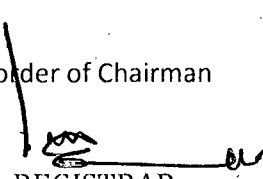


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1414/2022 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/09/2022	<p>The appeal of Mr. Yaseen Khan resubmitted today by Mr. Naveed Jan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Yaseen Khan Ex-Driver FATA Tribunal received today i.e. on 28.09.2022 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Departmental appeal having no date be dated.

No. 2702 /S.T,

Dt. 29/09 /2022



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naveed Jan Adv. Pesh.

Re submitte
or
complete
file at 30/09/2022

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

Service Appeal No. 1414 /2022

Yaseen Khan.....(Appellant)

V E R S U S

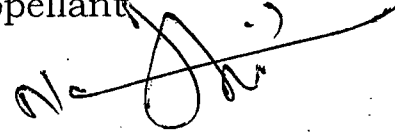
Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa and others.....(Respondents)

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6.	Copy of the show cause notice	C	13
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Appellant

Through



Dated: 27/09/2022

Naveed Jan

Advocate High Court,
Peshawar.

Cell No. 0311-1819917

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR.

Service Appeal No. 1414/2022

Yaseen Khan S/o Feroz Din R/o Mohallah Jamshaid Abda,
Warsak Road, Peshawar, Driver (Ex-FATA Tribunal,
Peshawar.....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Home
and Tribal Affairs Department, Civil Secretariat, Peshawar.
3. Government 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 17/01/2022
WHEREBY THE APPELLANT HAS BEEN
AWARDED THE MAJOR PENALTY OF
"REMOVAL FROM SERVICE" AND
AGAINST WHICH THE DEPARTMENTAL
APPEAL WAS FILED BEFORE THE

2

**COMPETENT AUTHORITY WHICH IS NOT
YET RESPONDED EVEN AFTER THE
LAPS OF STATUTORY PERIOD OF 90
DAYS.**

PRAYER IN APPEAL:

On acceptance of this appeal the order dated 17/01/2022, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

Respectfully Submitted:

1. That the respondents department various posts were advertised including the post of the appellant i.e. Driver. (Copy of the advertisement is attached as annexure "A").
2. That the appellant having the requisite qualification and fulfilling the eligibility criteria duly applied for the post of Driver (BPS-07) by fulfilling all the legal and codal formalities in the prescribed manner.

3. That the Competent Authority/ Departmental Selection Committee duly constituted for the purpose of recruitment considered the appellant for the post of Driver and when found eligible for the post recommended for appointment.
4. That the competent authority on the recommendation of Selection Committee issued the appointment order for the post of Driver in which the appellant was also appointed. (Copy of the appointment order is attached as annexure "B").
5. That the appellant takeover the charge of the post by submitting his arrival report along with medical fitness certificate and start performing his duties to the entire satisfactions of his superiors without any complaint whatsoever regarding his performance.
6. That while serving in the said capacity the appellant was served with a Show Cause Notice dated 25/10/2021, containing certain false and baseless allegations.

"That consequent upon the findings & recommendations of the inquiry committee it has

been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all the 24 appointment orders were issued without authority and liable to be cancelled"

(Copy of the show cause is attached as annexure "C").

7. 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 "D").

8. That astonishingly the appellant was awarded major penalty of "Removal from Service" vide office order dated 17/01/2022, 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 17/01/2022 is attached as annexure "E").

9. That the feeling aggrieved from the order dated 17/01/2022, the appellant filed a departmental appeal before the competent authority, which has not yet been responded by the respondents even

(5)

after the laps of 90 days of statutory period. (Copy of the departmental appeal is attached as annexure "F").

10. That the appointment of the appellant in pursuance of the advertisement made by the respondent department also in question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments .conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Hon'ble Tribunal in Appeal which was allowed and declared the Registrar namely Sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed (Copy of the appeal and judgment is attached as annexure "G").

6

11. That being aggrieved from the illegal order dated 17/01/2022 the appellant has filed this appeal on the inter alia on following grounds:

GROUND 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 appointment of the appellant in pursuance of the advertisement made by the respondent department also in 'question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in

(7)

questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Hon'ble Tribunal in Appeal which was allowed and declared the Registrar namely Sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed.

- D. 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.
- E. That the appellant is jobless since his Removal from Service.
- F. 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

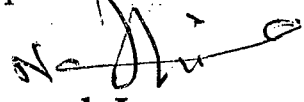
2

17/01/2022, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.

Dated: 27/09/2022

Through

Appellant

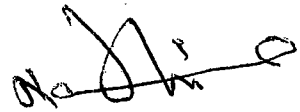


Naveed Jan

Advocate High Court,
Peshawar.

Note:

That similar nature 10 Service Appeals titled "Reedad Khan..VS..Secretary Home etc" Service Appeal No. 774/2022 were fixed for 28/10/2022, including Service Appeal No. 906/2022 titled "Zia ur Rehman..VS..Govt of KP and others" of the other colleagues of the appellant have already been pending for adjudication before this Hon'ble Tribunal which are fixed for 09/11/2022, therefore the instant appeal may kindly be clubbed and be heard together.



ADVOCATE

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

Service Appeal No. _____/2022

Yaseen Khan.....(Appellant)

V E R S U S

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

AFFIDAVIT

I, Yaseen Khan S/o Feroz Din R/o Mohallah Jamshaid Abda, Warsak Road, Peshawar, Driver (Ex-FATA Tribunal, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

CNIC: 17101-6400156-3

(10)

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

Service Appeal No. _____/2022

Yaseen Khan.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary

Khyber Pakhtunkhwa and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Yaseen Khan S/o Feroz Din R/o Mohallah Jamshaid Abda,
Warsak Road, Peshawar, Driver (Ex-FATA Tribunal, Peshawar.

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Home
and Tribal Affairs Department, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary
Establishment Civil Secretariat, Peshawar.

Dated: 27/09/2022

Through

Appellant

Naveed Jan
Naveed Jan
Advocate High Court,
Peshawar.

Annex A

(11)

"JOB OPPORTUNITIES"

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

No	Name of Post	BPS	No's of Post	Age	Qualification
1	Assistant Moharar/	14	04	18-32	BA/BSc/B.Com & Equivalent w 06 years experience.
2	Key Punch Operator	12	03	18-32	BA/BSc/B.Com & Equivalent
3	Stenographer	12	01	18-32	FA/FSc with Shorthand & typin, Speed up to 40 WPM
4	Junior Clerk	07	04	18-32	FA/FSc or Equivalent with Typing Speed up to 40 WPM
5	Driver	04	04	18-40	Middle pass having "LTV" Driving License
6	Naib Qasid	01	04	18-40	Middle Pass
7	Chowkidar	01	03	18-40	-

Term & Conditions:-

1. Age relaxation in deserving cases can be considered as per Government rules. 2. Only shortlisted candidates will be called for test/interview. 3. No TA/DA will be admissible for test/interview. 4. Application form alongwith attested copies of Testimonials, Experience Certificates, CNIC, Domicile Certificate and a recent photograph should reach on PO Box No. 131 within 15 days of advertisement. 5. Incomplete or applications, received after closing date will not be entertained. 6. Government employee should apply through proper channel. 7. The competent authority reserves the right to change the terms & condition, not to fill, increase/decrease vacancies or cancel recruitment process without any reason. 8. Errors/omissions are subject to rectification.

Registrar
FATA Tribunal



(12)

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19//... dated: 08-03-2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint **Mr. Yaseen Khan S/o Faroz Din** against the vacant post of **Driver BPS-04 (9900-440-23100)** in FATA Tribunal at Peshawar under rule 10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-04 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt: to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

01. The Accountant General Pakistan Revenues Sub Office, Peshawar.
02. Ps to ACS FATA, Peshawar.
03. PS to Secretary Law & Order FATA, Peshawar.
04. PS to Secretary Finance FATA, Peshawar.
05. Personal File.
06. Official Concerned.

3
REGISTRAR
FATA TRIBUNAL

SHOW CAUSE NOTICE

I Mr. Ikram Ullah Khan Secretary Home & Tribal Affairs Department as Competent Authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve upon you, Mr. Yasin Khan, Driver employees of Ex-FATA Tribunal as follows:-

"That Consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled".

I am, therefore, satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule (I) (vi) "appointed in violation of law and rules".

2. To, dispense with the Inquiry and serve you with a show cause notice under Rule-7 of the ibid Rules.

3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the following penalty under the Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011:-

i. Removal from service

4. you are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than of fifteen days of this delivery, it shall be presumed that you have no defense to put in, and in that case ex-parte action shall be taken against you.


(IKRAM ULLAH KHAN)
HOME SECRETARY
(Competent Authority)

Mr. Yasin Khan,
Driver
Ex-FATA Tribunal

To,

Home Secretary,
Khyber Pakhtunkhwa,
Peshawar.

Subject: REPLY TO SHOW CAUSE NOTICE DATED
25/10/2021.

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration.

1. That 23 posts including the post of the undersigned i.e. Driver were advertised in daily "AAJ" and "Aeen" Newspapers dated 09/02/2019 for open competition, being fit and eligible all respect the undersigned applied for the post of Driver.
2. That after gone all the rigorous and selection process i.e. interview, the undersigned was duly recommended for the post of Driver and was appointed on the said post vide office order dated 08/03/2019.
3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my

15

superior without any complaint whatsoever regarding my performance.

4. That while service in the said capacity, the undersigned received a Show Case Notice dated 25/10/2021 by leveling false and baseless allegations which was never committed by the undersigned by any malafide intention nor any connection or relations with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following:

That consequent upon the findings & recommendations of the inquiry committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all the 24 appointment orders were issued without authority and liable to be cancelled.

I am, therefore, satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

5. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the

undersigned was appointed on the post after gone all the rigors and selection process provided under the law.

6. That the allegation so leveled against me regarding the misconduct is false and baseless in have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct .
7. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Driver.
8. That the member 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 and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on oath .

(17) (17)

the statement that they duly appeared before the selection committee.

9. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favour 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 committee were duly inquiry 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.
10. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.
11. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.

12. That the undersigned is a respectable, conscious citizen and cannot even think of the display of the charges leveled against me.

13. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.

14. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal and loyalty albeit I have been roped in the instant false and baseless charges.

15. That the charges leveled against me 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 me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmise and conjectures regarding charges, further to add that the so called


(S) (101)

inquiry was conducted in Sajjad ur Rehman registrar case.

16. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The proposed penalty if imposed upon me, it would be too harsh and would stigmatized the bright and spotless service record of the undersigned.
17. That I also desire to be heard in person.

It, is, therefore, humbly prayed that on acceptance of this reply the subject Show Cause may kindly be dropped and I may be exonerated of the charged levered against me.

Yours Faithfully,


Yaseen Khan
Driver
(Ex-FATA) Tribunal



(20)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR**

Dated Peshawar 17th January, 2022

ORDER

HD/FATA Tribunal/B&A/55/2022/216-26 WHEREAS, Mr. Yaseen Khan, Driver (BPS-06) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. **AND WHEREAS**, the Department gave opportunity of personal hearing to Mr. Yaseen Khan, Driver (BPS-06), Ex-FATA Tribunal as required under the rules 7(d) of Government Servant (Efficiency & Disciplinary) Rules, 2011, **AND WHEREAS**, Mr. Yaseen Khan, Driver (BPS-06), Ex-FATA Tribunal was not able to produce any favorable record.

3. **NOW, THEREFORE**, the Competent Authority has been pleased to impose major penalty of **"Removal from Service"** on Mr. Yaseen Khan, Driver (BPS-06), Ex- FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-01-2022.

-Sd-

**Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department**

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General Govt. of Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa Home & Tribal Affairs Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. Additional Secretary (Judicial) Home & TAs Deptt: Khyber Pakhtunkhwa.
7. PSO to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Chief Minister Khyber Pakhtunkhwa.
9. Account Section Home & TAs Department (NMAs).
10. Official concerned.

Section Officer (B & A)

To

The Honorable Chief Secretary,
Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

21

Subject:- DEPARTMENTAL APPEAL AGAINST THE REMOVAL ORDER DATED 17.01.2022.
Respected Sir,

Most respectfully, it is stated that I am a resident of District Peshawar and was appointed as Driver (BPS-06) in FATA Tribunal after fulfilling all the legal & codal formalities required for the post vide order dated 08.03.2019. In compliance, I started performing my duty quite efficiently whole heartedly and up to the entire satisfaction of my high ups.

The FATA Tribunal was abolished after the 25th Constitutional Amendment and FATA was merged in the Khyber Pakhtunkhwa Province. After abolition of FATA Tribunal all staff of FATA Tribunal was deputed to Home & Tribal Affairs Department and performing their duties efficiently in the said department.

Astonishingly, I received Show Cause notice dated 25.10.2021 with the allegation that *"appointment/recruitment process so made in my as well as other 24 staff is without Lawful Authority"*. Which was properly replied by denying the entire allegation leveled against me. In this connection it is stated in your honor that my appointment was made after fulfilling all the codal formalities i.e. which includes Advertisement, other relevant selection process and appearance before the Departmental Selection Committee for interview.

It is well settled principle of law that one should not be punished for the fault of others and accordingly I am punished for no fault on my part. The impugned removal order dated 17.01.2022 is not issued in accordance with Law as no charge sheet and statement of allegation have been served upon me; no proper regular inquiry was conducted nor the inquiry report was handed over to me.

Only I am been prosecuted in the matter while issuing the impugned order date 17-01-2022 in such a way that the only the inquiry is conducted against me and not against those as authority that issued appointment order dated 08-03-2019. Hence, the authority did not look into the matter in accordance with Law & Rules while issuing the impugned order dated 17.01-2022.

Therefore, it is, most kindly requested that the impugned order dated 17.01-2022 whereby major penalty of removal from Service has been impose upon me may very kindly be cancelled and I may be reinstated into service with all benefit.

I shall be very thankful to you for this kindness.

Obediently Yours

(YASEEN KHAN)

Driver (Ex-FATA Tribunal)

0314-4993197

22

Admitted



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 1606

Dated: 22/11/2021

2770
Appeal No. _____/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 today

Registrar

22/10/2021

Re-submitted today and filed.

Registrar

12/2/2021

Prayer in Appeal: -

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

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(22)

~~23~~

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 ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-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.

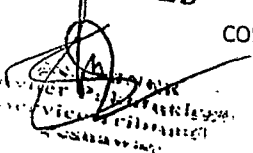
02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the

ATTESTED

EX-MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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


 (Sd/-)
 Officer in Charge
 Vigilance
 Government of Karnataka


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


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SECRETARY
Khyber Pakhtunkhwa
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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

BY REGISTRAR
Chairman of Pakhtunkhwa
Service Tribunal

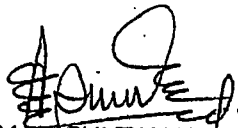
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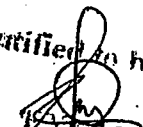
by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence 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

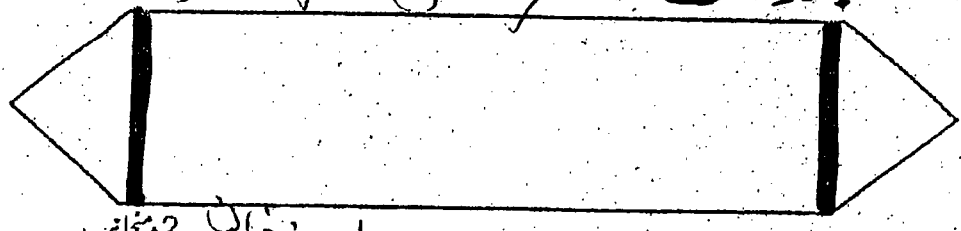

(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy

Atiq-ur-Rehman Wazir
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22/3/22
Number of Words 2400
Copying Fee 26/-
Urgent 9/-
Total 36/-
Name of Applicant _____
Date of Completion of Copy 22/3/22
Date of Delivery of Copy 22/3/22

بعدالت سرسرس سر بیونل CPIC سٹیشن



یا میں حالت 2 پنجاب
بنام

Service Appeal

موزخه
مقدمه
دعوی
جزم

گورنمنٹ آف CPIC

بذریعہ چیف سیکریٹری CPIC
حیدرآباد

باعث تحریر آنکھ

مقدمہ مشذرحہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام سید کیلئے ڈاکٹر راجان اور ڈاکٹر

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعوی اور
بصورت ڈگری کرنے اجراء اور صوبی چیک در و سپہ ارضی دعوی اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جاتہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20

_____ واہ الب

کے لئے منظور ہے۔

دست
میں
حیدر
آباد
