


31.08.2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Riaz, Superintendent for the respondents present.

02. Representative for respondents submitted copy of Notification bearing NO.SOE-III(ED)2(9)2010 dated 31st August, 2022 whereby the Service Tribunal judgement dated 01.02.2022 has conditionally/provisionally been implemented subject to the outcome of pending CPLA before the august Supreme Court of Pakistan. Perusal of the said Notification reveals that in concluding Para, date of the Service Tribunal judgement has erroneously been mentioned as 01.09.2020 (which is actually date of the then impugned Notification) instead of 01.02.2022. Department is therefore, required to issue corrigendum to this effect. Copy of the said Notification is placed on file as well as provided to the petitioner. As such the judgement of Service Tribunal stands implemented. Consign.

03. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 31st of August, 2022*




(Mian Muhammad)
Member (E)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the August 31, 2022

NOTIFICATION

NO.SO.E-II(ED)2(9)2010:-

WHEREAS, the appellant, Mr. Sajjad ur Rehman, Ex-EAC / Illaqa Qazi (BS-17), Registrar, Ex-FATA Tribunal, Peshawar was proceeded against under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 and after fulfilment of due process the Competent Authority ordered to impose upon him Major Penalty of “**Removal from Service**” notified vide Notification of even No. dated 10-09-2020.

AND WHEREAS, aggrieved with the decision, the appellant filed Departmental Appeal and upon regrettal, filed Service Appeals No.2770/2021 in Khyber Pakhtunkhwa Service Tribunal.

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal partially accepted his appeal, set aside the major penalty and converted it into “Minor Penalty of Stoppage of Increment for one year through judgment dated 01/02/2022.”

AND WHEREAS, the department filed CPLA against the judgment of Khyber Pakhtunkhwa Service Tribunal dated 01/02/2022 which is pending adjudication before the august Supreme Court of Pakistan.

AND WHEREAS, the appellant filed Execution Petition No.300/2022 in Service Appeal No.2770/2021 which came for hearing today on 31.08.2022; the Tribunal while rejecting the Reply to execution petition submitted by the Department on behalf of respondents directed to produce implementation report as ordained in the Tribunal judgment dated 01/02/2022/.

AND NOW THEREFORE, Chief Minister Khyber Pakhtunkhwa, being Competent Authority in terms of Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment Promotion & Transfer) Rules, 1989 has been pleased to order conditional re-instatement of the appellant into service by converting his major penalty of “Removal from Service” into “Minor Penalty of Stoppage of Increment for one year in compliance to the Khyber Pakhtunkhwa Service Tribunal judgement dated: 10.09.2020, subject to the final outcome of the CPLA which is pending adjudication before the Supreme Court of Pakistan

01.02.22


Chief Officer (B-11)
Establishment &
Administration Deptt

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to the:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department.
3. Accountant General, Khyber Pakhtunkhwa.
4. Secretary Finance Department, Khyber Pakhtunkhwa.
5. Secretary Law Department, Khyber Pakhtunkhwa.
6. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. SO(Secret)/SO(Admn)/EO/SO(Lit-III), Establishment & Administration Department.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
10. PS to Special Secretary (Estt), Establishment Department.
11. PS to Additional Secretary (Estt:), Establishment Department.
12. PS to Additional Secretary (Judicial), Establishment Department.
13. PA to Deputy Secretary (Estt), Establishment Department.
14. Officer concerned.
15. Personal file.

3/108/22
**SECTION OFFICER
(ESTABLISHMENT-II)**

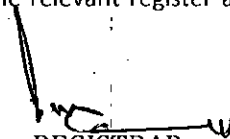



**Section Officer (E-II)
Establishment &
Administration Deptt.**

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 300/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.05.2022	<p>The execution petition of Mr. Sajjad-ur-Rehman submitted today by Mr. Zartaj Anwar Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25-5-22	<p>This execution petition be put up before Single Bench at Peshawar on <u>20-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	20 th June, 2022	<p>Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl AG alongwith Mr. Ayaz, Supdt for respondents present.</p> <p>Implementation report not submitted. Respondents are directed through the learned Addl: AG to submit implementation report on or before the next date. To come up for implementation report on 09.08.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>
	9.8.2022	<p>Due to The Public Holiday The Case is Adjourned to 31-8-2022</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No.2770/2021
Decided on 01.02.2022

Exception petition No. 300/2022

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973,
Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar
.....(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar & Others.

(Respondents)

INDEX

S. NO	Description of documents	Annexure	Page No
1	Memo of Appeal along with affidavit		1- 3
2	Copy of the appeal and order and judgment dated 01.02.2022	A & B	4- 16
3	Copy of the application dated 24.03.2022	C	17
4		
5	Vakalatnama		18

Sajjad ur Rehman
Appellant

Through

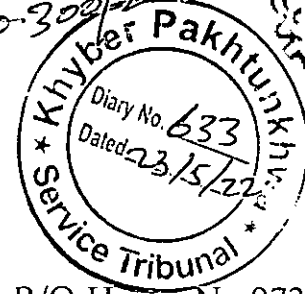
Zartaj Anwar
ZARTAJ ANWAR
Advocate Supreme
Court of Pakistan
Office FR , 3 Forth
Floor Bilour Plaza
Peshawar Cantt.
Cell: 0331-9399185

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition no-302/2022

In the matter of
Appeal No.2770/2021
Decided on 01.02.2022



Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973, Street
No 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

**Application for the implementation of the order
and Judgment dated 01.02.2022 in the above
noted service appeal of this Honourable
Tribunal.**

Respectfully Submitted:

1. That the above service appeal was pending before this honourable Tribunal which was decided vide order and judgment dated 01.02.2022.
2. That vide order and judgment dated 01.02.2022 of this honourable Tribunal allowed the appeal and reinstated the appellant on the following terms:

We have observed that charge against the appellant was not so grave as to propose the penalty of removal from service, such penalty appears to be harsh which does not commensurate with nature of the charge, As a sequel to the above, the instant appeal is

partially accepted. The appellant is reinstated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year.

(Copy of the appeal and order and judgment dated 01.02.2022 is attached as annexure A & B)

3. That the judgment and order of this honourable tribunal was duly communicated to the respondent by the applicant by submitting the application for implementation of the judgment dated 01.02.2022 but they are reluctant to implement the same. **(Copy of the application dated 24.03.2022 is attached as annexure C)**
4. That the respondents are legally bound to implement the order and judgment dated 01.02.2022 of this honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, humbly prayed that on acceptance of this application the order and judgment dated 01.02.2022 of this honorable tribunal be implemented in its true letter and spirit.

[Signature]
Appellant

Through

[Signature]
ZARTAJ ANWAR
Advocate Peshawar

&

[Signature]
IMRAN KHAN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No.2770/2021
Decided on 01.02.2022

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973,
Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar

.....(Appellant)

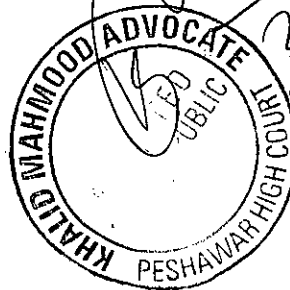
VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Peshawar & Others.

(Respondents)

AFFIDAVIT

I, Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973,
Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar, do
hereby solemnly affirm and declare on oath that the contents
of the above noted application are true and correct to the best
of my knowledge and belief and that nothing has been kept
back or concealed from this Honourable Tribunal.



Sajjad
Deponent

4 Anniza "A"



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

2770
Appeal No. _____/2021

Khyber Pakhtunkhwa
Service Tribunal Peshawar
Diary No. 1606
Date: 22/1/2021

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No-973, Street
No 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 10.09.2020 whereby the appellant has been awarded the major penalty of removal from service, and against which the departmental appeal dated 25.09.2020 was filed before the competent authority which is still not responded after laps of statutory period on 90 days.

Filed to-day
Registrar
22/01/2021

Prayer in Appeal: -
Re-submitted to-day and filed.

Registrar
12/2/2021

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 10.09.2020, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2

Respectfully Submitted:



1. That the appellant has served the department for more than 25 years and ever since my appointment I am performing my duties as assigned with zeal and devotion and have never given any chance of complaint whatsoever regarding my performance.
2. That while serving in the said capacity the appellant was served with a charge sheet along with statement of allegation dated NIL, containing certain false and baseless allegations.
 - I. That you advertised 23 number vacant positions (BPS-01 to 14) on 9th February 2019 for Ex-FATA Tribunal without the approval of the Competent Authority.
 - II. That you without any legal authority, notified scrutiny committee comprising of daily wages/contract employee namely Mr. Nadir Shah, Junior Clerk, Mr. Naveed ur Rehman, Junior Clerk and Mr. Arif Jan, Junior Clerk who were also candidates for the vacant posts advertised in press.
 - III. That you constituted a ghost Department Selection Committee vide letter No. R/11/2018-19/FT/R/11/995 dated 04.12.2019 (the date which has not yet come).
 - IV. That you issued appointment orders of 24 candidates against 23 posts and that also without recommendation of the Department Selection Committee.
 - V. That you failed to produce office record, rather you submitted freshly printed copies to the fact-finding inquiry Committee which were signed in front of members of the inquiry Committee during proceedings.
 - VI. That you appointed candidates who were overage at the time appointment without relaxing the upper age limit from the Competent Authority.
3. That the appellant duly replied the false and baseless allegation by denying the entire allegation leveled against the appellant by replying in brief. (Copy of charge sheet and reply are attached as annexure A & B)
4. That thereafter so called inquiry has been conducted and it has been learnt by the appellant vide the subject show cause notice that the appellant has been recommended for major punishment of Removal from service, whereas till date the appellant has not been provided the detail inquiry report nor any of the witness or record been

ATTESTED

EXAMINER
Feroz Khan Khwa
Service Tribunal
Peshawar

6

summoned by the inquiry officer to probe into the matter, whereas the issue was regarding the recruitment,

5. That the appellant once again deny the allegations leveled against as false and baseless, the appellant has been falsely roped in the instant case, as replying is answered up to the extent of 23 No of vacant posts which were duly advertised in print media vide dated 9th of February 2019 in daily AAJ and Aeen with the approval of the Competent Authority vide office order dated 21.03.2016 and 23.06.2016 and after merger of FATA with the approval of the Chairman of Tribunal dated 24.07.2018. *(Copy of advertisement is attached as annexure C).*
6. That the respondent department advertise various posts for which thousands of application were received so placing all the document in a proper order for calling up the candidates for the posts in questions the Tribunal was not having the permanent employees as after merger the regular permanent employee were taken back by their parent department and left with contractual employees working in the Tribunal for more than decade, in order to scrutinize the process by fulfilling all the legal and codal formalities the candidates were called for screening test to short list them and when successful call for the interview, furthermore in such process no favoritism or nepotism was given to any of the candidate as all of them were eligible candidates and also gone through the rigors of selection process, even today their eligibility and suitability can be ascertained from their education testimonial and eligibility for the post against which they been appointed.
7. That the respondent department while alleging that there was no selection process taken place for appointment and only Ghost Selection Committee was there which is baseless because all the relevant information and documentation of the selection process was available when the partial inquiry was conducted and the inquiry officer himself holding / in position the relevant record of the departmental selection committee.
8. That the respondents also put a question mark on all the appointment during the tenure of the appellant regarding the number of posts as there are only 23 no of posts were advertised but the appointment order was issued of 24 candidates firstly at serial no 7 of the advertisement , which says the competent authority having the power to increase/ decrease vacancies or cancel the recruitment process, in

ATTESTED
[Signature]
[Stamp]

Para 8 of the advertisement it was also mentioned that errors and omission are subject to rectification , but here it is worth to mentioned that even in that case only 23 report for duty and the salaries drawn by 23 candidates only, it is also worth to mention here that 116 sanction positions are still vacant.

- 9. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders and the copy of the recommendation of selection committee was handed over to section officer for signature and further process and later on when inquired regarding the signatures the officials requested to await, on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee which they now refusing to signed.
- 10. That in the initial inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation leveled against me .
- 11. That the inquiry committee did not associate the appellant properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in the presence of the appellant nor the appellant has been given opportunity to cross examine those who may have deposed anything against the appellant during the inquiry.
- 12. That the appellant has never committed any act or omission which could be termed as misconduct, the appellant duly performed his duties as assigned with full devotion, zeal and loyalty albeit the appellant has been roped in the instant false and baseless charges.
- 13. That the charges leveled against the appellant were neither proved during the inquiry proceedings, nor any independent and convincing proof/ evidence has been brought against me in the inquiry that could even remotely associate the appellant with the charges, as such the charges remained unproved during the inquiry and the inquiry officer

TESTED
 MANAGER
 District Office
 Durgam Cheruvu
 Hyderabad

8

has thus rendered his findings on mere surmises and conjunctures regarding charges.


14. That the appellant has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding the performance of the appellant. I always preferred the interests of the department over and above the personal interests of the appellant. The proposed penalty if imposed upon me, it would be too harsh and would stigmatized the bright and spotless service record of the appellant.
15. That the show cause notice issued on 7th of May received by accountant of the appellant on 20th of May upon which the appellant requested to high-up's for granting some extra time due to the current pandemic vide letter dated 01.06.2020. *(Copy of the show cause dated 07.5.2020 and letter dated 01.06.2020 are attached as annexure D & E).*
16. That the appellant has submitted the reply to show cause within time and denied all the allegation leveled against the appellant. *(Copy of the reply is attached as annexure F)*
17. That astonishingly the appellant was awarded major penalty of "Removal from Service" vide office order dated 10.09.2020, without taking into consideration the reply of the show cause in which the appellant denied all the allegations leveled against the appellant. *(Copy of the impugned order dated 10.09.2020 is attached as annexure G).*
18. That the feeling aggrieved from the order dated 10.09.2020, the appellant filed a departmental appeal before the competent authority on 25.09.2020, which still not responded even after laps of statutory period of 90 days. *(Copy of the departmental appeal is attached as annexure H).*
19. That being aggrieved from the illegal order dated 10.09.2020 the appellant has filed this appeal on the inter alia on following grounds

ATTESTED

EXAMINER
Punjab Public Service Commission

GROUNDS OF SERVICE APPEAL

- A. That the appellant has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before awarding the major penalty of Removal from service, the whole proceedings are thus nullity in the eyes of law.
- C. That the appellant has not done any act or omission which can be termed as mis-conduct, thus the appellant cannot be punished for the irregularities if so occurred in the recruitment process.
- D. That the allegation so leveled against the appellant regarding the non-production of recruitment record it is also baseless as the fact, written reply of the appellant to the TORs was presented to the inquiry committee which was duly signed by the inquiry officer 31st July 2019 then after I have never met the inquiry committee till now, furthermore the inquiry officer was explained in its findings that the record was produced but attested at recent time.
- E. That the allegation regarding the overage candidate only one candidate namely Naveed ur Rahman was overage at the time selection but the same was the employee of the levy directorate since 2012 belong to merged area having qualification of MBA with 7 years' experience and also with the NOC granted by the FATA secretariat for the purpose.
- F. That no proper procedure has been followed before awarding the major penalty of ~~Dismissal~~ from service to the appellant. No proper inquiry has been conducted, the appellant has not been associated properly with the inquiry proceedings, statements of witnesses if any were never taken in his presence nor he has been allowed opportunity of cross examination, moreover he has not been served with any show cause notice, thus the whole proceedings are defective in the eyes of law.
- G. That the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which they found the appellant guilty of the so-called allegations. But they failed to do so, moreover, there was no

ATTESTED

 EXAMINER
 Cyber Pakhtunkhwa
 Service Tribunal

16

iota of evidence to connect the appellant with the commission of allegations of misconduct. Mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of so-called allegations leveled against the appellant in the charge sheet. Hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law.

- H. That the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case but he failed to do so and awarded major penalty of dismissal from service to the appellant despite the fact that the allegations as contained in the charge sheet had not been proved in the so-called inquiry.
- I. That the appellant was neither involved in corruption, nor embezzlement nor immoral turpitude. Therefore, such harsh and extreme penalty of dismissal from service of appellant was not commensurate with the nature of his so-called misconduct to deprive his family from livelihood.
- J. That the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic Principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- K. That the appellant is a responsible, cautious employee of the department and cannot even think of the display of the charges leveled against the appellant.
- L. That the appellant has not been given proper opportunity of personal hearing before awarding the penalty, hence the appellant have been condemned unheard,
- M. That the charges were denied by the appellant had never admitted, nor there sufficient evidence available to held the appellant guilty of the charges.
- N. That the superior courts have a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

11

cannot be dispensed with that too when the charges are denied by the employee.

O. That the appellant has never committed any act or omission which could be termed as misconduct the charges leveled against the appellant are false and baseless besides the same are neither probed nor proved albeit the appellant has illegally been removed from service.

P. That the appellant at his credit a long unblemished and spotless service career, the penalty imposed upon the appellant is too harsh and is liable to be set aside.

Q. That the appellant is jobless since his Removal from service.

A. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 10.09.2020, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

[Signature]
Appellant

Through

[Signature]
ZARTAJ ANWAR
Advocate Peshawar

[Signature]
IMRAN KHAN
Advocate Peshawar

AFFIDAVIT

I, Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973, Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



[Signature]
Deponent

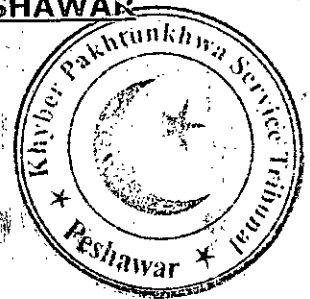
12 Anwar D

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2770/2021

Date of Institution ... 22.11.2021

Date of Decision ... 01.02.2022



Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No. 973, Street No. 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others. (Respondents)

Zartaj Anwar,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT


ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant, while serving as Registrar in Ex-FATA Tribunal, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 10-09-2020. Feeling aggrieved, the appellant filed departmental appeal dated 25-09-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 10-09-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the


ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

13

Constitution has badly been violated; that no proper procedure has been followed before awarding the major penalty of dismissal from service, the whole proceedings are thus nullity in the eye of law; that the appellant has not done any act or omission which can be termed as misconduct, thus the appellant cannot be punished for the irregularities, if so occurred in the recruitment process; that the allegation so leveled against the appellant regarding the non-production of recruitment record is baseless; that no proper inquiry has been conducted against the appellant, hence the appellant was deprived of the opportunity to defend his cause; that neither statement of any witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the appellant has not been served with any showcause notice, thus the whole proceedings are defective in the eye of law; that the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which the appellant was found guilty of allegations, moreover, there was not a single evidence to connect the appellant with the commission of allegation of misconduct; that mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so called allegations leveled against the appellant in the charge sheet/statement of allegation, hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law; that the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case, but he failed to do so and awarded major punishment of dismissal from service upon the appellant despite the fact that the allegations as contained in the charge sheet/statement of allegation has not been proved in the so called inquiry; that the appellant is neither involved in corruption nor embezzlement nor moral turpitude, therefore such harsh and extreme penalty of dismissal from service of the appellant does not commensurate with the nature of the guilt to deprive his family from livelihood;

ATTESTED


SECRETARY
Punjab Public Service Tribunal
Ludhiana

44

that the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore the impugned order is not tenable under the law; that the appellant has not been afforded proper opportunity of personal hearing and was condemned unheard.

03. Learned District Attorney for the respondents has contended that the appellant while serving as registrar in Ex-FATA Tribunal, has been proceeded against on account of advertizing 23 posts without approval of the competent authority and appointed 24 candidates against these posts without recommendation of the departmental selection committee; that a proper inquiry was conducted and during the course of inquiry, all the allegations leveled against the appellant stood proved, consequently, after fulfillment of all the codal formalities and affording chance of personal hearing to the appellant, the penalty of removal from service was imposed upon the appellant vide order dated 10-09-2020; that proper charge sheet/statement of allegation was served upon the appellant as well as proper showcause notice was also served upon the appellant, but inspite of availing all such chances, the appellant failed to prove his innocence.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUTS AND AUDIT RULES, 2015, where appointing authority for making appointments in Ex-FATA

ATTESTED


Deputy Director
Service Tribunal
Peshawar


15

4

Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

06. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointing authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval of the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal. We have repeatedly asked the respondents to produce any such order/notification, which could show that appointing authority in respect of filling in post in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointing authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegations does not hold ground.

07. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed


ATTESTED

REGISTRAR
Hyder Pakhtunkhwa
Service Tribunal
Deshawar


16

by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

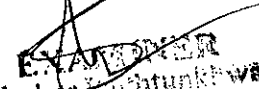
08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. As a sequel to the above, the instant appeal is partially accepted. The appellant is re-instated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 20/5/22
Number of Words 5252
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Annex "C"

PSIC.S Khyber Pakhtunkhwa
Diary No. 1418 (w/E)
Date: 24-03-2022

To

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

17


Subject: **REINSTATEMENT OF SAJJAD-UR-REHMAN IN VIEW OF JUDGMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL DATED 01-02-2022 PASSED IN SERVICE APPEAL NO.2770/2021.**

Dear Sir,

I have the honor to say that the Khyber Pakhtunkhwa Service Tribunal has ordered to reinstate the undersigned vide judgment dated 01-02-2022 in Service Appeal No.2770/2021 and there by set-aside the impugned order of dismissal from service dated 10-09-2020 and converted the same into minor penalty of stoppage of increment for one year (copy of the judgment enclosed).

2. The impugned order of dated 10-09-2020 dismissal from service of the undersigned was converted by the Service Tribunal in the ibid judgment. Hence in view of the above, in pursuance of the judgment of Service Tribunal, the penalty imposed upon the undersigned vide order dated 10-09-2020, may kindly be modified accordingly, and the undersigned may kindly be allowed to continue his service.

Enclosed: As above


Sajjad-Ur-Rehman
Ex-Registrar in Ex-FATA Tribunal

~~ATTESTED~~

ATTESTED

POWER OF ATTORNEY

In the Court of Khyber Pakhtun Khwaqa Goawal Tolband
Sajjad us Rehman } For Rehman
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Khyber Pakhtun Khwaqa } Defendant
and others } Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W. the undersigned, do hereby nominate and appoint

ZARAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at Rehman to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out: and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so. any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year 2011
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Imran Khan
IMRAN KHAN
Advocate High Court
Mob. 0245 9090648

Zaraj Anwar
ZARAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilqar Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
PC-10-9851
CNIC: 17301-1610151-5