019 of the Hon'able Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. That during pendency of de-novo inquiry, appellant was reinstated in service, vide order dated: 01.02.2021 supra, but with immediate effect, instead to be given effect from the date of removal from service i.e. 20.06.2014, moreover, the inquiry officer concluded the inquiry with the recommendation that pay and allowances drawn by the appellant during the period of his **willful absence** be recovered from him, which is squarely against the office order dated: 24.01.2014 of the competent authority/DGMM Khyber Pakhtunkhwa, in which the said period of absence from duty of appellant has been converted into Extra Ordinary leave (without pay), hence the instant appeal.

It is therefore most respectfully requested that on acceptance of instant appeal:

- i. Reinstatement order dated: 01.02.2021, of appellant, may be given effect from the date of removal from service i.e. 20.06.2014, in compliance with the consolidated judgement dated: 16.07.2019 of the Hon'able Khyber Pakhtunkhwa Service Tribunal, Peshawar and,
- ii. The wording **willful absence** in recommendation of the inquiry officer in de-novo inquiry may be expunged and be read as **leave (without pay)**, in light of order dated: 24.01.2014.
- iii. That the pay and allowance of **Rs. 135,856** drawn by the appellant during the period of **leave (without pay)** may be exempted in appellant favor, in light of the consolidated judgement of Hon'able Khyber Pakhtunkhwa Service Tribunal dated 16.07.2019 in which the order of 15.01.2014 has been set aside, so as to secure the ends of justice.

Mineral Dev. Deptt (KPK)

Secy: Diary No. 2041

Date: 15-07-21

Appellant

ASFANDYAR KHATTAK

ASFANDYAR KHATTAK
Royalty Inspector (Litigation Cell),
Director General Mines & Minerals
Khyber Pakhtunkhwa, Peshawar.

Dated: 14.07.2021

ATTENDED



Government of Khyber Pakhtunkhwa
Minerals Development Department

Amec = "0"

43

No.SOE/MDD/4-1/2020 / 5102-05
Dated Peshawar, 26 October, 2021

To

✓
The Director General,
Mines & Minerals, Khyber Pakhtunkhwa,
Peshawar.

Subject: APPEAL AGAINST DECISION/ OFFICE LETTER DATED 18.06.2021
ALONG WITH REINSTATEMENT ORDER DATED 01.02.2021 OF THE
DIRECTORATE GENERAL OF MINES & MINERALS KP.

I am directed to refer to your letter No. 22551/2/1134/DGMM/Admin dated 27.08.2021 on the subject noted above and to state that the Competent Authority i.e. the Secretary, Minerals Development Department, Khyber Pakhtunkhwa has considered the appeal of Mr. Asfand Yar Khattak, Royalty Inspector (BS-12) dated 14.07.2021 and rejected, being devoid of merit and having no solid grounds. The applicant may be transferred accordingly.

2. I am further directed to invite your kind attention to Rule-23 of GFR which reveals that "Every Government officer should realize fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government officer to the extent to which it may be shown that he contributed to the loss by his own action or negligence". Besides above, Rule-12(3) of the Revised Leave Rules, 1981 stipulates that "extra ordinary leave may be granted retrospectively in lieu of absence without leave".

3. Therefore, the intervening period between 30.06.2014 till his re-instatement into the service i.e. 01.02.2021 may be decided in light to the above quoted Rules being Competent Authority, as observed by the Service Tribunal during hearing on 02.08.2021.

Directorate General
3228
27-10-21

(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT-1)

Endst: No & Date even:

Copy is forwarded for information to:

PS to Secretary, Minerals Development Department.

DD(Admin)

ATTACHED



Directorate General Mines and Minerals

Khyber Pakhtunkhwa

Attached Departments Complex, Khyber Road Peshawar

No. _____/2/1134/DGMM/Admin

Dated. _____/11/2021

OFFICE ORDER

Annex = 'P' (44)

In pursuance of Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment dated: 16/07/2019, order sheet dated: 02/08/2021 and 21/10/2021 in Service Appeal No. 769/2014 title Mr. Asfandayar Khattak V/S Government, the Competent Authority is pleased to order the following decisions:-

- i. The official concerned shall deposit Rs. 135,856 in lump-sum within a period of one week.
- ii. The intervening period w.e.f 30/06/2014 till his reinstatement into the Government service 01/02/2021 may be considered leave without pay in light of Rule-12 (3) of the Revised Leave Rules, 1981 "Extra Ordinary leave may be granted retrospectively in lieu of absence without leave".
- iii. It is further added that under rule-23 of General Financial Rules (GFR) which reveals that "Every Government officer should realize fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government officer to the extent to which it may be shown that he contributed to the loss by his own action or negligence".

Sd/-

Director General Mines & Mineral
Khyber Pakhtunkhwa Peshawar

Endst: No. 31515-23/2/1134/DGMM/Admin

Dated 08 /11/ 2021

Copy is forwarded to:

1. PA to Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. The Registrar, Service Tribunal, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Director (Litigation) H/Q Office, Peshawar.
4. The Section Officer (Establishment) Minerals Dev: Department, Khyber Pakhtunkhwa, Peshawar with reference to his letter referred to above.
5. The Section Officer (Litigation) Minerals Dev: Department, Khyber Pakhtunkhwa, Peshawar.
6. Mr. Asfandayar Khattak Royalty Inspector H/Q Office, Peshawar for strict compliance.
7. The Assistant Director (Accounts), H/Q Office, Peshawar for necessary action, please.
8. Master File /DGMM/Admin/2021.

Assistant Director (Admin)
H/Q Office, Peshawar.

ATTESTED

وکالت نامہ

بعدالت جناب خیر محتوخوا سروس لیبیونل پشاور

اسفندیار بنام گورمند و عمرہ

جناب Appellant دعویٰ اجرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکے

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام پشاور کے لئے

امین الرحمن یوسفزئی ایڈووکیٹ ہائی کورٹ و فیڈرل شریعت کورٹ آف پاکستان،

سجاد احمد محسود اینڈ خالد خان مہمند ایڈووکیٹس ہائی کورٹ، پشاور

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشگی پر خورد یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشگی پر سن منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بزور تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر سن منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرواختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو لڑنی دعویٰ و جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل و گمرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد جانشینی وراثتی نامہ کو فیصلہ بر خلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا مسوئی ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری مثل اجراء ڈگری بھی موصوف کو بشرط ادا جیٹی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اہل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے شیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جائز اتواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری نسیں تاریخ پیشگی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند ہے مورخہ 21-11-12 مسنون مختار نامہ من لیا ہے اور اسی طرح کچھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Amin ur Rehman Yusufzai
Advocate High Court

Federal Shariat Court of Pakistan
CNIC: 17301-5813582-3
Cell No. 0321-9022964
BC-10-7562

Sajjad Ahmad Mehsud
Advocate High Court
Peshawar

&
Khalid Khan Mohmand
Advocate High Court
Peshawar
BC No. 18-1115

Muhammad Kaveem Arvidi Advocate

bc 10-3389

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

7764

SB

Appeal No. of 2021

Asfandyar

Appellant/Petitioner

Govt of KPK through its Chief Secy

Versus

Respondent

Respondent No. (1)

Notice to:

Govt of KPK through its Chief Secy Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....^{04/07/2022}.....at 8.00 A.M. If you wish to urge anything against the appelland/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the ^{quilt} appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....^{20th}..... Day of.....^{June}.....2022?

(For Comments)
ISSUE BRANCH
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa
Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.



Map

Section 1/5/55

Section 1/5/55
The land is divided into four
sections of equal size
each section is 1/4 of the total
area

1/5/55

1/5

“B”

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

SB

Appeal No. 7764 of 2021.

Asfandyar Appellant/Petitioner

Versus

Govt. of KPK through its Chief Secy Respondent

Respondent No. (3)

Notice to: — DG, Mines & Minerals Deptt: Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....07/07/2022.....at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

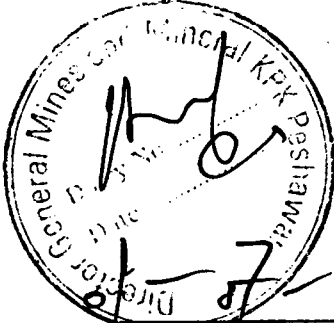
Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....20th.....

Day of.....June.....2022.

For (Comments)
7-022



**Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.**

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

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505

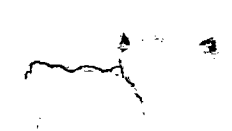
505/Folio

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52



"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

SB

Appeal No. 7764 of 20 22

..... Asfandyar Appellant/Petitioner

Versus

..... Govt of KPK through its Chief Secy Respondent

Respondent No. (4)

Notice to: —

Deputy Director (Tech) / Inquiry Officer, Directorate
General, Mines & Minerals Department Peshawar

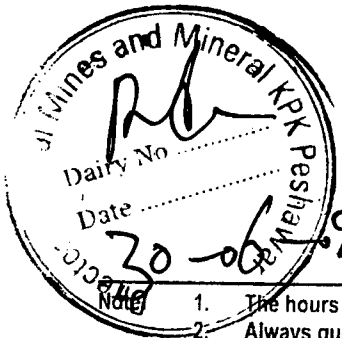
WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 04/07/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Given under my hand and the seal of this Court, at Peshawar this..... 20th

Day of..... June 20 22



(For Comments)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
- 2. Always quote Case No. While making any correspondence.



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1405

5505/5010

James Wilson, Director of the Department of Justice
Washington, D.C. (1000) / [illegible] / [illegible]

per [illegible] [illegible] [illegible]

10/10/51

10/10/51

10/10/51



6/6/82

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Ullas Chandra

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Security Forces & *[unclear]* fees

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v/s

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S.A 7764/2021

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