

| Sr. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|----------------------------|--|
| 1 | 28.03.2017 | <p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 749/2013</p> <p style="text-align: center;">Shafqat Ali Versus the Secretary Prisons, Khyber Pakhtunkhwa Peshawar and 2 others,</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p style="text-align: center;">Counsel for the appellant and Mr. Ziaullah, Government Pleader alongwith Sohrab Khan, Assistant for respondents present.</p> <p>2. Shafqat Ali hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against original order dated 07.02.2013 as well as final order dated 18.03.2013 vide which his prayer for reinstatement in service was declined and hence the instant service appeal on 23.4.2013.</p> <p>3. Brief facts of the case of the appellant are that the appellant was serving as Warder at District Jail Swat when his services were terminated with immediate effect due to unsatisfactory work and conduct during probation period vide impugned order referred to above and where-against his departmental representation was also rejected vide final order dated 18.03.2013.</p> |

(Handwritten signature)
28.03.17

4. Learned counsel for the appellant has argued that the impugned order of termination from service of the appellant is against facts and law as the procedure prescribed for enquiry under the Government of Khyber Pakhtunkhwa (E&D) Rules were not followed. That the impugned order was based on objectionable conduct and reputation of the appellant and as such he was entitled to opportunity of hearing as prescribed by rules. In support of his arguments learned counsel for the appellant has placed reliance on case law reported as 1987 PLC(C.S) 756 (Federal Service Tribunal), 1984 PLC(C.S) 1370 (Service Tribunal Punjab) and PLD 1974-Supreme Court-393.

5. Learned Government Pleader has argued that the appellant was not awarded any penalty. That no enquiry was required under the rules. That the impugned order is based on the work and conduct of the appellant during probation period governed by Section 11 of the Khyber Pakhtunkhwa Civil Servants Act, 1973.

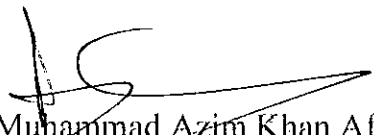
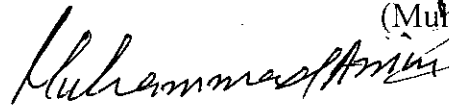
6. We have heard arguments of learned counsel for the parties and perused the record.

7. Perusal of record would suggest that performance of the appellant was not found satisfactory during the period of probation and as such the competent authority has formed an opinion, after assessing the work and conduct of the appellant that his work and conduct was not satisfactory. According to Section 11 of the said Act the services of a civil servant are liable to termination without notice during the period of probation. Since no stigma of any kind warranting departmental action is attributed

28.03.17

to the appellant as such we are of the humble view that there was no need to conduct a formal enquiry under the E&D Rules, 2011.

8. For the above mentioned reasons the appeal is dismissed, leaving the parties to bear their own costs. File be consigned to the record room.


 (Muhammad Azim Khan Afridi)
 Chairman

 (Muhammad Amin Khan)
 Member

28.03.17

ANNOUNCED

28.03.2017

22.11.2016

Appellant in person and Assistant AG for respondents
respondent present. Appellant requested for adjournment. Request
accepted. To come up for arguments on 28.3.17

(MUHAMMAD AAMIR NAZIR)
MEMBER



(ABDUL LATIF)
MEMBER

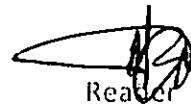
04.04.2016

Clerk to counsel for the appellant and Mr. Sohrab Khan, Junior Clerk alongwith Addl: AG, for respondents present. The learned Member (Executive) is on leave as well as non-availability of learned counsel for the appellant therefore, case is adjourned to 5.7.16 for arguments before D.B.


Member

05.07.2016

Since 5th July has been declared as public Holiday on account of Eid-ul-Fitar, therefore, the case is adjourned for arguments on 13.07.2016.


Member

07.2016

Counsel for the appellant and Mr. Sohrab Khan, Junior Clerk alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 22-11-16.

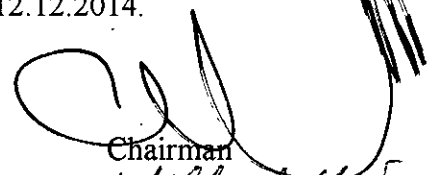

Member


Member

8.

13.8.2014

Neither appellant nor counsel for the appellant present. Mr. Sheharyar Khan, Assistant Supdt. Jail on behalf of respondents with AAG present. Written reply has not been received. To come up for written reply/comments, positively, on 12.12.2014.



Chairman

12-12-2014

No one is present on behalf of the appellant. Mr. Sheharyar Khan, ASJ for respondents with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for written reply on 27-3-2015,



Reader

9

27.03.2015

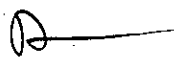
Appellant in person and Mr. Sheharyar Khan, ASJ for respondents alongwith Addl: A.G present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.10.2015.



Chairman

16.10.2015

Appellant with counsel and Mr. Ziaullah, GP for respondents present. Counsel for the appellant submitted rejoinder on behalf of appellant copy whereof is handed over the learned GP. To come up for arguments on 4-4-16.



Member



Member

Appeal No. 749/2013.
Mr. Shafiqul Ali

09.04.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that appellant has not been treated in accordance with law/rules. Against the impugned order dated 07.02.2013, he filed departmental appeal on 22.02.2013, which has been rejected on 18.03.2013 as claimed to have been received on 15.04.2013, hence the present appeal on 23.04.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 19.06.2014.

Appellant Deposited
180/- Bank
Rs. 180/-

See

Member

09.04.2014

This case be put before the Final Bench 1 for further proceedings.

Chairman

19.6.14

The Hon'ble bench is on Tour.
Therefore, case is adj'd 19.6.14

Read

Appeal No. 749/2013.
Mr. Sharjeet Ali.

13.6.2013

None for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013); the case is adjourned on note Reader for proceedings as before on 16.7.2013.

~~Sh~~
~~Ali~~


Reader

4. ~~Sh~~ ~~Ali~~
Noted

16.07.2013

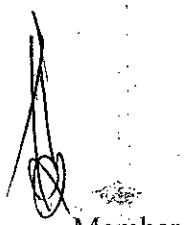
No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant for preliminary hearing on 17.09.2013.


Member

5.

17.09.2013

Neither the appellant nor his counsel present despite of proper service to them. As such the appeal is dismissed in default. File be consigned to the record.




Member

ANNOUNCED
17.09.2013

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 749/2013

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 23/04/2013 | <p style="text-align: center;">The appeal of Mr. Shafaqat Ali presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 24-4-2013 | <p style="text-align: center;">This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-6-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 749, 2013

Shafqat Ali *Vs* The Secretary etc.

| I N D E X | | | |
|-----------|---------------------------------|---------------|-------------------|
| S.No. | DESCRIPTION OF DOCUMENTS | ANNEXURE Nos. | PAGE Nos. From To |
| 1. | Memo of Appeal | - | 01 - 04 |
| 2. | Affidavit | - | 05 |
| 3. | Appointment order dt: 15.9.12 | A | 06 |
| 4. | Termination order dt: 07.02.13. | B | 07 |
| 5. | Representation dt: 22.02.2013. | C | 08 -09 |
| 6. | Appellate Order 18.03.2013 | D | 10 |
| 7. | Wakalat Nama | - | 11. |
| Total: | | | .11 |

Shafqat Ali
Shafqat Ali

Through *Muhammad*
ADAM KHAN
B.A. LLB Advocate
HIGH COURT PESHAWAR
Muhammad Adam Khan

Advocate Mardan.

Dt: 20.4.2013.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 749 /2013

~~Q.W.F. Peshawar~~
~~Case No. 810~~
~~23/4/13~~

Shafqat Ali son of Mushtaq Ali (Ex-Warder,
District Jail Swat) resident of Mohallah Fazal Abad,
Kas_Kuroons, Mardan. (Appellant)

VERSUS

1. The Secretary Prisons, KPK, Peshawar.
2. The Superintendent, Head Quarter (Easter),
Prison, Haripur.
3. Inspector General of Prisons, KPK Peshawar.

(Respondents.)

~~Hand to the~~
~~under~~
23/4/13.

APPEAL UNDER SECTION -4, SERVICE TRIBUNAL ACT, 1974

TO THE EFFECT THAT ORDER OF SUPERINTENDENT/

RESPONDENT No. 2, VIDE LETTER No. 298 DATED 7.2.2013

WHEREBY THE SERVICE OF APPELLANT IS TERMINATED AND

AND THE APPEAL THEREFROM IS REJECTED BY THE
I.G. PRISONS/RESPONDENT No. 3, VIDE LETTER
No. 7639 DATED 18.03.2013.

FACTS

1. That the ~~Appellant~~^A was appointed as Warder
(BPS-5) under Respondents, on 09.05.2012.
B

COPY ANNEXURE 'A'

2. That while posted at Swat, the Respondent No. 2,
terminated the service of Appellant vide letter
No. 298 dated 07.02.2013 on the alleged grounds
of unsatisfactory work and conduct.

COPY ANNEXURE 'B'

3. That grieved therefrom the Appellant preferred
Representation to Respondent No. 3, on 22.2.2013

Copy Annexure 'C'

3. That The I.G. Prisons/Respondent No. 3, rejected the Representation vide letter No. 7639 dated 18.03.2013, received on 15.4.2013.

COPY ANNEXURE 'D'

4. That the impugned order is unjustified, against the Law and facts and the same is liable to be set aside on the following amongst many other grounds:-

(I) That the service records of appellant had been clean and favourable through-out his service. There is no instance of the alleged nature in support of the allegations.

(II) That there is no detail of the alleged "unsatisfactory work and conduct", mentioned in the impugned order.

III) That the appellant is not provided the chance of defence through-out and he is condemned unheard.

(4)

IV) That the impugned order is against the provisions of the constitution of Islamic Republic of Pakistan 1973, and against the principles of natural justice.

(V) That the Appellant/^{is not provided}~~is not provided~~ the right of proper defence.

(V) That Appellant seeks leave of this Hon'ble Tribunal to claim further orders.

It is prayed that on acceptance of this Appeal, setting aside the impugned order, the Appellant may be reinstated into service with back service benefits, with costs.

Submitted by

Shafqat Ali

(Shafqat Ali)

Muhammad
ADAM KHAN
Through B.A. LL.B. Advocate
HIGH COURT MARDAN
Muhammad Adam Khan
Advocate
Mardan.

Dt; 19.04.2013.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2013

Shafqat Ali V/S The Secretary Prisons, etc.

AFFIDAVIT

I, Shafqat Ali, The Petitioner do hereby state on solemn affirmation that the contents of the accompanied Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal,

Dt; 20.4.2013.

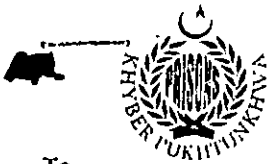
Shafqat Ali

SHAFQAT ALI (Deponent)

Diya Khan

| |
|-----------------------|
| ATTORNEY |
| DIYAKHAN KHAN |
| Advocate |
| Muz. & Public Mardan. |
| No. 20 Dated 4 |

2013

**SUPERINTENDENT**
HEADQUARTERS PRISON PESHAWARNo. 551 /P.B dt: 9/5/2012

To

Mr. Shafqat Ali s/o Mushtaq Ali
Mohallah Fazal Abad, Kas Koroona, Tehsil & District Mardan.

ATTENDED
[Signature]
ADAM KHAN

Subject: **APPOINTMENT AS WARDER (BPS-05)**

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in (BPS-05) (5400-260-13200) and other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the jails of Khyber Pukhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & Medical attendance etc. you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of your appointment as Warder will be those as laid down in the NWFP Prisons Rules 1985, Prisons Department (Recruitment, Promotions & transfer) rules 1980 and all other rules and regulations prescribed to Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your Medical fitness.
- 6- No TA/ DA will be admissible to you on joining your first appointment.
- 7- You cannot resign from the service immediately but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the services rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- On your report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, It will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled.
- 11- You are directed to attend this office immediately for your Medical Examinations at Police & Services Hospital Peshawar.

[Signature]
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR

Endorsement No: _____

Copy of the above is forwarded to the: -

- 1- Superintendent District Jail Swat. The above named newly appointed Warder is attached with his Jail for all purposes.
- 2- District Accounts Officer Swat.

[Signature]
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
9/5/12

Musawer/-

A

Annexure B

CENTRAL PRISON HARIPUR



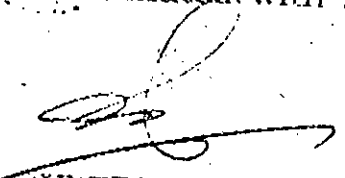
Office of
the Superintendent
Central Prison Haripur
No. 298 Dated 07/02/2013

ATTESTED

ADAM KHAN

OFFICE ORDER

Due to unsatisfactory work and conduct during probation period, the services of wader Shafqat Ali s/o Mushtaq Ali attached to District Jail Swat are hereby terminated with immediate effect.


SUPERINTENDENT
HEADQUARTER (EASTERN)
PRISON HARIPUR

NO 299 - 301

Copy forwarded to the:-

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent District Jail, Swat with reference to his Memo No. 422-WE dated 01-02-3013
3. District Accounts Officer, Swat.


SUPERINTENDENT
HEADQUARTER (EASTERN)
PRISON HARIPUR

B

To

The Inspector General of Prisons
Lahore Sahibganj, Peshawar.

ATTESTED
ADAM KIL

Subject: REPRESENTATION AGAINST THE
IMPUGNED ORDER No. 298, DATED
07.02.2013, WHEREBY THE SERVICE
OF THE APPELLANT IS TERMINATED.

(Through: Proper Channel)

R/Sir,

With due respects your kind attention is drawn towards the above mentioned order passed by the Superintendent, HQ (Eastern) Prison Haripur whereby the services of appellant is terminated with immediate effect.

The impugned order is untenable inter-alia on the following grounds and worth cancellation:-

- A: The impugned order is based on mala-fide, besides it is illegal, void ab initio against the facts and circumstances against the law and rules and against the principles of natural justice.
- B: That the impugned order is passed on the basis of alleged misconduct and unsatisfactory work but the same is issued without fulfilling the requisite code formalities.
- C: That No, show cause, explanation, charge sheet is served upon the appellant.
- D: That No opportunity of hearing is afforded to the appellant if he is condemned un-heard.

E - That no inquiry is conducted prior to the issuance of the impugned order.

It is therefore, requested that setting-aside the impugned order the appellant may kindly be re-instated in service with all back benefits.

Thanks.

Yours obediently:-

Dated: 22-02-2013

Sh. Ali

(SHAFQAT ALI)

Ex-Warden,

District Jail Saido Sharif

Distt: Swat.

S/o Mushtaq Ali,

Address: Mohallah Fazal Abad Dargai, Mardan

Tehsil of District Mardan

(NOTE: Copy of the impugned order is attached)

9 D



*Asst
Recd*

OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

Annexure

NO. 7639

ATT/STED

DATED 18-43-29B

ADAM KHAN

To

The Superintendent,
Headquarters Prison Haripur.

Subject - DEPARTMENTAL APPEAL
Memo:

I am directed to refer to your letter No.1479-WE dated 07-3-2013 on the subject and to convey that the appeal of Mr.Shafiqat Ali Ex-warder regarding set aside the penalty of termination from service has been examined and rejected by the Appellate Authority (I.G.Prisons).

Please inform him accordingly.

[Signature]
ASSISTANT DIRECTOR (ADMIN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR

M DS/PP
[Signature]

1252
21/3/13

D

BETTER COPY of Page - 10 Annexus 'D'

OFFICE OF THE INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTOONKHWA, PESHAWAR:

Alian

No. 7639

DATED 18.03.2013

To

The Superintendent,
Headquarters Prison Haripur.

Sub: DEPARTMENTAL APPEAL

Nemo:

I am directed to refer to your letter No. 1479-WE dated 07.03.2013 on the subject and to convey that the appeal of Mr. Shafqat Ali Ex-Warder regarding set aside the penalty of termination from service has been examined and rejected by the Appellate Authority (I.G.Prisons).

Please inform him accordingly.

Sd/-

Assistant Director(Admn)
For Inspector General of Prisons,
Khyber Pakhtoonkhwa, Peshawar.

....

| | |
|---------|----------------|
| کوٹ فیس | قیمت ایک روپیہ |
|---------|----------------|

مورخہ: 20 اپریل
 مقدمہ: شفقت علی
 دعویٰ: سروس ٹریبونل
 جرم:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و گل کاروائی متعلقہ آن مقام نور کیلئے محمد احمد خان ایڈووکیٹ، مردان کو مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی گل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی، اقبال دعویٰ، بصورت ڈگری دائر کرانے درخواست اجراء اور وصولی بینک یا نقد رقم نیز عرضی دعویٰ اور درخواست ہر قسم کی تصدیق دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخ کیلئے درخواست دائر کرنے، اپیل درخواست نگرانی، درخواست نظر ثانی کی پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت گل یا جزوی کاروائی کے واسطے دوسرا وکیل یا مختار قانون کو اپنے ہمراہ یا اپنی جگہ تقرر کرنے کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ پر داختم منظور و قبول ہوگا اور دوران مقدمہ میں جو زچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا، اسے، وصولی کے مستحق وکیل صاحب ہونگے۔ نیز بقا، خرچہ غیر ادا شدہ کی وصولی کرنے کا بھی اس کو اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا عدالت ہذا کے حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکور ہذا کرے۔ وکالت نامہ لکھ دیا کہ سندر ہے۔

13

اپریل

20

مقام

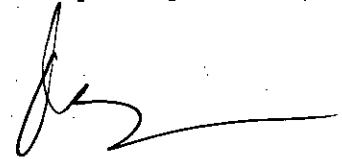
العبد گواہ شدہ العبد

کیلئے منظور ہے

بمقام:

03.01.2014

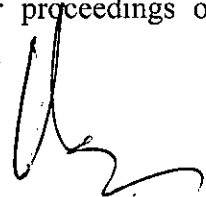
Appellant with counsel present. Preliminary arguments heard and case file perused. Perusal of the case file reveals that the appellant has impugned his termination order dated 07.02.2013, against which the appellant filed departmental appeal which was also dismissed vide order dated 18.03.2013. The instant appeal filed by the appellant on 23.04.2013, after expiry of limitation period of 30 days, however learned counsel was of the view that rejection of the departmental appeal it was communicated to the appellant on 15.04.2013, therefore, the appeal is not barred by time. Since there is nothing on record to prove appellants communication, therefore, in the interest of justice pre-admission notice be issued to the respondents/GP to bring the record before the Tribunal to the effects that on what date departmental order was communicated to the appellant. To come up for preliminary arguments on 26.02.2014.



Member

26.02.2014

Appellant in person and Mr. Sheharyar, Supdt with Mr. Zia Ullah, GP for the respondents present. Representative of the respondents requested for time to produce the relevant record. Request is accepted. To come up for further proceedings on 09.04.2014.




Member

25.09.2013

Appellant in person present and submitted an application for restoration of service appeal No.749/2013 which was dismissed in default due to non-prosecution on 17.09.2013. To come up for arguments on application for restoration of appeal on 11.12.2013 with

*Pre-admission notice to the GP/SGP to the asst
The tribunal on the dt. fixed.*


MEMBER.

11.12.2013

Counsel for the appellant and Mr. Zia Ullah, GP for the respondent present. Arguments on application heard. The appeal is restored. The learned counsel for the appellant requested for adjournment. To come up for further preliminary hearing 03.01.2014.


Member

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

CM No. _____/2013

In

Service Appeal No. 749/2013

Decided on 16.09.2013

Shafqat Ali son of Mushtaq Ali (Ex-Warder District Jail Swat) resident of Mohallah Fazal Abad, Kas - Kureona, Tehsil and District Mardan (Applicant)..

VERSUS

1. The Secretary Prisons, KPK Peshawar.
2. The Superintendent Head Quarter (Eastern), Prisons Haripur.
3. The Inspector General of Prisons, KPK, Peshawar.

(Respondents)

APPLICATION FOR RESTORATION OF SERVICE APPEAL

NO. 749/2013 DISMISSED IN DEFAULT OF APPEARANCE

ON 16.09.2013.

Sir,

1. That the above captioned Appeal was pending adjudication before this Honourable Tribunal

which is dismissed in default of appearance on 16.09.2013.

2. That the absence on the part of applicant was not wilful and deliberate.
3. That Parcha Peshi was misplaced from applicant and he was of the opinion that the Appeal is fixed for hearing on 19.09.2013. But, when he appeared on 19.09.2013, it was learnt that the same is dismissed in default on 16.09.2013.
4. That the Counsel of Appellant had no notice about the date of hearing.
5. That valuable rights of Appellant are involved in the Appeal and the same needs adjudication on merits.

Contd.....3/-

It is prayed that the Appeal may be
ordered to be restored.

Appellant

Shafqat Ali
(SHAFQAT ALI)

Through

Adam
MUHAMMAD ADAM KHAN

dt; 25.09.2013

Advocate Mardan.

AFFIDAVIT

I, Shafqat Ali son of Mushtaq Ali / Appellant

do hereby state on solemn affirmation that

the contents of the above mentioned application

are true and correct to the best of my knowledge

and belief. Nothing has been concealed from

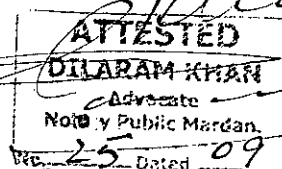
this Honourable Court.

Dt; 25.09.2013.

Shafqat Ali (Deponent)

M

Shafqat Ali



2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of Service Appeal No.749 of 2013

Filed by Ex- Warder Shafqat Ali

(Attached to District Jail Swat.....) **Appellant**

VS

- 1- The Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, Peshawar.
 - 2- The Superintendent Central Prison Haripur
 - 3- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
- **Respondents**

Preliminary Objections:

- (i) That the appellant has got no cause of action.
- (ii) That the appeal is incompetent & not maintainable in its present form.
- (iii) That the appellant is estopped by his own conduct to bring the present appeal.
- (iv) That the appellant has no locus standi.
- (v) That the appeal is bad for mis-joinder & non-joinder of necessary parties.
- (vi) That the appeal is badly time barred.

Facts:

1. Pertains to record, hence, no comments.
2. Pertains to record, hence, no comments.
3. Pertains to record, hence, no comments.
3. Pertains to record, hence, no comments.
5. Incorrect. The termination order is justified, according to law & rules and is liable to be upheld.

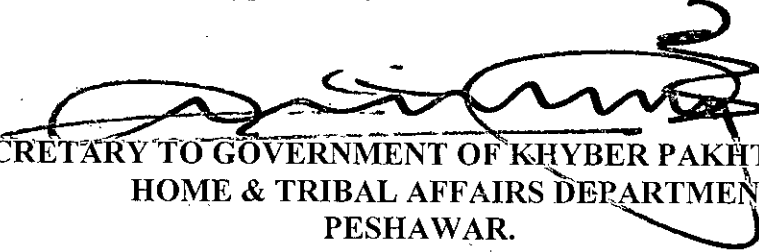
Grounds:


- I. Incorrect. The appellant has worse service history envisaged in the following facts.
 - a. The official concerned was served upon a show case notice vide this office Endstt; No. 985-88 dated 24-10-2012 during the period of attachment with Internment Centre lakki Marwat (copy enclosed as Annex-A).
 - b. An inquiry against him was conducted and personally heard by Superintendent District Jail Swat on the complaint of In-charge

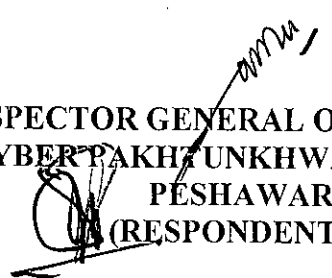
Internment Centre Paitham. He was found guilty and posted to Internment Centre Fizagate for duty (copy enclosed as Annex-B).

- II. Incorrect. Despite the verbal warnings by the Superintendent jail Swat, he quarrelled with fellow namely Ijaz Ahmad hurt him with a stone on the forehead and badly injured him; he was stitched at Saidu Shareef Hospital. Hence, he rendered himself to gross misconduct and negligence vide Superintendent District Jail Swat Memo No. 422/WE dated 01-02-2012 (copy enclosed as Annex-C).
- III. Incorrect. As replied in Para-I & II above. Hence, his services were liable to be terminated during probation period vide Superintendent Headquarter prisons, Peshawar No. 541 dated 09-05-2012 (copy enclosed as Annex-D).
- IV. Incorrect. The impugned order is neither against the spirit of constitution of Pakistan nor against the governing rules of civil servant and Pakistan Prisons Rules.
- V. Incorrect. Proper inquiry was conducted by the Superintendent District jail Swat. Statement of witness (fellow warders) was recorded and reasonable opportunity was provided to him. His services were terminated on the ground of misconduct & unsatisfactory work.
- VI. That the respondents seek permission to raise additional ground at the time of arguments.

It is prayed that the appeal may be dismissed with costs.


1- SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT,
PESHAWAR.
(RESPONDENT # 1)


SUPERINTENDENT
2- CIRLE HEAD QUARTERS PRISON HARIPUR.
(RESPONDENT # 2)


3- INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.
PESHAWAR.
(RESPONDENT # 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR


In the matter of
Service Appeal No.749 of 2013
Filed by Ex- Warder Shafqat Ali
(Attached to District Jail Swat..... **Appellant**


VS

- 1- The Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, Peshawar.
 - 2- The Superintendent Headquarter (Eastern) Prison Haripur
 - 3- The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
- **Respondents**

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 TO 3.

We the undersigned respondents do hereby solemnly affirm that the contents of the para-wise comments on the above cited appeal are true and correct to the best of our knowledge and belief and that no material facts has been kept secret from this honourable court.


1- SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT,
PESHAWAR.
(RESPONDENT # 1)


2 - SUPERINTENDENT
CIRCLE HEAD QUARTERS (Eastern) PRISON HARIPUR
(RESPONDENT # 2)


3- INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.
(RESPONDENT # 3)

D. No. 546
28-1-11-2012

V Annex A

**SHOW CAUSE NOTICE UNDER RULE-5 (i) READ WITH
RULE-7 OF THE KHYBER PAKHTUNKHWA GOVERNMENT
SERVANTS (EFFICIENCY DISCIPLINE) RULES 2011.**

You **Warder Shafqat Ali** attached District Jail Swat for the purpose of pay and for the purpose of duty with Internment Center, Lakki Marwat remained absent from duty on 03-08-2012.

I, Masud-ur-Rehman Superintendent Headquarters Prisons Haripur as competent authority, am satisfied by report submitted by the In-Charge Internment Center Lakki Marwat Memo; No. 95-96 dated 06-08-2012 and there is no need of holding any further inquiry.

Now therefore, you **Warder Shafqat Ali** are hereby called upon to show cause with in seven days as to why punishment of **Removal from Service** may not be awarded to you for your above stated act.

In case your reply does not reach this office within stipulated period, ex-parte action shell be taken against you.

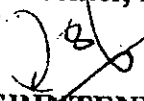
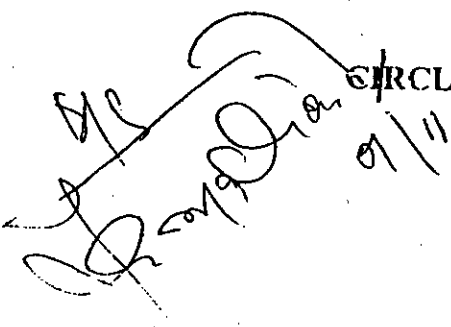


**SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR**

Endst No. 985-88 1-24/10/12

Copy of the above is forwarded to the:-

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar with reference to his Endstt; No. 21975-76 dated 28-08-2012.
2. In-charge Internment Center, Lakki Marwat. A copy of the show cause notice duly signed by the accused may please be returned to this Headquarter as a token of receipt and office record.
3. **Warder Shafqat Ali** c/o In-charge Internment Center, Lakki Marwat.
4. Superintendent District Jail Swat.



**SUPERINTENDENT
CIRCLE H/Qs PRISON HARIPUR**

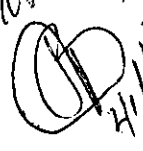
(Annex B)

2

the Superintendent
Distt Jail Swat

No 01
dated - 1-1-2013

Subject: Transfer of Warden Shafiqat to
Sub-jail Daska Kohistan on
Administrative Ground.

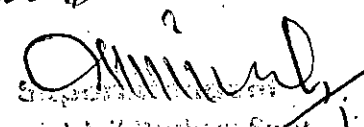
L.M.J.C.
For n/a/c P.O.S.


R/Sir,
It is submitted that warden Shafiqat
attached to this Centre for duty is infrequently
undutiful, untrustworthy and ill disciplined.
He was verbally warned for some time but
he did fail to show any regard under the rules.
Today at evening time he left his duty place and
threw his rifle Cr3 in his bed and started
busy with mobile phone which is strictly prohibited.
The matter was taken serious by the G.O. 12. Case
and directed the undersigned for immediate
replacment of the said warden.

It is therefore requested that one dutiful warden
substitute to him may kindly be posted at this Centre and
his transfer be recommended for sub-jail Daska on
administrative grounds please.

Attested


SUPERINTENDENT
District Jail, Swat.


Special Jail Pathan Swat. 1-1-2013

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The official was verbally warned to be careful in future and directed to abide by the rules and detailed for duty to Intermment Centre Pai Fizagat.

Attested

4/1/13

SUPERINTENDENT
District Jail, Swat.

13

Annex - C

Annex - E

OFFICE OF THE SUPERINTENDENT DISTRICT JAIL SWAT

No. 422/WEI

By Fax

February 01, 2013.

Most urgent
out today

To

The Superintendent
Headquarter Jail Haripur

Subject:-
Dear Sir;

DISCIPLINARY ACTION/TERMINATION OF SERVICES.


It is submitted for your kind information that one warder namely Shafqat Ali son of Mushtaq Ali, attached to Internment Centre Fizagat, Swat quarreled with his fellow warder namely Ijaz Ahmad on 01-02-2013 in the evening without any provocation and hit him on the head with a stone and badly injured him. Two wounds, one at the forehead and one at the right side of the head were stitched in Saidu Teaching Hospital.

It is submitted that warder Shafquat Ali is criminal minded person and also quarreled with his fellow warders in the past. He is also an addict and said to be deserted from Pak army. He was detailed to Internment Centre Paithom, Swat. But he was not disciplined and violated rules and his detailment to the said centre was withdrawn on the request of the Incharge Assistant Superintendent of the said Centre (report attached). He was detailed to Internment Centre Fizagat, Swat and was verbally directed to abide by the rules. But he did not mend his ways and badly injured his fellow warder.

This act on the part of the warder concerned is gross-misconduct and even a crime. He is black mole on the face of prisons department and his retention will be injurious.

In light of the above submission, it is, requested that the services of the said warder namely Shafqat Ali s/o Mushtaq Ali may be terminated with immediate effect as he could not completed his Probation period of one year successfully **as he has been appointed in the Prisons Department as warder on 23-05-2012.**


The matter may be treated as most urgent please.


SUPERINTENDENT
DISTRICT JAIL SWAT

Endst.No

Copy of the above is forwarded to;

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar for information and necessary action please.
2. The Incharge Internment Centre Fizagat, Swat.

DS/PB

Supdt

Sd
SUPERINTENDENT
DISTRICT JAIL SWAT

543
07/02/13



SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
 No. 551 /P.B dt: 9/15/2012

To

Mr. Shafqat Ali s/o Mushtaq Ali
 Mchallah Fazal Abad, Kas Koroona, Tehsil & District Mardan.

ATTENDED

ADAM KHAN

Subject: APPOINTMENT AS WARDER (BPS-05)

Memo:

Reference your test/ interview for the subject post.

You are hereby offered the post of temporary Warder in (BPS-05) (5400-260-13200) and other usual allowances as admissible under the rules subject to the following conditions: -

- 1- You are liable to serve anywhere in the jails of Khyber Pukhtunkhwa.
- 2- Your appointment is purely temporary and your services can be terminated at any time without assigning any reason during probationary period.
- 3- For all other purposes such as pay, T.A & Medical attendance etc. you will be governed by the rules applicable to the government servants of your category.
- 4- The terms and conditions of your appointment as Warder will be those as laid down in the NWFP Prisons Rules 1985, Prisons Department (Recruitment, Promotions & transfer) rules 1980 and all other rules and regulations prescribed to Government Servants or the rules which may be promulgated by the Government from time to time in this behalf.
- 5- Your appointment will be subject to your Medical fitness.
- 6- No TA/ DA will be admissible to you on joining your first appointment.
- 7- You cannot resign from the service immediately but will have to put in writing at least one month prior notice or in lieu thereof, one month pay shall be forfeited from you.
- 8- Your appointment is subject to fulfillment of all the conditions laid down in the services rules.
- 9- You will be on probation for a period of two years extendable to one more year.
- 10- On your report for duty, it will be taken for granted that you have accepted all the above terms and conditions and if you failed to report within 10 days of the receipt of this appointment order, it will be presumed that you have declined to accept this offer, hence this order of appointment shall stand cancelled.
- 11- You are directed to attend this office immediately for your Medical Examinations at Police & Services Hospital Peshawar.

[Signature]
 SUPERINTENDENT
 HEADQUARTERS PRISON PESHAWAR

Endorsement No: _____/-

Copy of the above is forwarded to the: -

- 1- Superintendent District Jail Swat. The above named newly appointed Warder is attached with his Jail for all purposes.
- 2- District Accounts Officer Swat.

[Signature]
 SUPERINTENDENT
 HEADQUARTERS PRISON PESHAWAR

9/15/12

A

Musawer/-



OFFICE OF THE
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

Annexure 9

Muzaffar
Rasool

NO.

7639

ATTESTED

DATED

18-03-2013

ADAM KHAN

To

The Superintendent,
Headquarters Prison Haripur.

Subject -
Memo:

DEPARTMENTAL APPEAL

I am directed to refer to your letter No.1479-WE dated 07-3-2013 on the subject and to convey that the appeal of Mr.Shafiqat Ali Ex-warder regarding set aside the penalty of termination from service has been examined and rejected by the Appellate Authority (I.G.Prison).

Please inform him accordingly.

ASSISTANT DIRECTOR(ADMIN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR

M DSIPB
Syeda
M/S

1252
21/3/13

D

To

The Inspector General of Prisons
Udhampur Jail, Udhampur, Jammu & Kashmir.

ATTESTED
ADAM K...

Subject: REPRESENTATION AGAINST THE
IMPUGNED ORDER NO. 298, DATED
07.02.2023, WHEREBY THE SERVICE
OF THE APPELLANT IS TERMINATED.

(Through: Proper Channel)

R/Sir,

With due respects your kind attention is drawn towards the above mentioned order passed by the Superintendent, H.S.L (Eastern) Prison Haripur whereby the services of appellant is terminated with immediate effect.

The impugned order is untenable inter-alia on the following grounds and worth cancellation:-

- A: The impugned order is based on mala-fide, besides it is illegal, void ab initio against the facts and circumstances against the law and rules and against the principles of natural justice.
- B: That the impugned order is passed on the basis of alleged misconduct and unsatisfactory work but the same is issued without fulfilling the requisite code formalities.
- C: That No, show cause, explanation, charge sheet is served upon the appellant.
- D: That No opportunity of hearing is afforded to the appellant if he is condemned un-heard.

C

E - That no inquiry is conducted prior to the issuance of the impugned order.

It is therefore, requested that setting aside the impugned order the appellant may kindly be re-instated in service with all back benefits.

Thanks.

Yours obediently:-

Dated: 22-02-2013

Sh. Ali

(SHAFQAT ALI)

Ex-Warden,

District Jail Saidul Sharif

Distt: Swat.

S/o Mushtaq Ali,

Address: Mohallah Fazal Abad Dargai, Mardan

Tehsil of District Mardan

(NOTE: Copy of the impugned order is attached)

- (VII) Needs no reply.
- (VI) that the Appellant is jobless after the impugned order.
- (V) incorrect. None was examined in presence of Appellant. Hence, such evidence, if any, having not out to the test of cross-examination, cannot be taken into consideration.
- (IV) Incorrect and false. Denied.
- (III) incorrect and false. Denied. Hearing in defence is the fundamental right of every citizen of Pakistan and no one can be denied the same.

It is prayed that setting aside the impugned order, the Appellant may be re-instated into service, with back service benefits.

Dated: 13.10.2012

[Signature]
Appellant

(Shafiq Ali)

Through

[Signature]

A. State ...
A. State ...

Affidavit

I, Shafiq Ali ...
and content to be the best of my knowledge ...
on solemn affirmation that the contents of ...
are true and correct.

D: ...
(2)

[Signature]
13-10-12

for convenience of cultivation or some other reason was divided into three small plots. This parcel of land adjoins the plaintiff's land and has been sold as an integer. It comprises but a small area. We see no good reason for so disintegrating the integer sold as has been done by our learned colleague, and for holding Plot No. 836 alone and not also Plots Nos. 833 and 834 and Plot No. 837. Baillie in his work on Muhammadan Law (2nd Edition at p. 475) defines the right of pre-emption in the following terms:

"The original meaning of *shoofa* is conjunction. In law it is a right to take possession of a purchased parcel of land for a similar (in area and quantity) of the price that has been set on it to the purchaser. The cause of it is the conjunction of the property of the purchaser and the person claiming the right with the subject of the purchase. In Vol. III of Hamilton's Hedaya (at p. 591), it is stated that *shoofa* takes place with regard to all lands or houses, and the author adds: 'Besides, according to our tenets the grand principle of *shoofa* is the conjunction of property and its objects to prevent the vexation arising from a disagreeable neighbour and this then is of equal force whether the thing is divisible or otherwise.'"

Now if the grand principle of *shoofa* is the conjunction of property and its object is to prevent vexation arising from a disagreeable neighbour, it is clear that the object in this case would be frustrated by the decree of the learned Judge of this Court were it otherwise. According to that decree the plaintiff would, no doubt, have his borders extended by the inclusion in his land of part of Plot No. 836 but he would be left in the same predicament as that in which he was before pre-emption, namely that he will still have the vexation of his neighbours. In our opinion with all deference to our learned brother, the subject-matter of the sale being the entire parcel of land made up of three plots—and this parcel of land adjoins the plaintiff's land—the entire subject-matter of the sale should be held to be the plaintiff being entitled to pre-empt that by right of vicinage. The plaintiff is entitled to pre-empt the entire subject-matter of the sale and not merely a part."

In the light of the above discussion, I am of the opinion, that the view taken in the earlier decision of the Peshawar High Court that each and every *Khasra* or field constitutes a separate property is erroneous.

After careful consideration of the point involved in this matter, I am of the opinion, that the sale of a parcel of land comprised in more than one *Khasra* numbers will not be the sale of as many properties as there are *Khasra* numbers, but will be only of one property represented by that parcel of land.

In my opinion, the law enunciated in *Muhammad Yousuf v. Salim* is correct. In that view of the matter, the appeal was rightly dismissed by the High Court and there is no ground to interfere.

In the result, the appeal is dismissed with no order as to costs.

S. A. H.

Appeal dismissed.

MOHD. SIDDIQ JAVAID CHAUDHRY V. GOVT. OF WEST PAKISTAN
(Waheeduddin Ahmad, J)

P L D 1974 Supreme Court 393

Present : Hamoodur Rahman, C. J., Waheeduddin Ahmad and Salahuddin Ahmed, JJ

C. A. No. 295 of 1969

MUHAMMAD SIDDIQ JAVAID CHAUDHRY—Appellant
versus

THE GOVERNMENT OF WEST PAKISTAN—Respondent
AND

C. A. No. 14 of 1970

ABDUL RASHID ABBASI—Appellant
versus

COMMISSIONER OF POLICE, MUZAFFARGARH—Respondents
AND 2 OTHERS
AND

C. A. No. 97 of 1970

MUMTAZ HUSSAIN MALIK—Appellant
versus

THE GOVERNMENT OF WEST PAKISTAN—Respondent

Civil Appeals Nos. 295 of 1969, 14 and 97 of 1970, decided on 2nd March 1974.

On appeal from the judgment and orders of the former High Court of West Pakistan, Lahore, in Writ Petitions Nos. 2096 of 1964, 1231 of 1965 and 1231 of 1965, dated the 31st January 1967 and 25th January 1967).

services—

Probationer—Definition and liability of.

A probationer is a person who is taken in service subject to the condition that he will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. [p. 401]A

A person who is on probation is subject to all checks to which a probationer is subject. He cannot, for example, refuse to obey orders, or neglect his own hours of duty, or indulge in any malpractice. [p. 401]B

Muhammad Naseem Ahmad and others v. Miss Azra Feroze Bakhat and others P L D 1968 S C 37 and *Muhammad Afzal Khan v. Superintendent of Montgomery and others* P L D 1961 Lah. 808 ref.

Constitution of Pakistan (1962)—

Art. 177—Termination of services—Show-cause notice—Probationer's service terminated on ground of unsatisfactory work—Such termination not dismissal or removal from service but within domain of contract or Rules made by Government—Services of probationer terminated on ground of misconduct—Such course amounts to removal of probationer, being stigmatised, protected by Art. 177—Show-cause notice and proper inquiry against probationer—Necessary in such case.

JUDGMENT

If the service of a probationer is terminated on the ground of factory work that will not amount to dismissal or removal from service, termination will be in term of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a dismissal in his favour. The probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made. [p. 401]C

The record showed that there were allegations against the appellants, officers of corruption.

Held: In these circumstances, the order terminating their services amounted to removal and dismissal within the meaning of Article 177 of the Constitution of Pakistan (1962). [p. 401]D

Riaz Ali Khan v. Pakistan P L D 1967 Lah. 491; *Khawaja Ghulam Sarwar v. Pakistan through the General Manager, P. W. R., Lahore* P L D 1965 S C 142; *Abdul Majid Sheikh v. Mushafee Ahmad and others* P L D 1965 208; *Muhammad Afzal Khan v. Superintendent of Police, Montgomery and others* P L D 1961 Lah. 808; *Syed Nisar Ali v. The Secretary, Ministry of Health, Government of Pakistan and others* P L D 1958 Kar. 30; *Federation of Pakistan v. Mrs. A. V. Isaacs*, P L D 1956 S C (Pak.) 431; *Nasir Hassan and others v. The Federation of Pakistan* P L D 1956 S C (Pak.) 331; *Federation of Pakistan v. Raja Muhammad Afzal Khan* P L D 1958 S C (Pak.) 258; *Mohammad Muntaz Khan v. Government of West Pakistan* P L D 1963 357; *Muhammad Ashraf v. Dr. Arshad Malik, Chairman, District Family Planning Board, Sargodha* 1970 S C M R 241; *Federation of Pakistan v. Riaz Ali Khan* P L D 1958 Lah. 22; *Tasnim Ali Mir v. The Federation of Pakistan* P L D 1959 Kar. 62 and *Muhammad Naseem Ahmad and others v. Mir Feroze Bakhat and others* P L D 1968 S C 37 ref.

C. A. No. 295 of 1969

Abdus Salam, Advocate Supreme Court instructed by *Ch. Khairuddin Rahman*, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (S. Sidhwa, Advocate with him) instructed by *Ijaz Ali*, Advocate-on-Record for Respondents.

C. A. No. 14 of 1970

Muhammad Shafi, Senior Advocate Supreme Court instructed by *Abdul Karim*, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (M. Bajwa, Advocate with him) instructed by *Ijaz Ali*, Advocate-on-Record for Respondents.

C. A. No. 97 of 1970

Fazle-Ghani, Senior Advocate Supreme Court instructed by *Ejaz Ahmad Khan*, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (R. S. Sidhwa, Advocate with him) instructed by *Ijaz Ali*, Advocate-on-Record for Respondent.

Date of hearing : 12th April 1974.

WAHEDUDDIN AHMAD, J.—This judgment will dispose of Civil Appeals Nos. 295 of 1969, 14 of 1970 and 97 of 1970, in which a common question of law is involved.

In Civil Appeal No. 295 of 1965, the appellant was appointed by letter dated the 25th September 1963, as Civil Judge in the West Pakistan Civil Service (Judicial Branch). He was to be considered on probation for a period of two years with effect from the date he actually resumed duty. He was also required to pass departmental examination prescribed in the West Pakistan Civil Services (Judicial Branch) Rules, 1962 and in case, he failed to do so, his services were liable to be terminated without notice. According to para. 7 of his appointment letter, he was governed by the Government Servants Conduct Rules and such other Rules as may have effect or may be enforced by the Government in this behalf. The appellant resumed service on the 9th November 1963. He passed the departmental examination which was notified in the official Gazette of 23rd June 1964 dated 29th January 1965.

The services of the appellant were dispensed with on the 19th June 1965, under rule 8 of the West Pakistan Civil Services (Judicial Branch) Rules, 1962 on account of his work and conduct having been found unsatisfactory during the initial probationary period of two years. According to the service record of the appellant produced by the High Court, it appears that the allegation against him was that he was corrupt and he himself admitted that he gained a reputation for corruption. The relevant part of rule 8 is reproduced below :—

“Rule 8 : Probation.—(1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years.

Explanation.—Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If the work or conduct of a member of the service during the period of probation has been unsatisfactory, Government may, notwithstanding that the period of probation has not expired, dispense with his services.

(3) On completion of the period of probation of member of the Service, Government may, subject to the provisions of sub-rule (4), confirm him in his appointment, or if his work or conduct has in the opinion of Government, not been satisfactory—

(a) dispense with his services; or
(b) extend the period of probation by a period not exceeding two years in all, and during or on the expiry of such period pass such orders as it could have passed during or on the expiry of the initial probationary period.”

The appellant moved a petition before the Governor of West Pakistan, bringing to his notice the alleged injustice done to him. No decision, however, was taken on it and no reply was sent. Thereafter, the appellant challenged the order of termination of his service under Article 98 of 1962 Constitution of Pakistan in the former High Court of West Pakistan, Lahore, in Writ Petition No. 1231 of 1965, on the ground that the appellant

was entitled to protection of Article 177 of the Constitution and in so far as no opportunity was afforded to him, his dismissal from service was without lawful authority. It was further pleaded that the provisions of natural justice has been violated. His writ petition along with Writ Petition No. 2096 of 1964, came up for hearing before a Division Bench of the former High Court of West Pakistan, Lahore and these petitions were dismissed by a single judgment dated the 31st January 1967, for the reasons stated in Writ Petition No. 2096 of 1964. The grievance of the appellant is that his case was not considered by the High Court and the High Court has mixed up his case with the case of Mumtaz Hussain Malik in the connected appeal.

The appellant challenged the order of the High Court in Civil Petition for Special Leave to Appeal No. 92 of 1967 and leave was granted to him to consider the question whether the order terminating his services could not have been made without a prior show-cause notice as held in the case of *Riaz Ali Khan v. Pakistan* (1), that a probationer has the same right as a permanent member of a service. Leave was granted to consider the correctness of this decision.

In Civil Appeal No. 14 of 1970, the appellant was approved as candidate for appointment as Assistant Sub-Inspector of Police on three years' probation on the 1st March 1962, with the approval of the Deputy Inspector-General of Police, Multan Range. His appointment was made by the Superintendent of Police, Muzaffargarh, vide Gazette Notification No. 5261 dated the 24th March 1962. He was sent to the Police Training Institute for the completion of Inter-Class Course and was declared successful. He was posted for the completion of 'D' Course to Police Station, Khan Garh. During his posting at Police Station, Khan Garh, a complaint was received against him by S. H. O. Khan Garh who conducted an inquiry into the allegations. Thereafter, the respondent deputed the District Inspector, Alipur, to probe into the allegations against the appellant. The said Officer reported that the appellant has demanded Rs. 40 as illegal gratification from Ghulam Sarwar and Khuda Bakhsh for showing them favour in his Daily Diary Report No. 14 dated the 15th June 1965. It was alleged that the appellant summoned these persons knowing that he was taking cognizance of a non-cognizable offence. The appellant was charge-sheeted and a summary of allegations against him was sent to him. He was called upon to show cause as to why major penalty under Government (Efficiency and Discipline) Rules, 1960, may not be imposed against him. The appellant submitted his reply on the 26th February 1965. After considering the reply, the appellant was discharged from service vide order dated the 27th February 1965, on the ground that he was not likely to make a good Police Officer and there were complaints of corruption and misconduct against him. The appellant filed an appeal against this order before the Deputy Inspector-General of Police which was dismissed on the 13th July 1965. He took up the matter in revision before the Additional Inspector-General of Police but was unsuccessful there also.

Thereafter, the appellant filed Writ Petition No. 2005 of 1965 in the former High Court of West Pakistan, Lahore, which was dismissed by a Division Bench on the 25th January 1967. The appellant filed Civil Petition for Special Leave to Appeal No. 148 of 1967 and leave was granted to him to consider the question whether a probationer has an assurance of continuance in service equal to those of a permanent employee and cannot be removed on a mere declaration of unsatisfactory service.

(1) P L D 1967 Lah. 491

In Civil Appeal No. 97 of 1970, the appellant was appointed Judge in the West Pakistan Civil Services (Judicial Branch), letter dated the 27th July 1961. He took charge on 1st September 1961. He was to be considered on probation for a period of two years. He was also required to pass departmental examination, prescribed in the West Pakistan Civil Services (Judicial Branch) Rules, 1962 and if he fails to do so, his services were liable to be terminated without notice. Under Clause VII of the letter of his appointment, the appellant was governed by the Government Servants Conduct Rules and other Rules as may have been or may be enforced by the Government in his behalf. Under Clause IX of the letter of appointment, his services were liable to be terminated on the following grounds :—

- (a) During the period of probation or on its conclusion or even thereafter without notice, if your work or conduct is proved to be unsatisfactory or if you fail to pass the departmental examination within the prescribed period,
- (b) in circumstances other than those mentioned in (a) above, without assigning any cause, by one month's notice from you to Government or vice versa provided that one month's pay may be forfeited or granted, as the case may be, in lieu of notice.

The services of the appellant were dispensed with under rule 8 of the West Pakistan Civil Services (Judicial Branch) Rules, 1962, on account of his work and conduct have been found unsatisfactory during the period of probation. The remarks made in his service record show that he was indifferent, was unpunctual and difficult to work with and he was reputed to be abrupt. Relevant rule 8 has already been reproduced while giving the facts in Civil Appeal No. 295 of 1969. The appellant challenged the order of termination of his service dated the 18th August 1964 by a Writ Petition No. 2096 of 1964 in the former High Court of West Pakistan, Lahore. The writ petition was dismissed by a Division Bench of the High Court on the 31st January 1967, on the ground that a probationer has no constitutional protection.

The appellant filed Civil Petition for Special Leave to Appeal No. 124 of 1967 which was dismissed on the 19th April 1967. On a review petition, this Court granted leave to the appellant on the 30th June 1967, to consider the correctness of the decision of the High Court in *Riaz Ali Khan v. Pakistan* (1).

The learned counsel for the appellants have contended that a probationer is also entitled to the safeguard of the show-cause notice guaranteed against dismissal or removal from service under Article 177 of the Constitution of Pakistan, 1962. They further contended that just as a person, who is a temporary employee, is also in service or holds a civil post, similarly a probationer is also in civil service and holds a civil post. It is also contended that any rule or term of contract which is contrary to the constitutional guarantee will not apply to a probationer. In support of their contention, the learned counsel for the appellants have relied on *Riaz Ali Khan v. Pakistan* and *Khawaja Ghulam Sarwar v. Pakistan through the General Manager, W. R., Lahore* (2). In the second case, it was held that the termination of a Railway employee's employment, by notice, purporting to issue under

(1) P L D 1967 Lah. 491

(2) P L D 1962 S C 142

a term in his contract of employment, where the facts showed that he incurred the displeasure of his superior officers, but without a show-cause notice, was a violation of the guarantee of employment conveyed by section 240 (3) of the Act of 1935. This case was further considered in *Abdul Majid Sheikh v. Mushafee Ahmad and others* (1). It was held in that case that the decision in *Ghulam Sarwar's case* was also applicable to an employee holding an appointment, indefinite in duration, although not in a substantive capacity, but expressly described as temporary. In the case of *Riaz Ali Khan v. Pakistan*, it was held as under :—

“Just as a person who is a temporary employee is also in service, who holds a civil post, similarly a probationer is also in civil service and holds a civil post. He is equally subject to all checks to which a permanent Government servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. If his termination of service is not a termination simpliciter in the sense in which termination is used as distinguished from dismissal or removal, but tantamounts to removal and dismissal, then it cannot be brought about without the formality of a show-cause notice, and he too is eligible to a show-cause notice. As for example, where it is due to his conduct of the employee then the agreement or appointment letter, which placed him under probation, as we have stated earlier, will not be permitted to contract out of the provisions of the constitution, so as to say that as you are on a probation, therefore, even though you are being dismissed or removed from service, you will not be given a show-cause notice. This will be allowing to do that indirectly which the Constitution has prohibited to be done directly.”

The learned counsel for the appellants also referred to the cases of *Muhammad Afzal Khan v. Superintendent of Police, Montgomery and others* (2) and *Syed Nisar Ali v. The Secretary, Ministry of Health, Government of Pakistan and others* (3). In the last mentioned case, it was held that in a case of probationer if the Department wants to terminate the services of the Government servant then the principles of natural justice should be followed. In the case of *Muhammad Afzal Khan v. Superintendent of Police, Montgomery*, it was held as under :—

“The position of a person who has been taken on probation is that he is in service but his service is subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. A person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice.

The termination of the services of a Government servant, for the purposes of the provisions making an enquiry necessary, can be divided into four categories, namely, dismissal from service, removal from service, termination of service in terms of the contract between the Government and the employee and the termination of service during the period of probation. The terms “dismissal” and “removal from service” have attained technical meanings for the purposes of public services. Dismissal from service, which is invariably the result of

proved misconduct, ordinarily debars the person dismissed from future employment under Government. Termination of service in terms of the contract though it may have resulted from a fault of the employee does not amount to removal or dismissal from service unless the order terminating the service mentions that the terms of the contract were enforced because the employee had been guilty of misconduct. Termination of service during the period of probation does not amount to either removal or dismissal from service unless the order terminating the service mentions that it was terminated because of misconduct of the employee.”

Mr. Kamal Mustafa Bokhari, learned Assistant Advocate-General, Punjab respondents, has referred to the cases of *The Federation of Pakistan v. I. V. Isaac* (1), *Noorul Hassan and others v. The Federation of Pakistan* (2), *The Federation of Pakistan v. Raja Mohammad Afzal Khan* (3), *Mohammad Ishaq Khan v. Government of West Pakistan* (4) and *Mohammad Ashraf v. Ishaq Malik, Chairman, District Family Planning Board, Sargodha* (5). These cases are under section 240 of the Government of India Act. The essence of decision of some of these cases is that if a temporary Government servant is discharged from service on account of misconduct, it was an order of dismissal within the meaning of section 240, Government of India Act that if the opportunity required by that section was not given to him the order of dismissal would be void, irrespective of whether the respondent was permanent or temporary employee. In the case of *Raja Mohammad Afzal Khan* it was held that the first tentative appointment of the Government servant concerned, was “subject to verification of character and antecedents” there was a condition that the service could be terminated on 15 days’ notice by either side. As it was, Government made enquiries and were not satisfied as to “character and antecedents” of the incumbent, they, therefore, terminated his service “with immediate effect” and directed that he should be paid 15 days’ pay in lieu of notice. It was held that the establishment of satisfactory character and satisfactory antecedents was a condition *sine qua non* to the completion of the contract of employment. In the case of *Muhammad Mumtaz Khan*, cited above, it was held that a Government servant appointed in a temporary capacity to class I post on specified terms, two of which were: (1) although temporary, the post was likely to continue indefinitely, and (2) the appointment was liable to be terminated at any time on one month’s notice on either side. The employee failed to give a satisfactory account of himself during the brief tenure of his office in the new post. The Government terminated his appointment on one month’s notice and after he was taken back in his previous post. The employee in due time filed a writ petition. It was contended that because his employment was in a post which though temporary was to continue for an indefinite period, he could not be regarded as a temporary officer and his services could therefore, be terminated by notice. This Court held that the employee’s post contained no element of permanency for the post itself was temporary and he had been appointed to it in a temporary capacity. His removal from that post was effected in an entirely straightforward manner.

(1) P L D 1956 S C (Pak.) 431

(2) P L D 1956 S C (Pak.) 331

(3) P L D 1958 S C (Pak.) 258

(4) P L D 1968 S C 357

(5) 1970 S C M R 241

(1) P L D 1965 S C 208

(2) P L D 1961 Lah-808

(3) P L D 1958 Kar. 360

on the basis that his work showed that he was inadequate to the requirements of the post. It was further observed as under:—

"He had been informed of this at an intermediate stage, and given opportunity to show better work over a period of three months. On account of his failure to do better, his services were terminated in Class I appointment, and he was restored to his original Class II appointment for which at the state of his efficiency had been reached, it appears to have been suitable. His removal was in no sense a punishment. It represented acceptance of the fact that a mistake had been made in appointing him to a post for the requirements of which he did not possess the necessary ability, and the conclusion to that effect was not reached hastily or on any ulterior ground, but after actual trial and issue of a notice to the appellant that he was under special report for the purpose of judging whether he could prove his adequacy for the post. Therefore, nothing in the nature of a punishment was involved in his removal."

In the case of *Mohammad Ashraf v. Dr. Arshad Malik, Chairman, District Family Planning Board, Sargodha*, it was held that persons appointed purely on a temporary basis as Supervisors in Family Planning Department removed for insufficiency and dereliction of duties constitutional protection under Article 177 was not available to such employees in view of provisions of Article 179 of the Constitution of 1962.

It appears to me that the real question for decision in this case is what is the position of a probationer in service. This aspect of the question was considered in the cases of *Federation of Pakistan v. Riaz Ali Khan* (1), *Tarzan Ali Mir v. The Federation of Pakistan* (2), *Riaz Ali Khan v. Pakistan* (3) and *Mohammad Afzal Khan v. Superintendent of Police, Montgomery* and others. In the former two decisions, it was held that in the case of a probationer the question as to whether he is or is not to be employed has not yet been finally decided whereas in the case of a temporary employee the question of employment has certainly been decided. Only he is not a permanent employee and the period of his employment is regulated by his agreement. It was further held that the question of removal or dismissal arises only when the question whether a person is to be employed has been finally decided and secondly it is only where the order of discharge by the Government finds a person to be blameworthy or deficient that it can be regarded as removal or dismissal. To such a removal or dismissal a stigma attaches, but if all that has happened is that the real reason of discharge is the unsatisfactory work of an employee but the Government does not proceed on that basis that he is guilty or deficient and simply terminates his services in accordance with the terms of his agreement of service, that would not be removal. Contrary view was taken in the latter two decisions which have been cited earlier. The position of a probationer was also considered in *Mohammad Naseem Ahmad and others v. Miss Azra Feroze Bakht and others* (4). Hamoodur Rahman, J. one of us (as he then was), has, in this connection, observed as under:—

"Where conditions are prescribed for confirmation an officer remains a probationer" until he has fulfilled those conditions and cannot be treated as a person substantively appointed to a permanent post.

(1) P L D 1958 Lah. 22

(2) P L D 1959 Kar. 62

(3) P L D 1967 Lah. 491

(4) P L D 1968 S C 37

has he any right to be confirmed from the date of his original appointment, no matter when he qualifies for confirmation. Although in the normal course, if there is nothing against the officer concerned, the general rule followed appears to be that he is confirmed from the date of his original appointment provided a permanent post is available. But it would appear from the Establishment Manual, Government of Pakistan, Volume I, that this is in the discretion of Government and that it has on occasions laid down a different rule or procedure."

further observed as under:—

There is no rule or practice of general application with regard to confirmations and the Government has reserved to itself the right to determine how, when, in what manner and with what effect from what date confirmations will be made. There is also no unreasonableness in this, for it is only the employer who can say when a probationer is to be considered to have become fit for permanent retention according to his requirements and until then the probationer can have no lien to or right of retention in the service. But all other conditions being fulfilled confirmation can and does in most cases relate back to the date of original induction into service."

In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in *Mohammad Afzal Khan v. The Superintendent of Police, Montgomery* and *Riaz Ali Khan v. Pakistan*, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any practice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the agreement made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made.

Taking now the facts of each case, it will be noticed that the authorities concerned in the case of *Mohammad Siddiq Javaid Chaudhry and Mumtaz Ali Malik* appellants, terminated their services on the ground of unsatisfactory work and conduct. The record shows that there were allegations against them of corruption. In these circumstances, the order terminating their services amounts to removal and dismissal within the meaning of Article 177 and they were entitled to a show-cause notice under Article 177 of the Constitution of Pakistan, 1962.

Similarly, in the case of *Abdur Rashid Abbasi*, appellant, the allegations of corruption were made against him and an enquiry was also held but instead of completing the enquiry, his services were terminated on the ground that he was not likely to become a good officer. It was also mentioned in the order terminating his services that there were complaints of corruption against him. In these circumstances, the order terminating his services amounts to removal and dismissal and he is entitled to the protection of Article 177 of the Constitution of 1962.

On these findings, I will accept all the appeals and will hold that services of all the appellants were terminated in violation of Article 177 of the Constitution of 1952 and they are still in service. It is, however, open to the respondents to hold proper enquiry against them after show-cause notice is issued.

In the result, the appeals are accepted with no order as to costs.

HAMOODUR RAHMAN, C. J.—I agree.

SALAHUDDIN AHMED, J.—I agree.

S. A. H.

Appeals accepted

P L D 1974 Supreme Court 402

Present: Salahuddin Ahmed and Anwarul Haq, JJ

THE FEDERATION OF PAKISTAN AND 3 OTHERS—Appellants
versus

Malik GHULAM JILANI—Respondent

Criminal Appeal No. 44 of 1974, decided on 14th October 1974.

(On appeal from an order of the Lahore High Court passed on the 30th of September 1974, in Writ Petition No. 1630 of 1973).

Constitution of Pakistan (1973)—

— Art. 199(1)(b)(i)—*Habeas corpus* petition—Words “person in custody within territorial jurisdiction of the Court”—Persons detained and lodged in jail within territorial jurisdiction of High Court but contention that they were being held in pursuance of specific criminal cases registered against them at place (in another Province) outside the territorial limit of High Court and so High Court to decide question of jurisdiction first before directing production of detenus—*Held*, Constitution does not make exercise of jurisdiction under Art. 199(1)(b)(i) dependent on prior determination of question of jurisdiction as long as person detained is within territorial jurisdiction of High Court—High Court has power to direct production in Court of persons detained for purpose of satisfying itself as to legality of detention—Discretion of examining detenus should be exercised judiciously ensuring that examination does not prejudice trial if any pending against detenu.

The power of issuing a writ in the nature of *habeas corpus* has been conferred on the High Courts by clause (b)(i) of Article 199(1) of the Constitution which prescribes that a High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any person, make an order directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner. This constitutional provision is of fundamental importance, providing, as it does, an effective safeguard for the liberty of the subject. The Constitution itself contemplates that in a matter of this kind the High Court shall have the power to direct the production before it of the person alleged to be detained without lawful authority or in an unlawful manner. The production of the body is of course intended for the purpose of enabling the High Court to satisfy itself as to the legality of the detention. The Constitution does not make the exercise of this power dependent on the prior determination by the Court of questions relating to its jurisdiction and the

legality of the detention, as long as the person detained is within the territorial jurisdiction of the High Court concerned. All such questions can in fact be ultimately raised only in the presence of the detenu so that he is in a position to apprise the Court of the facts and circumstances which may be peculiar to his case. [p. 404]A

It, however, goes without saying that once the detenu is produced before the Court, the latter would exercise its discretion judiciously, in the light of all the attendant circumstances of the case, for the purpose of examining the detenu, and ensuring that such examination does not prejudice the trial, which may be pending, nor does it defeat the very object of *habeas corpus* proceedings by undue prolongation. [p. 405]B

For Raja Mohammad Anwar, Dy. Attorney-General for Pakistan, M. B. Zaman, Advocate-General Punjab (Sh. Riaz Ahmad, Assistant Advocate-General with him) instructed by Sh. Ijaz Ali, Advocate-on-Record for Appellants.

For Mahmud Ali Qasuri, Senior Advocate (Mushtaq Raj, Advocate with him) instructed by Ejaz Ahmad Khan, Advocate-on-Record for Respondent.
Dates of hearing: 7th and 14th October 1974.

JUDGMENT

ANWARUL HAQ, J.—After hearing the learned counsel for both sides I have decided to convert this petition into an appeal, as it raises a substantial question of public importance regarding the powers of the High Court in *habeas corpus* matters.

During the pendency of a *habeas corpus* petition, moved by the respondent Malik Ghulam Jilani in respect of the detention of four persons belonging to Baluchistan, viz., Sardar Khair Bakhsh Marri, Mir Ghaus Bakhsh Bizanjo, Sardar Attaullah Mangal and Col. Sultan Mohammad Khan, a Division Bench of the Lahore High Court has made an order on the 30th of September 1974 directing that they be produced in Court on 8-10-1974 so that the Court could ascertain their point of view. It appears that at an earlier stage the Court had desired that the prisoners be kept in a jail at Lahore so that their counsel could seek instructions from them, but the Provincial Government had expressed its inability to do so in the public interest, on the ground that shifting of the prisoners from different jails in the Province to one jail at Lahore involved security risks. It was also averred that there was a possibility of an attempt being made to get the prisoners forcibly released from custody. It is in this background that the High Court has directed that even if the prisoners cannot be lodged in a prison at Lahore, yet they should be brought to the Court for the purpose of recording their statements, after which they could be taken back to the places where they are presently lodged.

The Federal Government of Pakistan as well as the Provincial Governments of Baluchistan and the Punjab, besides the Deputy Inspector-General of Police, Special Branch at Lahore, have felt aggrieved by this order. It was submitted by the learned Attorney-General that when the *habeas corpus* petition was admitted by the High Court to a full hearing on the 17th of August 1973, the only direction made by the learned Judges was that the prisoners be not removed from the territories of the Punjab Province, and as late as the 25th of September 1974 the Bench had observed that the production of the detenus in Court did not appear to be necessary, as only legal questions were being debated. He contends that in the written statement submitted on behalf of the Governments concerned the question of jurisdiction of the Lahore High Court was specifically raised on the ground that

5. The learned District Attorney has submitted, as the charge proved against the appellant when the matter was enquired by the Inspector, C. I. A., hence the appellant has correctly been held guilty of misconduct and punishment so awarded to the appellant is in order and lawful.

6. I have given my anxious thought to the argument of the appellant and have carefully scrutinized the show-cause notice and allegations therein. The allegation contained in the show-cause notice is clear of corruption against the appellant *i. e.* accepting of Rs. 100 illegal gratification for returning illicit arm to Mr. Mushtaq Ahmad son of Muhammad Khan, Carpenter, resident of Vih. A regular enquiry should have been conducted against the appellant to give him an opportunity of producing the witnesses in his defence. This Tribunal has already held reliance upon the judgments of the Supreme Court of Pakistan reported as P L C (C. S.) 418; 1980 P L C (C. S.) 611; 1980 P L C (C. S.) 562 and P L D 1974 S C 393; that in cases involving charges of corruption, it is incumbent for the competent authority to hold a regular enquiry. Since the provision of rules has not been complied with in the case of holding a regular enquiry, hence the impugned orders cannot be sustained. This fact cannot also be ignored that the appellant's counsel has vehemently argued that the appellant has not been provided an opportunity to produce the witnesses even when the preliminary enquiry was held and the appellant has been punished without proving the charge against him.

7. The upshot of the above discussion is that the appeal is accepted. The impugned orders are set aside. The case is remanded to the competent authority *i. e.* Superintendent of Police, Sargodha for proceeding in accordance with the law as indicated above. The appellant is directed to be re-instated in service to bestow upon him the status of a civil servant and enable the authority to proceed against him. The fate of the period for which the appellant remained out of service will also be decided by the competent authority after conducting the proceedings in accordance with the law, as indicated above.

There will be no order as to costs.

M. Y. M.

Appeal accepted.

1984 P L C (C. S.) 1370

[Service Tribunal Punjab]

Present : M. Salim Chaudhry, Chairman, Prof. Ashfaq Ali Khan and
Khalid Farooq Akbar, Members

MUHAMMAD ZAFARULLAH

versus

D. I.-G. OF POLICE, MULTAN

Case No. 167/569 of 1975, decided on 15th March, 1977.

Civil service—

—Termination of service—Order though described as merely termination but passed on basis of objectionable conduct and bad reputation tantamount to removal—Requirements of law as to charge-sheet, departmental inquiry and show-cause notice and personal hearing not observed—Impugned order, in circumstances,

order by Service Tribunal directing department to proceed in accordance with law—Punjab Service Tribunals Act (IX of 1974), [p. 1371]A & B

P L D 1974 S C 393 fol.

Mushtaq Ahmad Riaz for Appellant.

G. Humayun, Government Pleader for Respondent.

ORDER

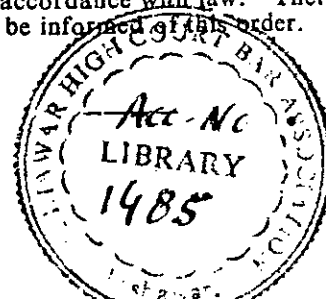
SALIM CHAUDHRY (CHAIRMAN).—This is an appeal under section 4 of Punjab Service Tribunals Act, 1974 by the appellant a temporary employee since removed from service by the order of D. I.-G. of Multan Range, dated 8th February, 1975 on the ground that he had received an adverse report for his work and conduct during the years 1972-73 and that his service record and present reputation were indications of his unsuitability for retention in service. The appellant also approached the Inspector-General of Police on 12th March 1975 against his discharge from service but his representation was rejected on 21st March, 1975 with the observation that there was no material or legal flaw in the order of discharge in the absence of which the general merits of the order of discharge issued by the competent authority could not be discussed and the representation was accordingly rejected.

The present appeal as filed before us on 14th March, 1975 seeks to challenge the aforesaid action of the respondent on the ground that the order passed by him though described as termination was tantamount to removal for which the requirements of law as to charge-sheet, Departmental inquiry and show-cause notice and also that of personal hearing had not been observed. Reliance was placed on the following observation of the Supreme Court of Pakistan, reported as P L D 1974 S C 393 at page 401 :—

"In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour."

In our opinion the ratio of the above decision clearly supports the termination of the appellant inasmuch as the impugned order has been passed on the basis of the objectionable conduct and the bad reputation of the appellant. We accordingly set aside the order and direct the respondent to proceed in accordance with law. There will be no order as to costs. Let the parties be informed of this order.

Appeal allowed.



substantive promotion to the rank of A.S.I. However, the rule lays down the following standard for admission to promotion list D:-

"No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity."

Keeping in view his unsatisfactory record of service, the appellant had practically no chance of admission to Promotion List 'D' even if he had been selected for Intermediate Class Course after giving relaxation in upper age limit. Therefore, the appellant was rightly ignored by D.I.G. Lahore Range for Intermediate Class Course and his two representations for relaxation of upper age limit were rightly rejected by the Inspector General of Police.

8. In view of what has been stated in the foregoing paragraphs, we have come to the conclusion that there is no legal force in the appeal and it is accordingly rejected.

There will be no order as to costs.

A.E./132/Sr. P.

Appeal rejected.

1987 P L C (C.S.) 756

[Federal Service Tribunal]

Before Muhammad Irshad Khan and
S. A. Sayood, Members

SABEHUDDIN KHAN

versus

SECRETARY, CENTRAL BOARD OF REVENUE,
ISLAMABAD and another

Appeal No. 12(K) of 1983, decided on 1st December, 1984.

Civil Servants Act (LXXI of 1973)--

--S.11(3)--Government Servants (Efficiency and Discipline) Rules, 1973, R.4--Termination of service of temporary employee, ad hoc appointee or probationer on consideration of misconduct--Termination order did not embody such charge--Procedure prescribed for punishment was to be followed--Termination order passed by invoking powers under S.11(3) of Civil Servants Act, 1973 and without recourse to Efficiency and Discipline Rules, held, was arbitrary, unjustifiable, unlawful and mala fide--Order set aside by Service Tribunal. [p. 751] A

Sh. Mushtaq Ali for Appellant.
Niaz Ahmad for Respondent
1st December, 1984

JUDGMENT

MUHAMMAD IRSHAD KHAN, (MEMBER).--The appellant was suspended from service as UDC vide order dated 22-9-1982 which is reproduced below:-

"As there exists a prima facie case of 'Misconduct' against Mr. Sabehuddin UDC of this Custom House, he is placed under suspension with immediate effect and till further orders as provided under the Government Servants (Efficiency and Discipline) Rules, 1973.

(2) During the suspension period he will be entitled to draw a subsistence allowance equal to half of his basic pay plus usual allowances admissible to him under the Rules.

(3) During the suspension period the office of the A.C. Estt. (A) shall be his HQ."

On 25-9-1982 an order was passed whereby the appellant's services were terminated on the ground that during the probationary period, his working and conduct had not been satisfactory. Aggrieved thereby the appellant filed the present appeal on 14-2-1983.

It was mainly contended by the learned counsel for the appellant in an identical case of Iqbal Wasti the order of termination of service passed in the similar circumstances and even on the same date has been set aside by this Tribunal vide its judgment dated 2-12-1984. We held in Iqbal Wasti's case that since there was an allegation of misconduct against the appellant, the order terminating services amounts to removal and could not be passed except by following the procedure prescribed by the Government Servants (Efficiency and Discipline) Rules, 1973, while, the suspension order published that the proceedings under the Efficiency and Discipline Rules were initiated against him by suspending him under the said Rules but without taking those proceedings to a logical conclusion a shoddy method was used to get rid of the appellant in that case. The present appellant also had been impliedly punished and stigmatized by the impugned order. We, therefore, reiterate the view taken in Iqbal Wasti's case that the impugned order was passed on consideration of the charge of misconduct for which the appellant was suspended. Therefore, it was but incumbent upon the relevant authority to proceed against the appellant under the Government Servants (Efficiency and Discipline) Rules and termination of his service in an arbitrary and shoddy manner is totally unjustifiable, unlawful and mala fide.

In the result we accept the appeal and set aside the impugned order. It is directed that the appellant shall be reinstated into service and shall be deemed to be in service from the date of his suspension. He shall also be entitled to all consequential benefits.

1377/Sr. F

Appeal accepted.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 698 /ST

Dated 7 / 4 / 2017

To

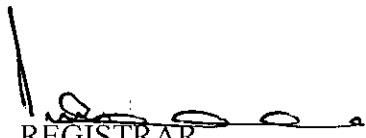
The Superintendent Headquarters (Eastern) Prison,
Government of Khyber Pakhtunkhwa,
Haripur .

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 28.3.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.