

10.08.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Fazle Khaliq, Litigation Officer for respondents present.

Representative of the respondent department submitted office order dated 05.08.2022 which is placed on file, through which the petitioner is reinstated in service. Representative of the respondent department is directed to revise the order to the extent of Extra Ordinary Leave into leave of the kind due in the light of judgment of this Tribunal. To come up for revised implementation order on 15.09.2022 before S.B.



(Fareeha Paul)
Member (E)

15th Sept, 2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned Addl: AG produced copy of order No. 8125-29 dated 15.09.2022, whereby in compliance of the judgment of the Tribunal, grievance of the petitioner has been redressed. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 15th day of Sept, 2022.


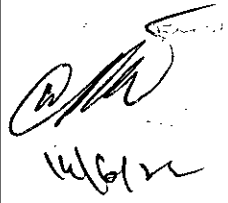





(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 322/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.06.2022	<p>The execution petition of Mr. Ali Khan 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> REGISTRAR</p>
2-	<p>14-6-22</p> <p> 14/6/22</p> <p>20th June, 2022</p> <p> 18/7/22</p> <p>SCANNED KPST Peshawar</p>	<p>This execution petition be put up before Single Bench at Peshawar on <u>20-6-22</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p> CHAIRMAN</p> <p>Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.</p> <p>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 10.08.2022 before S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No.1579/2019
Decided on 17.01.2022

Edeucation Retition
No. 322/2022

**SCANNED
KPST
Peshawar**

Ali Khan S/O Gul Zada Mohallah Chino, Village and Post Office
Jalsai Tehsil Lahor District Swabi.

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education Civil Secretariat Peshawar & Others.

(Respondents)

INDEX

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1	Memo of Appeal, along with affidavit		1-3
2	Copy of the appeal and order and judgment dated 17.01.2022	A & B	4-12 5-15
3	Copy of the application dated 01.04.2022	C	13 15
4	Documents		
5	Vakalatnama		14-15 16

Appellant

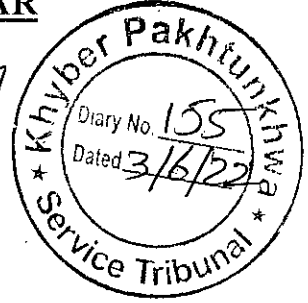
Through


ZARTAJ ANWAR

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

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

*Execution Petition
NO-322/22*



In the matter of
Appeal No.1579/2019
Decided on 17.01.2022

Ali Khan S/O Gul Zada Mohallah Chino, Village and Post Office
Jalsai Tehsil Lahor District Swabi.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Civil Secretariat Peshawar.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar
3. District Education Officer (male) Swabi.

(Respondents)

**Application for the implementation of the order
and Judgment dated 17.01.2022 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 17.01.2022.
2. That vide order and judgment dated 17.01.2022 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 17.01.2022 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 17.01.2022 but they are reluctant to implement the same. *(Copy of the application dated 01.04.2022 is attached as annexure C)*
4. That the respondents are legally bound to implement the order and judgment dated 17.01.2022 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 17.01.2022 of this honorable tribunal be implemented in its true letter and spirit.

Appellant

Through



ZARTAJ ANWAR
Advocate Peshawar

&



IMRAN KHAN
Advocate Peshawar

3

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No.1579/2019
Decided on 17.01.2022

Ali Khan S/O Gul Zada Mohallah Chino, Village and Post Office
Jalsai Tehsil Lahor District Swabi.

(Appellant)

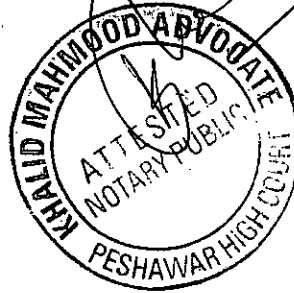
VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education Civil Secretariat Peshawar & Others.

(Respondents)

AFFIDAVIT

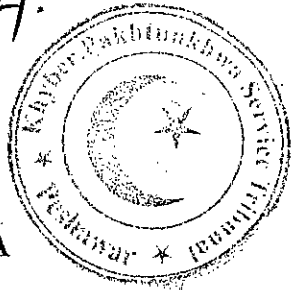
I, Ali Khan S/O Gul Zada Mohallah Chino, Village and
Post Office Jalsai Tehsil Lahor District Swabi, do hereby
solemnly affirm and declare on oath that the contents of the
above noted application are true and correct to the best of my
knowledge and belief and that nothing has been kept back or
concealed from this Honourable Tribunal.



Deponent

Amir A.

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1579/2019

Diary No. 1663

Dated 22/11/2019

Ali Khan S/O Gul Zada R/O Mohallah Chino, village and
Post Office Jalsai, Tehsil Lahor District Swabi

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (male) Swabi.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 16.05.2019, communicated on 24.06.2019 whereby the appellant was terminated from service, and against which the departmental appeal dated 23.07.2019 was filed before the competent authority which was also rejected/turn down vide order dated 24.10.2019.

Filed to-day
Registrar
22/11/19

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 16.05.2019, may please be set aside, and the appellant may graciously be re-instated in service w.e.f 16.05.2019 with all back benefits.

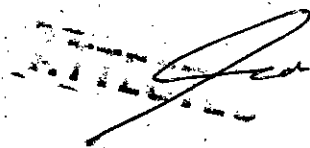
Respectfully Submitted:

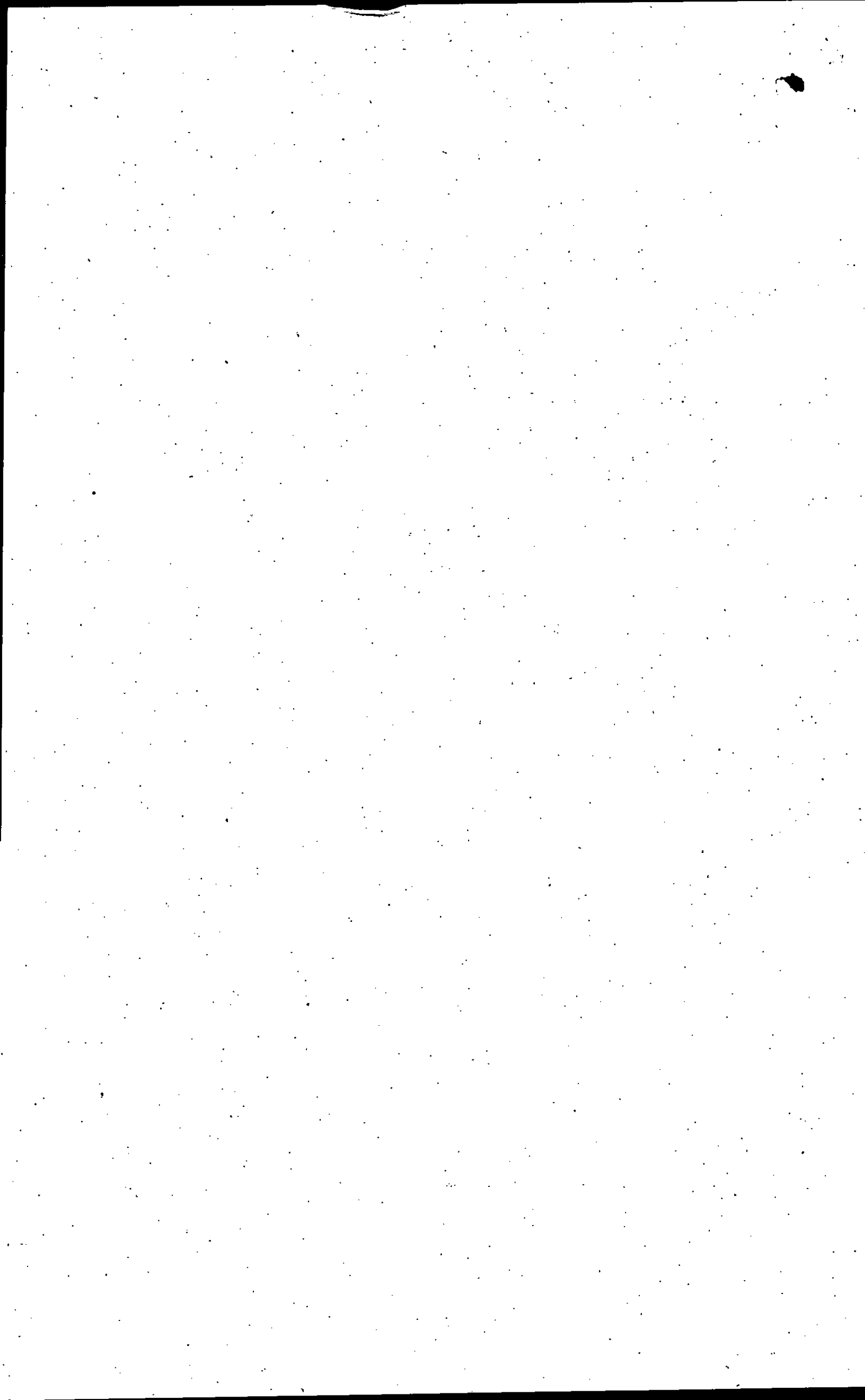
ATTESTED

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 5
1. That the appellant was appointed as PST at GPS Kalu Dheri Village and Post Office Jalsai Tehsil Lahor District Swabi. *(copy of the appointment letter is attached as annexure A)*
 2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
 3. That while serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302-PPC, vide FIR No.65, dated 04.02.2019 Police Station Lahore. The appellant duly informed his department about his false implication in criminal case. Since there were serious threats to the life of the appellant from his enemies, therefore he could not join his duty.
 4. That thereafter the appellant surrendered himself to the local Police in the above caption case on 11.05.2019.
 5. That the appellant has applied for his release on bail on 15.06.2019, which was accepted by the Learned Additional Session Judge I, Lahor, Swabi on 18.06.2019 and was released on bail. *(Copy of the Bail application and order dated 18.06.2019 are attached as annexure B).*
 6. That in the meanwhile the appellant was illegally removed from his service vide order dated 16.05.2019. *(Copy of the removal order dated 16.05.2019 is attached as annexure C)*
 7. That in the letter dated 23.07.2019, the SDEO Razzar requesting for withdrawal of removal/ termination order vide no 755/dated 20.05.2019 wherein it was stated (as per enclosure) that the subject teacher was arrested by police station lahore Swabi on 11.05.2019, however such certificate regarding his arrest was issued on 17.05.2019.
 8. That the appellant filed a departmental appeal against the illegal order dated 16.05.2019, communicated on 24.06.2019 upon which the appellant submitted a departmental appeal on 23.07.2019, which was rejected on 24.10.2019. *(Copy of the departmental appeal dated 23.07.2019 and rejected order dated 24.10.2019 is attached as annexure D & E)*

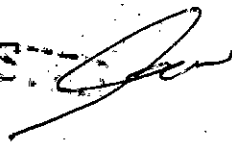




- 6
9. That being aggrieved from the illegal order dated 16.05.2019; the appellant has filed this appeal on the following grounds inter alia.

GROUNDS OF APPEAL:

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That according to CSR Article 194-A “ *A servant of government against whom a criminal charge or a proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g whilst released on bail), if the charge made or proceeding taken against him is connected with his position as a government servant or is likely to embarrasses him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowance, the provisions of Article 194 shall apply*”.
- C. That according to section 6 of the E&D rules 2011, *A government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days , if in the opinion of the competent authority , suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension , the government servant shall be deemed be reinstated, Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.*
- D. That the case of the appellant is covered under FR-54 which provides that:
- “F.R. 54---Where a Government Servant has been dismissed or removed is reinstated, the revising or*





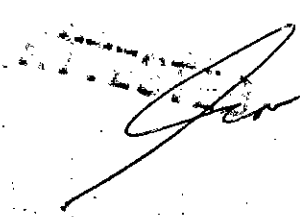
appellate authority may grant to him for the period of his absence from duty—

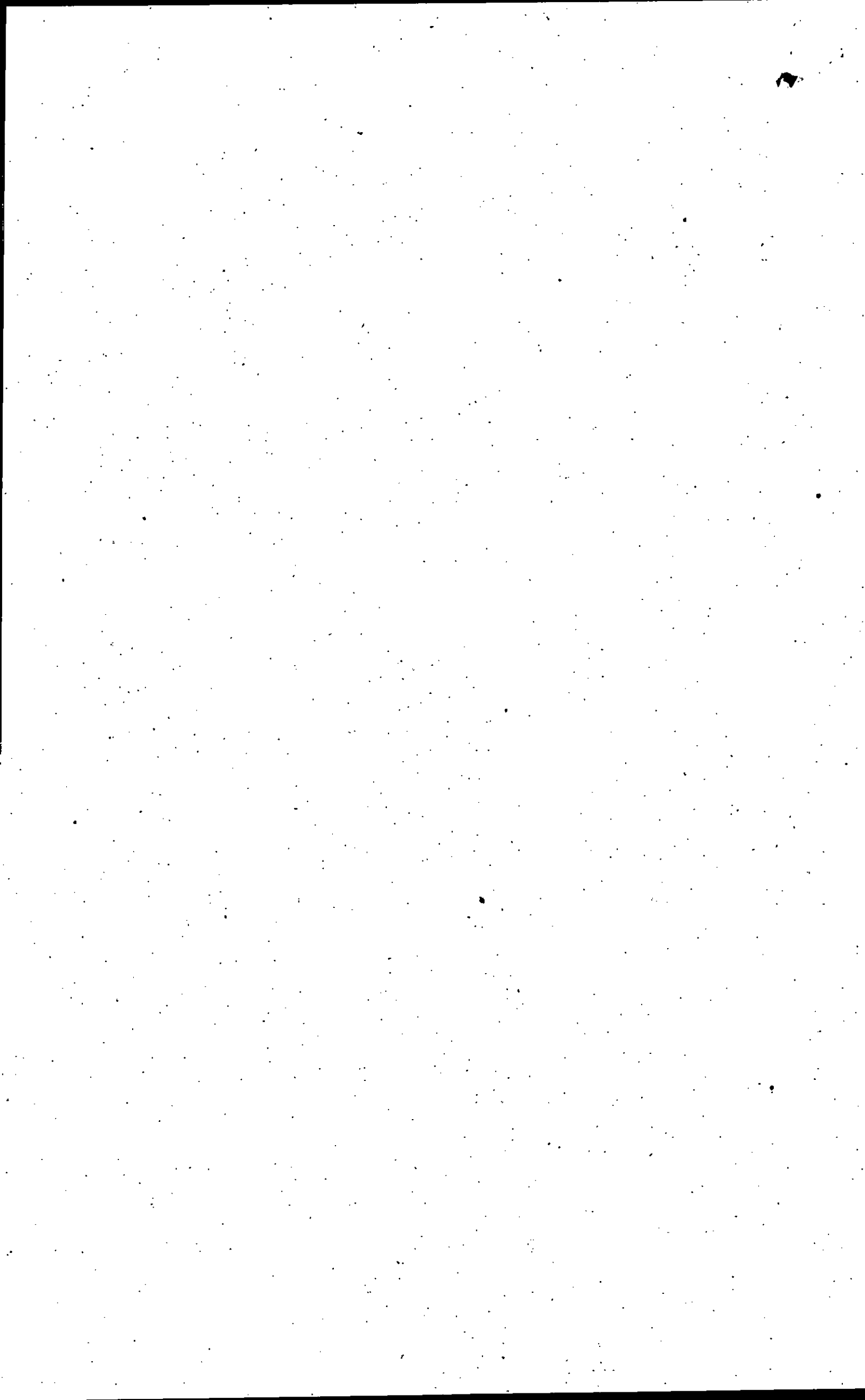
- a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or*
- b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.*

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.

Since the appellant has been Honourably released on bail in criminal case, therefore on his reinstatement he cannot be denied the back benefits of service to which he would have been entitled had he been in service.

- E. That it has also been held by the Superior courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can be termed as dis-honourable, reliance is places on 1998 SCMR 1993 and 2001 SCMR 269.
- F. That since the absence of the appellant was not willful but was due to his false implication in criminal case, moreover the respondents were fully aware of the registration of criminal case against the appellant, therefore under the law/rules when the appellant was released on bail in criminal case, then he under the law the Appellant is entitle to be re-instated with all back benefits.
- G. That the appellant was falsely implicated in FIR, and on 11.05.2019 he surrendered himself to the local Police and since then he was behind the bar until he was released on bail by the Court of law, and therefore he remained out of service during that period. The absence period of the Appellant was thus beyond his control and he cannot be made suffered for the events which were beyond his control.



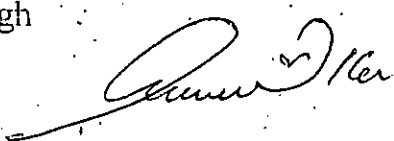


- 8
- H. That the appellant has never committed any act or omission which could be termed as misconduct, his absence from duty was not willful but it was due to his false implication in criminal case.
- I. That during the intervening period the appellant never remained in gainful employment, therefore on his reinstatement he is entitled for the grant of all benefits also.
- J. 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 impugned order dated 16.05.2019, may please be set aside, and the appellant may graciously be re-instated in service w.e.f 16.05.2019 with all back benefits.

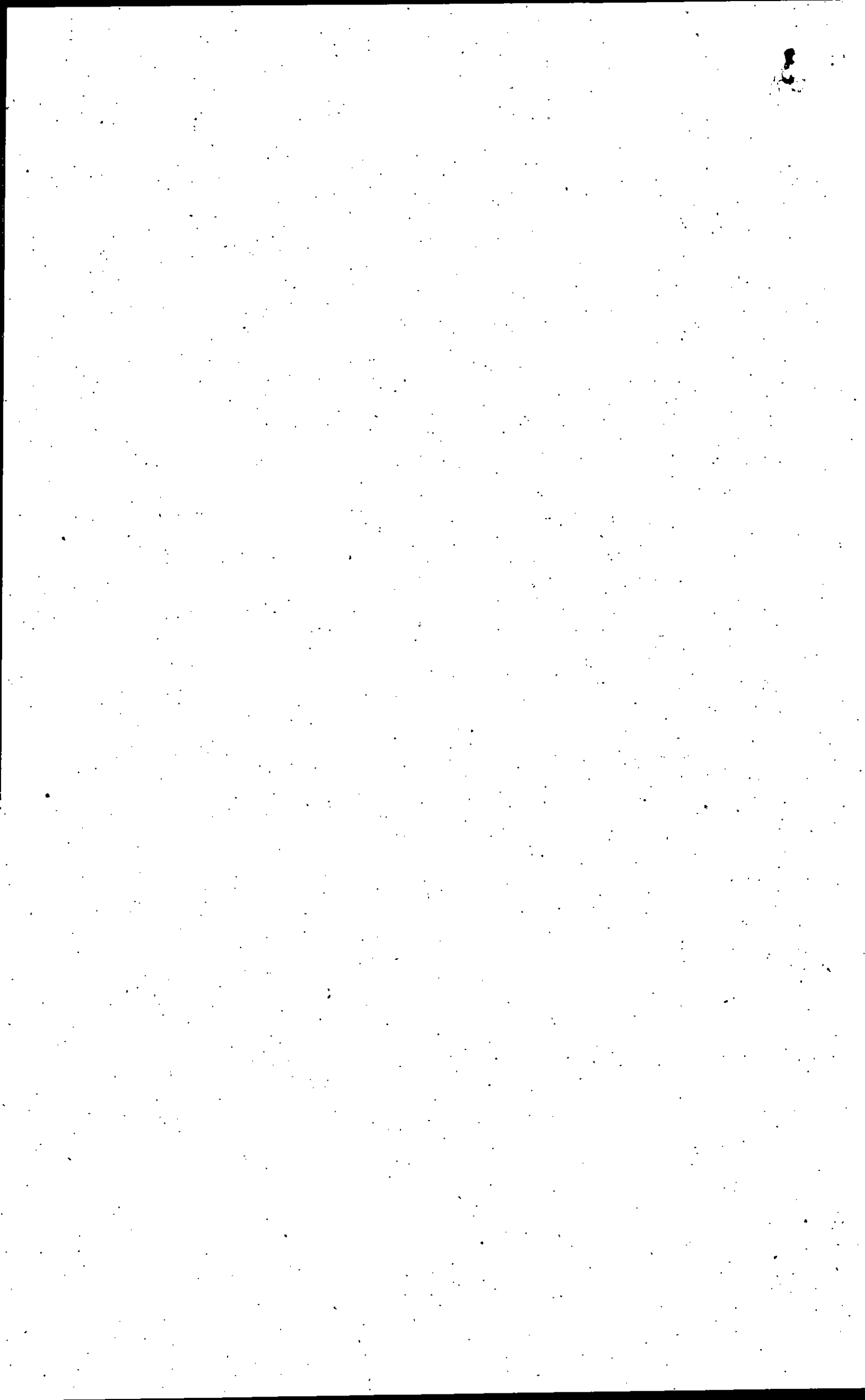
Appellant

Through


ZARTAJ ANWAR
Advocate Peshawar


IMRAN KHAN
Advocate Peshawar

ATTESTED

9 *Atedie B*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1579/2019

Date of Institution ... 22.11.2019

Date of Decision ... 17.01.2022



Ali Khan S/o Gul Zada Mohalah Chino, Village and Post Office Jalsai, Tehsil Lahor District Swabi. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Zartaj Anwar,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... 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 a teacher was charged in FIR U/S 302PPC dated 04-02-2019 and the appellant surrendered before law on 11-05-2019. In the meantime, the appellant was proceeded departmentally and was removed from service vide order dated 16-05-2019. The appellant was released on bail vide judgment dated 18-06-2019 and the appellant filed departmental appeal dated 23-07-2019, which was rejected vide order dated 24-10-2019, hence the instant service appeal with prayers that the impugned orders dated 16-05-2019 and 24-10-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED
[Signature]
MEMBER
Khyber Pakhtunkhwa Service Tribunal
Peshawar


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 Constitution has badly been violated; that the appellant was required to be treated under CSR 194 and was required to be suspended from service and to wait till conclusion of the criminal case, but the respondents hastily proceeded the appellant, which was against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the respondents also violated Rule-6 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 to this effect; that absence of the appellant was not willful, rather the appellant was behind the bars, hence his absence cannot be termed as willful absence; that the appellant has not committed any act or omission which could be termed as misconduct as his absence was not intentional but was due to registration of a false FIR against him.

03. Learned Additional Advocate General for the respondents has contended that the appellant was found involved in FIR U/S 302PPC Dated 04-02-2019; that the appellant went in hiding after the incident and surrendered before law on 11-05-2019; that the appellant was proceeded against under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 by sending notice at his home address followed by publication of such notice in two newspapers, but the appellant did not turn up, hence ex-parte action was taken against him and he was dismissed from service vide order dated 16-05-2019.

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

05. Record reveals that the appellant after being charged in FIRs, was proceeded departmentally in absentia as the appellant was absconder, who later on surrendered to police, but in the meanwhile, the appellant was dismissed on 16-05-2019, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the

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 Khyber Pakhtunkhwa
 Government Servants
 Discipline

ATTESTED



departmental inquiry. To this effect, the august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

06. Respondents were well aware of the fact that the appellant has been charged in FIR, so the respondents were required to suspend the appellant from service under CSR-194 which specifically provides for cases of the nature, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents instead of adopting the required legal step, prefer to proceed the appellant under Rule-9 of the E&D Rules, 2011 and dismissed him from service before conclusion of the criminal case. Rule-9 of the Rules ibid was not relevant rule to be applied in such case as absence of the appellant was not willful, rather it was due to compelling reason of registration of FIR against him, which prevented him from performance of his duty and which was beyond control of the appellant and the respondents were well aware of it. The relevant rule in the instant case was rule-6 of the rules ibid and CSR-194. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. The appellant was granted bail on 18-06-2019 and was released from jail. The criminal case is still pending against the appellant, which will be decided on its own merit in due course of time, but it is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting

ATTESTED


Khayrullah Khan
Service Tribunal
Peshawar

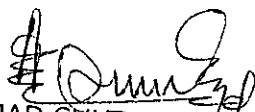
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each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a state of emergency, which depicted somewhat indecent haste.

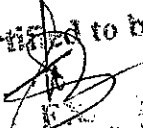
08. In circumstances, the instant appeal is accepted. The impugned orders dated 16-05-2019 and 24-10-2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the relevant provisions of law to take adverse action, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
17.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


LINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 31-3-22
Number of Words 2000
Copying Fee 22/-
Chargent 4/-
Total 26/-
Name of Copyist -
Date of Completion of Copy 31-3-22
Date of Delivery of Copy 31-3-22

ATTESTED


13 August 2022
کراچی ڈسٹرکٹ ایجوکیشن افسیس (جوائنٹ ایڈولٹ)

درخواست نمبر: درجہ 10
اسٹیٹن SPST



جوڈیال ٹریبونل کے لیے درخواستیں

مقامی

اسٹیٹن SPST کیلئے درخواستیں

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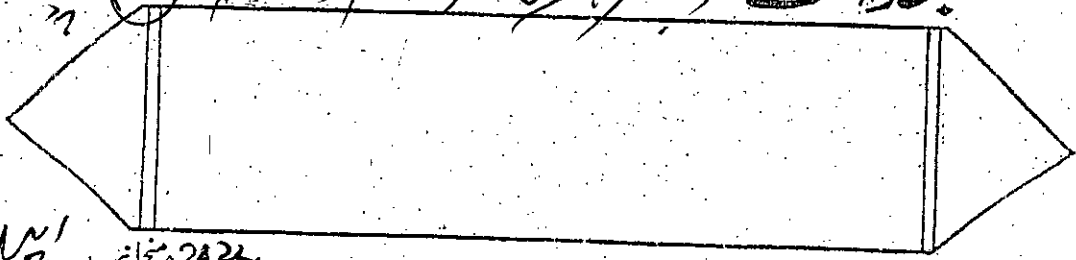
اسٹیٹن SPST کیلئے درخواستیں

اسٹیٹن SPST کیلئے درخواستیں

Handwritten signature and date: 10/04/2022

ATTESTED

بعدالت ضمیر کی فراہم کردہ شہادت



محمد مجاہد احمد انصاری
علی خان بنام حکومت دہلی

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام _____ کیلئے محمد علی خان انصاری
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دیکھیں صاحب کو راضی نامہ کرنے و تقرر ثالت فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت 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 لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20 _____

واہ الع

کے لئے منظور ہے۔
Jm. Olu
Adede

بمقام
Jm. Olu
Adede



DISTRICT EDUCATION OFFICE (MALE) SWABI
(Office phone & Fax No 0938280239, emis.swabi@yahoo.com)

OFFICE ORDER

In compliance of Service Tribunal Peshawar judgment in Service Appeal No.1579/2019, titled Ali Khan Ex-SPST, GPS Kalu Dheri, home address Mohallah Chino, VPO Jalsai Tehsil Lahor District Swabi, wherein the appeal is accepted, the impugned orders dated 16.05.2016 and 24.10.2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the relevant provisions of law to take adverse action, if decision in the criminal case was found adverse.

The appellant is re-instated into service and adjusted at GPS Kalu Dheri and the intervening period is converted into Extra Ordinary Leave (EOL) subject to the condition of the outcome in C.P.L.A No.448/2022 in the instant service appeal or decision in the criminal case is found adverse, which one is earlier.

(IRFAN ALI)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst: No. 6694-97 /Dated Swabi the 5/08 /2022.

Copy forwarded for information to the:-

1. Registrar Service Tribunal Peshawar.
2. P.S Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. P.A to Director Elementary & Secondary Education, KP, Peshawar.
4. District Accounts Officer, Swabi.


DISTRICT EDUCATION OFFICER
(MALE) SWABI