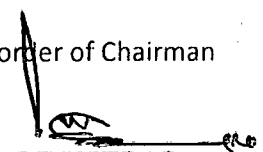


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1458 /2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2022	<p>The appeal of Mr. Zaheen Khan resubmitted today by Syed Noman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and her counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Zaheen Khan Ex-Roadman son of Wali Muhammad r/o Gomail p/o Nizam Pur Nowshera received today i.e. on 02.09.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexure-E and page 28 of the appeal are illegible which may be replaced by legible/better one.
- 2- Act under which appeal is filed is wrong.

No. 2508 /S.T,

DE. 619 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Nouman Ali Bukhari Adv. Pesh.

① The objection still remain, therefore requested to kindly extend time for removal of deficiencies.
21/9/22. *[Signature]*

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1458/2022

Zaheen Khan

V/S

Govt of Kp.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Service Appeal	----	01-08
2.	Copy of condonation of delay	----	09-10
3.	Copy of relevant document	A.	11-12
4.	Copy of pay slip	B.	13
5.	Copy of letters	C.	14-15
6.	Copy of impugned order	D.	16-17
7.	Copy of judgment & order	E.	18-22
8.	Copy of judgment & order	F.	23-28
9.	Copy of application	G.	29
10.	Copy of departmental appeal	H.	30
11.	Copy of S.C judgment	I.	31-34
12.	Copy of Tribunal Judgment	J.	35-37
13.	Vakalat Nama	-----	38

APPELLANT

Zaheen Khan
Zaheen Khan

Through

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court
Peshawar

Uzma Syed
UZMA SYED
Advocate High Court, Peshawar

①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1458 /2022

Mr Zaheen Khan Ex-Roadman S/o Wali Muhammad
R/o Gomail P/o Nizam Pur, tehsil and District Nowshera.

Appellant

VERSUS

1. The Secretary Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawa
2. The Director Water Farm Management, KP, Peshawar
3. The Director General, On Farm Water Management, Khyber Pakhtunkhwa, Peshawar.

Respondents .

**APPEAL UNDER SECTION-4 OF THE CIVIL SERVANT ACT,
1974 AGAINST THE ACT OF THE RESPONDENT NO. 2
WHO ISSUED IMPUGNED ORDER DATED 30/04/1999
WHEREBY SERVICE OF THE APPELLANT WAS
TERMINATED WITH AND AGAINST NOT DECIDING
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN
STATUTORY PERIOD OF 900 DAYS.**

PRAYER IN APPEAL:

**ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED
ORDER 30/04/1999, MAY PLEASE BE SET ASIDE AND
RESULTANTLY THE APPELLANT MAY GRACIOUSLY BE
REINSTATED IN SERVICE WITH ALL BACK BENEFITS IN
LIGHT OF RULES OF CONSISTENCY AND LAW OF GOOD**

GOVERNANCE AS ENUMERATED IN THE LATEST JUDGMENT OF THE SUPREME COURT OF PAKISTAN CITED AS 1985 SCMR 1185, 2003 SCMR 1030, 2009 SCMR -1, 2018 SCMR 380, 2015 PLC (C.S) 1406, 2021 SCMR 1313, 2022 PLC (C.S)94 AND 2022 PLC (C.S) 288 AND SERVICE TRIBUNAL JUDGMENT IN APPEAL NO: 213/2017 FURTHER UPHELD BY THE SUPREME COURT OF PAKISTAN IN CP NO 948/2020. ANY OTHER REMEDY DEEMED APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

Respectfully sheweth:

Facts leading to filing the present appeal are as under:-

1. That the present appellant was appointed as road man (BPS-01) in the year 1993, vide order dated 01-01-1993 in the respondents department against the regular post which is evident from the pension paper relevant page and work with full zeal and zest. Further it is added that the Benevolent Fund and GP fund properly deducted from the salary of the appellant. (copy of relevant document and salary slip is attached as annexure-A & B).
2. That the appellant after appointment, was working with great zeal and devotion but quite astonishingly the explanation notice was served upon the appellant on 30/10/1997 from Assistant Director Water Management (OECF) Kohat. In response to which Assistant Director water managment (OECF) Alpuri (Shangla) wrote letter to Director Water Management KP Peshawar and stated that the appellant performing his duties in this office from last three months. Copy of letters is attached as annexure-C.

3. That to the utter shock of the appellant, the services of the appellant with other colleagues was terminated with vide impugned order DATED 30/04/1999 without observing the codal requirements under the service rules laws. **(copy of the impugned order of termination is attached as Annex-D).**
4. That the other colleagues of the appellant namely Musa Khan, Fazlur Rahman etc which was accepted by the Hon'able tribunal vide Judgment dated 30.12.2002, in response to which the officials were reinstated in to service, thereafter some other colleagues named Arif Khan etc, with the same prayer as that prayed by the appellant in the instant appeal, had filed a service appeal before this honorable Tribunal and this honorable Tribunal graciously accepted his appeal through judgment dated 17.01.2007 and they are appointed in the light of that judgment. **(copy of the judgment, order, judgment and order is attached as Annex-E & F).**
5. That the appellant also filed application from time to time but the deptt: not taking any action on the application of the appellant, thereafter the appellant filed appeal on 04/05/2022 which was also not responded within statutory period of 90 days. **Copy of the application and appeal is attached as annexure-G & H.**
6. That the appellant being aggrieved and having no other efficacious remedy except to file the instant appeal for the redressal of his grievance before this Hon'able Tribunal on the following amongst others grounds.

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GROUND:

- A. Because the impugned orders of Respondent dated 30-04-1999 and discriminatory treatment against the appellant are against law, facts, hence liable to be set aside.
- B. Because of Respondent No. 2 in **utter disregard to the principles of the fairness, merit and transparency** has obliged upon the illegal and by misinterpreted the judgment passed the present impugned order dated 30-04-1999, hence the impugned orders of the respondents are against the law, facts, unlawful and void ab initio and liable to be turned down.
- C. Because the **dispensation removal of the appellant from his service without adopting proper criteria and codal requirements by the respondents is against the worthy ruling of the Hon' able Superior Courts of Pakistan** and therefore, the same are illegal practice and such practice adversely effects efficiency of incumbents and also reduces their confidence and faith in public, hence the impugned orders referred above are liable to be upheld on this score also.
- D. Because the **appellant had been made victim of discrimination demerits, partiality and favoritism** without any just and reasonable cause there by offending the fundamental rights of the appellant as provided by the Article 25 of the constitution of 1973, hence the impugned orders detailed above are liable to be set naught.
- E. Because the appellant is very hardworking punctual in his duty, therefore, no complaint received by the respondents against the appellant but the Respondents unlawfully and illegally proceeded against the appellant by ordering his removal from his service, which is against the law and fundamental rights of the appellant.
- F. Because the appellant was condemned unheard, his departmental appeal was not properly adjudicated in the manner as provided by the law. Further no chance of personal hearing was given to present appellant in order to redress his grievances

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which shows the malafide of the Respondents, hence needs interference of this Hon'able Court.

- G. That the conduct of the respondents in case of the appellant is against the spirit of justice, fair play, regulations related to discrimination as well as against the spirit of Article-2A, 4, 9, 10A, 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- H. Because the present impugned order is illegal, illogical, against facts, without jurisdiction and suffering from material irregularity, hence they are untenable and liable to be struck down.
- I. That the other colleagues of the appellant namely Musa Khan, Fazlur Rahman etc which was accepted by the Hon'able tribunal vide Judgment dated 30.12.2002, in response to which the officials were reinstated in to service, thereafter some other colleagues named Arif Khan etc, with the same prayer as that prayed by the appellant in the instant appeal, had filed a service appeal before this honorable Tribunal and this honorable Tribunal graciously accepted his appeal through judgment dated 17.01.2007 and they are appointed in the light of that judgment. That under the Rule of Consistency the appeal of the appellant may also be accepted as prayed for as being a similarly placed person, as principal enumerated in Superior Court Judgment cited as 1985 SCMR 1185, 2003 SCMR 1030, 2009 SCMR -1, 2018 SCMR 380, 2015 PLC (C.S) 1406, 2021 SCMR 1313, 2022 PLC (C.S)94 AND 2022 PLC (C.S) 288. (Copy of S.C judgment is attached as annexure-I).
- J. That in similar circumstances the Honorable Tribunal accepted the appeal no:2013/2017 titled as Arisf Shah vs C&W deptt: vide judgment dated 06.08.2019 and the same was also upheld by the Supreme Court of Pakistan. **Copy of the Tribunal judgment is attached as annexure-J.**
- K. That the junior to the appellant was working and appellant was terminated on the basis that the post was abolished and reference given to tribunal judgment dated 08.01.1999 which is already declared by the service Tribunal as Null and void. So

the impugned order has no sanctity in the eye of law and liable to be set aside.


L. The appellant crave for leave of this Hon'able Tribunal to raise additional grounds at the time of arguments.

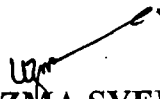
It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for:


Appellant

Zaheen Khan

Through


SYED NOMAN ALI BUKHARI
Advocate High Court
Peshawar


UZMA SYED
Advocate High Court ,Peshawar

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. _____/2022

Zaheen Khan

V/S

Govt of Kp.

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.

Appellant

Zaheen Khan

Through

SYED NOMAN ALI BUKHARI
Advocate High Court
Peshawar

UZMA SYED
Advocate High Court, Peshawar

8

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. _____ /2022

Zaheen Khan.

V/S

Govt of KP.

AFFIDAVIT

I, Zaheen Khan (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honourable Tribunal.

DEPONENT


Zaheen Khan

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2022

Zaheen Khan

V/S

Govt of Kp

.....
**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL IF ANY.**

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed.
2. That the relief was already granted to similar placed person, so in the light of the Superior Court Judgment reported as 2018 SCMR380, 2021 SCMR 1313, 2022 PLC cs 94 and 2022 PLC cs 288, laches losses force in matter where similar relief granted to similar placed person. So limitation no run in the instant appeal.
3. That the same principal followed in the appeal no: 2013/2017 decided on 06.08.2019 and delay was condoned and the appeal was accepted and the same was also upheld by the Supreme Court of Pakistan.
4. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.

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It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

APPELLANT

(Signature)
Zaheen Khan

Through

(Signature)
SYED NOMAN ALI BUKHARI
Advocate High Court
Peshawar

(Signature)
UZMA SYED
Advocate High Court, Peshawar

SECTION (2) CALCULATION OF QUALIFYING SERVICE

Total length of service as per Col-10 of Section (1)

Non-qualifying Service from 6 Y 3 M 29 D to Y M D

- (i) Extraordinary leave.....
- (ii) Unauthorised absence.....
- (iii) Spell of service not qualifying for Pension.....

Total (i), (ii) & (iii):- 6 Y 3 M 29 D

Net qualifying service.....
Add..... from..... to.....

Period
Y M D

(i) Periods, if any, Military service or War, Service allowed to count for pension.

(ii) Benefit of condonation of deficiency in total qualifying service.

Total (i) & (ii):-

Total qualifying service.....

SECTION (3) (a) CALCULATION OF "AVERAGE EMOLUMENTS"

Statement of emoluments during the last 36/12 months in case the post has not been held on regular basis:

Period		Duration Months and Days		Monthly Rate of Emoluments		Amount Drawn	
From	To	M	D	Rs.	Ps.	Rs.	Ps.
--	--	--	--	Rs. 1455/- PM		Rs. 1455/- PM	

Total emoluments for 36/12 months are
Therefore "Average Emoluments" work out to Rs.

36/12 = Rs. P.M.

**SECTION (3) (b) STATEMENT OF PAY/EMOLUMENTS LAST DRAWN
IN CASE THE POST IS HELD ON REGULAR BASIS**

- (a) Pay..... Rs.
- (b) Senior Post Allowance..... Rs.
- (c) Rs.
- (d) Rs.
- (e) Rs.

Total:-

SECTION (4) CALCULATION OF PENSION/GRATUITY

Length of total qualifying service..... years.

6-3-29

Emoluments/Average Emoluments.

1455/- PM

Amount of gratuity (in case where qualifying service is 5 years or more but less than 10 years.

Rs. 8730/-

Amount of gratuity on discharges from temporary service where qualifying service is 10 years or more but less than 25 years.

Rs.

4

PART - II

(To be completed by the Office/Department receiving the application for pension)

SECTION (1) - PARTICULARS OF APPLICANT

- Zaheen Khan
- *1. Name of civil servant.....
- *2. Father's name..... Wali Mohammad
- *3. Nationality..... Pakistani
- *4. Postal address..... Village Gaju Khail PO Nizampur Teh: & Distt: Nowshera.
5. Post held on the date of retirement/death and BPS.....
6. Date of birth..... 12.4.1973
7. Date of
- | | |
|------------------------------|-----------|
| Commencement of service..... | 1.1.1993 |
| Retirement/death..... | 30.4.1999 |
| Application for Pension..... | 26.3.2001 |
8. Length of service
- | | From | To | Y | M | D |
|--|------|---------|---|---|----|
| | | | 6 | 3 | 29 |
| | | | 6 | 3 | 29 |
| | | Total:— | | | |
9. Date of commencement and ending of each spell of military service, if any:
- | | From | To | Y | M | D |
|--|------|---------|---|---|---|
| | | | | | |
| | | | | | |
| | | Total:— | | | |
10. Government under which service has been rendered in chronological order:
- | | | | |
|---------------------|------|----|--------------|
| Government of | from | to | i.e..... |
| Government of | from | to | i.e..... |
| Government of | from | to | i.e..... |
| | | | Total: _____ |
11. Class of pension or gratuity applied for..... post Abolished.
12. Average Emoluments/Emoluments last drawn..... Rs. 1455/- PM
13. Proposed gross pension/gratuity..... Rs. 8730/-
14. Proposed family pension..... Nil
15. Proposed gratuity in lieu of 1/4th pension of..... Nil
16. Proposed value of commutation..... Nil
17. Proposed net pension..... Nil
- *18. Place of District Accounts Office
Treasury/Sub-Treasury..... Kohat
19. Date from which pension is to commence.....

Director
Signature of Head of Management
Office/Department. NWFP Peshawar

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LAST PAY CERTIFICATE

1. Last Pay Certificate of Mr. Zaheer Khan Ex-Beldar
of the Asstt. Director Water Management, Kohat.
proceeding to Retirement on the abolition of post.

2. He has been paid upto 30.4.1999

as the following rates:—

Particulars:

Substantive Pay:—

Officiating Pay:—

Exchange Compensation Allowance:—

	<u>Rs. 1245-35-1770 (BPS-1)</u>
01301-Pay of Post.	755/-
02200-H/Kent	276/-
02007-Medical Allow.	90/-
02019-Comp Allow.	101/85

Deductions:—

GPF Rs. vide A/C No. Agn. NSA/17/ess

3. He made over charge of the Office of Asstt. Director Water Management, (GECE)
Kohat.

on the 17th 17 noon of 30.4.1999

4. Recoveries are to be made from the pay of the Government servant as detailed on the reverse.

5. He has ben paid leave salary as detailed below. Deductions have been made as noted on the reverse.

From	<u>/</u>	to	<u>/</u>	at Rs.	<u>/</u>	a month
From	<u>/</u>	to	<u>/</u>	at Rs.	<u>/</u>	a month
From	<u>/</u>	to	<u>/</u>	at Rs.	<u>/</u>	a month

6. He is entitled to draw the following:—

7. He is also entitled to joining time for _____ days.

8. The details to the Income Tax recovered from him upto the date from the beginning of the current year are noted on the reverse.

Signature: Assistant Director, Water Management Kohat

Designation: _____

Dated at _____ 19

* TOTAL PAYMENT 2,229.90 * TOTAL DEDUCTION 00.00
2,169.90 SALARY PAID IN CASH

B13

3

ID CARD NO: 995 94 017429
GRADE: 01 SCALE: 01 TEMPORARY

NAME: ZAHREN KHAN S/O WALI MOHD
DESIGNATION: ROAD MAN

N.T. NO: 00-00-0000000 PLACE:
PAY PERIOD: 01/02/96 TO 28/02/96 AUDIT PAGE:

8-13

PAYMENTS	AMOUNT
001 BASIC PAY	1,350.00
134 HOUSE ALLOWANCE	275.00
175 MEDICAL ALLOWANCE	60.00
132 COMPENSATORY ALLOW.	94.50

DEDUCTIONS	AMOUNT
381 BENEVOLENT FUND	10.00
385 G.P.FUND	50.00

LOAN/FUND
AGRMS000017

PRINCIPAL	REPAID	BALANCE
		1,220.00

No. 443 / A.D. W.M-Kohat.

Dated the 28/10 /1997.

To

Mr. Zahreen Khan,
Rodman.

Subject:-
Memo:

E X P L A N A T I O N .

It has come to the notice of the under signed that you are absent from Govt:duties without prior permission /application since 13-10-1997 uptill now.

You are therefore directed to explain your position within three days after receipt of this letter for such a negligence other wise strict disciplinary action will be taken against you under E&D rules 1973.

Assistant Director,
Water Management,
(OECE) Kohat.

No. _____ / A.D. W.M-Kohat.

Dated the _____ /1997.

Copy to:-

The Deputy Director Water Management (OECE) Japan Financed
Project Peshawar for information & n.action please.

sd- Assistant Director,
Water Management,
(OECE) Kohat.

Assistant Director,
Water Management,
(OECP) Alpur (Shahla)

[Handwritten signature]

for information.

2. Mr. Zahed Khan

1. The Asst. Director / Management / OECP Kohat.

copy for:-

No. 1064-65 ADM/OECP/ dated Alpur the, 06/19 1997

Assistant Director,
Water Management,
(OECP) Alpur (Shahla)

[Handwritten signature]

Submitted for information and E/action please.

It is brought to your kind notice that the said official Mr. Zahed Khan Baidar/Rodhan has already reported for duty to his new station A.D. M. (OECP) Kohat since 01/09/1997 vide your office order No. 9400-9522/3/128/ dated 29/08/97, and he is performing his duty in the office of A.D. M. (OECP) Kohat from the last three months.

Reference your memo: No. 4020-11004/DPM, dated Beshwar the 06/11/97, addressed to Mr. Zahed Khan C/O Ghulam Akbar A.D. M. (OECP) Alpur.

Memo:-

Subject:- REINSTATEMENT/ADJUSTMENT/POSTING ORDER.

The Director,
Water Management,
MWP, Beshwar.

ADM/OECP/ dated Alpur the, /

1997.

[Circular stamp]

[Handwritten signature]

The services of the following Rodman, Baidar, F/Worker N/Qasid and Chowkidar being junior most are hereby terminated with immediate effect due to implementation of Judgement dated 08.01.1999 of NWFP Service Tribunal and non-availability of vacancies.

Sr.No.

- 1- Muhammad Anwar N/Qasid O/O the Asstt:Director On Farm Drainage Component NDP, Peshawar.
- 2- M.Fazal-e-Rehman N/Qasid O/O the Project Coordinator OFWM CRBIP Stage-III D.I.Khan.
- 3 M.Tehsil Khan Chowkidar of Karak O/O the Project Director OFWM, Pehur High Level Canal Project Mardan.
4. M.Asmat Ali Rodman of Karak O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
5. M.Habibullah Chowkidar of L/Marwat O/O the Asstt:Director Water Management (OECE)J/Financed Project Bannu.
6. M.Abdul Wahab Chowkidar of Karak O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
7. M.Zaheen Khan Rodman O/O the Asstt:Director W/M(OECE) Japan Financed Project Kohat.
8. Muhammad Sher Rodman of Nowshera O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
9. Enzer Gul F/Worker O/O the Project Director OFWM Training Centre D.I.Khas.
- 10 M.Abdullah N/Qasid of Karak O/O the Asstt:Director Water Management(OECE)Japan Financed Project Swat.
11. Aqwal Nawaz Chowkidar of Karak O/O the Asstt:Director Water Management (OECE)Japan Financed Project Kohat
12. Muhammad Ajmal Rodman Nowshera O/O the Project Director OFWM Pehur High Level Canal Project Mardan
13. M.Salah ud Din N/Qasid of L/Marwat O/O the Asstt:Director W/M (OECE)Japan Financed Project Bannu.
- 14 M.Iftikhar Ahmad Rodman of Swabi O/O the Project Director OFWM Pehur High Level Canal Project Mardan.
- 15 M.Taj Ali Shah Rodman O/O the Dy:Director W/M ADC-SSP Project Mardan.
- 16 M.Irshad Khan Rodman Dy:Director W/M ADC-SSP Project Mardan.
17. Tahirullah Rodman Dy:Director W/M ADC SSP Project Mardan
18. M.Inshahullah Rodman Dy:Director W/M ADC-SSP Proj:Mardan
- 19 M.Azam Jan Rodman Dy:Director W/M ADC SSP Project Mardan.

Sd/-Director,
Water Management
NWFP, Peshawar.

N.P-2nd.

17

No. 2545-84 /DWM, dated Peshawar, the

30/4/1999

Copy to the:-

1. Section Officer (Admn) Government of NWFP
Food Agri: L/S, Lock & Coop: Deptt: Peshawar.
Endst; No. SOG(AD)7(7)2/99/KC dated 28.4.1999.
2. Project Coordinator Agriculture Development
Component Swabi Scarp Mardan.
3. All District Accounts Officers concerned in NWFP.
4. All On Farm Water Management offices concerned
in NWFP.
5. All officials concerned.
6. Accountant General NWFP, Peshawar.

[Signature]
 Director,
 Water Management
 NWFP, Peshawar.

No. 2545-84 /DWM, dated Peshawar, the

Copy to the:-

No. 2545-84 /DWM, dated Peshawar, the

E

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1256/1999

Date of institution - 15.8.1999

Date of decision - 30.12.2002

Musa Khan Ex-Field Assistant,
On-Farm Water Management Peshawar. (APPELLANT)

VERSUS

1. Secretary Agriculture, NWFP,
Peshawar.
2. Director Water Management,
NWFP Peshawar.
3. Assistant Director, water
Management, Japan Finance
Project, Mingora. (RESPONDENTS)

Mr. Roohul Amin Advocate.For appellant.

Mr. Nasratullah Khan Govt. Pleader.For respondents.

MR. MUHAMMAD FAREED KHANMEMBER.

MR. MUHAMMAD SHAUKATMEMBER.

JUDGMENT.

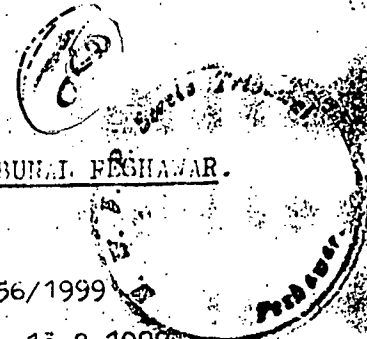
MUHAMMAD FAREED KHAN, MEMBER:- This appeal has

been filed by the appellant against the order dated 30.4.99 whereby his services were terminated with the prayer that the impugned order may be set aside and he be re-instated in service with all back benefits.

Brief facts of the case as averred in the memo of appeal are that the appellant was appointed as Field Assistant in BPS-6 vide order dated 1.9.90 and served the department for about 9 years with clean and unblemished service record. He was terminated from service vide the impugned order dated 30.4.99 against which he preferred a departmental appeal but with no response.

The appellant has assailed the impugned order on the grounds that the alleged reason advanced by the department for his termination i.e. "in compliance of judgment of this Tribunal passed in Appeal No. 1259/97 decided on 8.1.99.

Handwritten signature and stamp: "TESTED" with a signature over it.



90
19

Moreover, vide the above said judgment this Tribunal was pleased to re-instate 90 persons in service but in lieu of 90 persons the respondents pick and choose the name of appellant amongst four others who are not junior according to seniority list. The impugned order has been issued without any prior notice to the appellant. He has been condemned unheard. The post against which the appellant was working is still lying vacant.

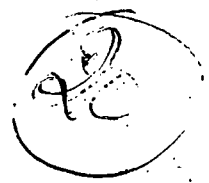
The respondents were summoned. They appeared through their representative/counsel and submitted written reply to the appeal. Raising inter-alia preliminary objections they submitted that the appellant has no cause of action/locus standi. The appeal is time barred/not maintainable and that the appellant is estopped by his own conduct to bring the present appeal. On factual side they submitted that the appellant has been terminated from service in the light of the judgment of this Tribunal, dated 8.1.99. The judgment of Service Tribunal passed in Appeal No. 1259/97 dated 8.1.99 has strictly been followed in letter and spirit. The appellant has not been terminated from service on disciplinary grounds, therefore, no notice etc was required to be served on the appellant.

The appellant has also submitted his re-joinder in which he has rebutted all the objections of the respondents.

Arguments of the learned counsel for the appellant and Government Pleader for the respondents have been heard and record perused.

The record shows that the appellant was appointed as Field Assistant in PDS-6 by the Director of Farm Water Management vide order dated 1.9.90 who was the competent authority. In accordance with the terms and conditions of his appointment order his appointment was made on temporary basis and there was nothing to show that he was appointed on work charge basis or contract basis. The appellant has been getting salary from the Provincial Fund.

ATTESTED



2913

The learned counsel for the appellant while arguing his case submitted that the post against which the appellant was working is still lying vacant and the same has not been abolished. The alleged reason advanced by the respondent Deptt. for terminating the service of the appellant, is that his services have been terminated in compliance with the judgment of Service Tribunal dated 8.1.99, i. vague and sheerly a pretext. The appellant is not a junior most and has been terminated from service without giving any prior notice. He has been condemned unheard without giving any opportunity to defend himself. Even recently the respondents have appointed some persons against the similar posts.

The appellant/learned counsel for the appellant were asked by this Tribunal to intimate the names of such persons who were junior than the appellant in his cadre and whose services were retained by the department in preference to the appellant but the appellant/counsel for the appellant failed to provide any documentary proof in support of their claim. However, the Tribunal observes that the appellant is a Govt. Servant and his services cannot be terminated till such time any vacant post in his cadre is available or any person junior to him is working in his cadre. The case of the appellant is remanded back to the respondent department with the direction to re-instate the appellant in service provided any person junior to him as per seniority is working in his cadre or any vacant post is available in his cadre and on that the appellant is senior most among the terminated employees of his cadre.

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ATTESTED

The appeal of the appellant is decided in the above terms.

This order will also dispose of other connected appeal bearing Nos. 1373/99 Muhammad Razaq, 1376/99 Gulimuddin, 1379/99 Muslim Khan, 1546/2000 Dawood Muhammad, 1578/99 Sheikh Muhammad Shoaib, 1578/99 Abdul Halim, 1664/99 Fazlur Rahman, 1681/99 Sheikh Ziauddin, 1327/99 Roseuddin, 1323/99 Lalahuddin, 1344/99 Inger Gul, 1580/99 Habibullah, 1580/99 Fatehullah & 1682/99 Abdul Hakeem Vs. Director (Admin. Management) etc. in the same

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manner, because in all these cases common questions of law and facts are involved.

Parties are left to bear their own costs and file be consigned to the record.

ANNOUNCED.
30.12.2002.

Muhammad Shukat
(MUHAMMAD SHAIKAT)
MEMBER.

Muhammad Fared Khan
(MUHAMMAD FAREED KHAN)
MEMBER.

ATTESTED
[Signature]
EXAMINER
NWFP Service Tribunal
Peshawar.

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Date of Copy 17/1/03
17/1/03

OFFICE ORDER

227
NWFP Service

In compliance with the decision dated 30/12/2002 of the honourable court of NWFP Service Tribunal Peshawar, the following officials are hereby reinstated w.e.f the date of announcement of decision dated 30/12/2002 by the NWFP Service Tribunal and Advocate General opinion communicated to Secretary Government of NWFP Agriculture, L/Stock & Cooperative Department Peshawar vide endst: No. 10 dated 17/03/2003. The staff is posted in the office as noted against each.

SNo	Name & Designation	Name of office in which posted
1	Mr. Saleem-ud-Din Field Assistant	Asstt: Director NWFP OFWM (WBA) Project Swabi
2	Mr. Mucen-uduDin Field Assistant	Asstt: Director NWFP OFWM (WBA) Project Lakki Marwat
3	Mr. Muhammad Shoaib Field Assistant	Asstt: Director NWFP OFWM (WBA) Project Bannu
4	Mr. Abdul Hakeem Field Assistant	Asstt: Director NWFP OFWM (WBA) Project Kohat
5	Mr. Sheikh Zia-ud-din Field Assit:	Asstt: Director NWFP OFWM (WBA) Project Haripur
6	Mr. Musa Khan Field Assit:	Asstt: Director NWFP OFWM (WBA) Project Nowshera
7	Mr. Daood Muhammad Rodman	Asstt: Director NWFP OFWM (WBA) Project Swabi
8	Mr. Muslim Khan Rodman	Asstt: Director NWFP OFWM (WBA) Project Swabi
9	Mr. Muhammad Rasool Rodman	Asstt: Director NWFP OFWM (WBA) Project Haripur
10	Mr. Abdul Haleem Rodman	Asstt: Director NWFP OFWM (WBA) Project Haripur
11	Mr. Fazal-e-Rehman Rodman	Asstt: Director NWFP OFWM (WBA) Project Mansehra
12	Mr. Habibullah Rodman	Asstt: Director NWFP OFWM (WBA) Project Bannu
13	Mr. Enzar Gul Rodman	Asstt: Director NWFP OFWM (WBA) Project Charsadda
14	Mr. Salahuddin Rodman	Asstt: Director NWFP OFWM (WBA) Project Lakki Marwat
15	Mr. Fatch-ullah Rodman	Asstt: Director NWFP OFWM (WBA) Project Charsadda

They are directed to report in the offices mentioned above.

No TA/DA is allowed.

Sd/- Director,
Water Management,
NWFP, Peshawar

No. 3011-34 /DWM dated Peshawar the 8/4 /2003.

- Copy to:-
- The all concerned.
 - The Section Officer (Estab:) Govt: of NWFP Agri: L/Stock & Coop: Deptt: Peshawar with reference to his endst: No. SOE(AO) 7(7)2/2002/WM dated 26/03/2003. The case for creation of supernumerary posts separately w.e.f the date of termination till the announcement of the decision. The decision/ reinstatement is being prepared along with budget and submitted separately.
 - The Accounts Officer (P) World Bank Assisted Project alongwith a copy of decision dated 30/12/2002 for information and with the remarks that he may arrange the payment of pay etc. to the above mentioned officials as per decision of the Court (Copy attached).
 - The Assistant Directors, NWFP OFWM (WBA) Project Bannu, Lakki Marwat, Kohat, Charsadda, Nowshera, Haripur & Mansehra for information and necessary action.

Director,
Water Management,
NWFP Peshawar.

FOR THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No.425/2004

Date of Institution..... 10.6.2004
Date of Decision..... 17.1.2007

Arif Khan son of Zaman Khan, Ex-Field Assistant,
Office of Assistant Director, Water Management,
OEFC, Swat.....(APPELLANT)

VERSUS

1. Secretary, Agriculture, NWFP, Peshawar.
2. Assistant Director, NWFP, O.F.W.M.)(W.B.A)
Project, Bannu.
3. Director, Water Management, NWFP,
Peshawar.....(RESPONDENTS)

APPEAL AGAINST ORDER DATED 30.4.1999
WHEREBY THE APPELLANT WAS TERMINATED
AND THE DEPARTMENTAL APPEAL WAS REJECTED
VIDE ORDER DATED 12.5.2004.

PRAYER:

On the acceptance of this appeal, the impugned order
may kindly be set aside and in the light of the judgment
of this Honourable Tribunal dated 30.12.2002 the
appellant may be reinstated in service with all back
benefits.

MR. MUHAMMAD UMAR AFRIDI,
MR. ADALAT KHAN KHATTAK,

MEMBER
MEMBER

ATTESTED

SECRETARY

Dawood Court Case document

1256/1999

2/6

JUDGMENT,

MUHAMMAD UMAR AFRIDI, MEMBER:- This appeal has been filed by Mr. Arif Khan son of Zaman Khan, Ex-Field Assistant, office of Assistant Director, Water Management, O.E.C.F. Swat under section-4 of the NWFP Service Tribunals Act, 1974, against the office order bearing No.2585-2609/DWM, dated 30.4.1999, whereby he was terminated with benefits of pensions/gratuity as admissible under the rules due to the non-availability of posts and order communicated vide letter No. 6196/3/4/DWM, dated 12.5.2004, whereby his departmental appeal was filed.

2. Brief facts of the case as averred in the memo of appeal are that the appellant was appointed as Field Assistant in BPS-6 vide office order No. 6776-79/DWM, dated 20.9.1989 and served the department for about ten years with clean and unblemished service record. He was terminated from service vide the impugned order dated 30.4.1999, against which he preferred a departmental appeal and it was communicated to him that his appeal was filed. Hence the present appeal.

3. After receipt of the appeal, pre-admission notices were sent to the respondents for filing their written replies. They filed their written replies and contested the appeal. Thereafter, the case was admitted to full hearing on 18.3.2006.

4. Arguments heard and record perused.

5. The counsel for the appellant argued that the appellant and other employees i.e. Musa Khan, and others were terminated by the respondent department through one and same order viz order dated 30.4.1999. He further argued that this order had already been set aside by the Tribunal in Service Appeal Nos.1256/1999, Musa

ATTESTED

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Khan, 1373/1999, Muhammad Rasool, 1396/1999, Saleemud Din, 595/2000, Muslim Khan, 1546/2000, Daud Muhammad, 1378/1999, Sheikh Muhammad Shoaib, 1379/1999, Abdul Halceem, 2164/1999, Fazalur Rehman, 1381/1999, Sher Ziaud Din, 1377/1999, Moenud Din, 1383/1999, Salahud Din, 1384/1999, Enzer Gul, 1380/1999, Habibullah, 1560/1999, Fateh Ullha, and 1382/1999, Abdul Hakim Versus Director Water Management etc. It was further argued that the above said judgment of this Tribunal was in rem and under the good governance the respondents should have reinstated the appellant like other employees. The counsel for the appellant also stated that the appellant was the senior most amongst the terminated employees and the respondent department while reinstating the above said employees had categorically admitted that the post, against which the appellant was working, was lying vacant. Moreso, the post of appellant was still vacant. It was further stated that in the light of the judgment of this Tribunal the appellant was entitled to be reinstated in service with all back benefits. He requested for reinstatement of the appellant with all back benefits and treatment of his case at par with that of Musa Khan, Field Assistant of the respondent department.

5. The learned A.G.P, on the other hand, argued that the appellant was a project employee and his services were terminated w.e.f. 1.1.1999 after serving proper notice on him in accordance with the government policy. He was paid all his dues. Therefore, his case could not be covered under the judgment dated 30.12.2002 of this Tribunal.

6. The Tribunal heard the arguments of both the parties and perused the available record of the case. The Tribunal noticed that the appellant was terminated in pursuance of the Tribunal's judgment in appeal No. 1259/1997 titled as "Shamshad Khan and 90 others

Secretary
Tribunal

Versus Secretary, Agriculture NWFP Peshawar and two other respondents" decided on 8.1.1999. Vide this judgment, the Tribunal was pleased to reinstate 91 persons in service but in lieu of 91 persons, the respondents in some cases adopted pick and choose policy. As a matter of fact this judgment should have been applied to all the affected persons but the respondents failed to do so. Moreover, the record shows that the appellant was a regular though appointed on temporary basis. The appellant has been getting his salary from the provincial funds. G.P.Fund, Group Insurance and Benevolent Fund. deductions were regularly made from the appellant. The Tribunal agrees with the arguments of the counsel for the appellant that the appellant and other employees i.e. Musa Khan and others were terminated by the respondent department through one and same order viz order dated 30.4.1999, which had already been set aside by this Tribunal in Service appeal Nos. 1256/1999, Musa Khan, 1373/1999 Muhammad Rasool, 1396/1999, Saleemud Din, 595/2000, Muslim Khan, 1546/2000, Daud Muhammad, 1378/1999, Sheikh Muhammad Shoaib, 1379/1999, Abdul Haleem, 2164/1999, Fazalur Rehman, 1381/1999, Sher Ziaud Din, 1377/1999, Moenud Din, 1383/1999, Salahud Din, 1384/1999, Enzer Gul, 1380/1999, Habibullah, 1560/1999, Fatchullah, and 1382/1999, Abdul Hakeem Versus Director, Water Management etc. The respondent department while reinstating the above said employees has categorically admitted that the post against which the appellant was working is still lying vacant and since the appellant was the senior most amongst the terminated employees, therefore, he should have been reinstated within time. The Tribunal has noticed discrimination in the case of the appellant. Similarly the grounds mentioned by the respondent department for terminating the services of the appellant are that his services have been terminated in compliance with the judgment of Service Tribunal dated 8.1.1999 are vague and just a pretext having weak footing. The appellant is

ATTESTED
 EXAMINED
 Peshawar

997

not a junior most and his services have been terminated without giving him a prior notice. He has been condemned unheard without giving him any opportunity to defend himself. Even recently the respondents have made new appointments.

9. In view of the aforementioned discussion, the Tribunal observes that the appellant is a government servant and his services cannot be terminated with a single stroke of pen till such time any vacant post in his cadre is available or any junior to him is working in the cadre. The Tribunal agrees to accept the appeal of the appellant and directs the respondent department to reinstate the appellant in service. Moreover, the intervening period should be treated as leave without pay. The Tribunal also directs the appellant to immediately deposit the amount received by him as G.P.Fund, Pension/Gratuity etc. in the Government Treasury.

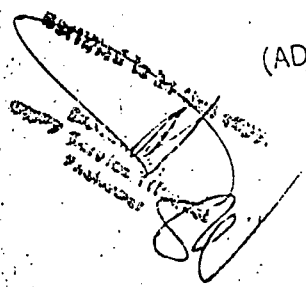
8. This order will also dispose of another connected appeal bearing No. 286/2004, Nadir Khan Versus Secretary, Agriculture NWFP, Peshawar and two other respondents.

9. Parties are left to bear their own costs. File be consigned to the record after completion.

ANNOUNCED.
17.1.2007

M. Umar Afridi
(MUHAMMAD UMAR AFRIDI)
MEMBER


(ADALAT KHAN KHATTAK)
MEMBER



17-1-07
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(2)

**DIRECTORATE GENERAL ON FARM WATER MANAGEMENT NATIONAL
PROGRAMME FOR IMPROVEMENT OF WATER COURSES IN PAKISTAN
NWFP (COMPONENT)**

OFFICE ORDER

Mr. Nadar Khan Red Man office of the District officer Water Management NPIWCs Buner is transferred to Office of the District Officer Water Management NPIWCs Nowshera against the vacant post of Red man with immediate effect.

Sd/-

Director General

NO 1326 /DG/WM/NPIWCs/ dated Peshawar 30/07/2007

Copy to:-

1. District Officer Water Management NPIWCs Buner & Nowshera.
2. District Account Officer Nowshera & Buner.
3. Official Concerned.

(Signature)
Assistant Director (A+A)

Accd

13.8.07

غرفہ - ڈائری مندرجہ ذیل ان فارم نامہ جمعیت کو صوبہ اسی کے دفتر -
ذمہ داری مندرجہ ذیل

ہ سالی

ذمہ داری مندرجہ ذیل

ان کے لئے ڈائری مندرجہ ذیل - مندرجہ ذیل فارم نامہ مندرجہ ذیل
Rod Man ڈیڑھی ساغاک
دارغاکھا - کہ اس دوران مندرجہ ذیل ۱۹۶۹ میں درج ذیل سے ہر طرف کر دیا گیا۔
اس سے پہلے بھی مندرجہ ذیل ذمہ داری کے لئے - اب افکار کے ذریعے مطلع کیا
گیا۔ کہ ہر طرف شدہ مندرجہ ذیل ذمہ داری کے لئے اس کے لئے مندرجہ ذیل
13 اگست سے قبل دیں - اخباری کاپی ذمہ داری کے لئے مندرجہ ذیل ہے۔

ذمہ داری مندرجہ ذیل ذمہ داری کے لئے - کہ اس کے لئے ہر طرف

ذمہ داری مندرجہ ذیل مندرجہ ذیل ذمہ داری کے لئے

7/9/2009

مندرجہ ذیل

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To

The Secretary (agriculture)

Via DG OFWM (agriculture)

Peshwar

Subject: application for reinstatement of service of Zaheen Khan

Dear Sir

With due respect it is stated that I was appointment as rodman (bps-1) via office order no 620-21 dated 31-12-1992 at assistant director OFWM Nowshera, which was later changed to belder via office order no 678-80 dated 31-07-1993 and as per departmental record my services can also be verified via pay bills from 1-1-1993 to 30-04-99.

Later, I was terminated from the services via office order no: 2545-84 dated 30-04-1999 (copy attached) along with other colleagues. Those colleagues were later reinstated by service Tribunal Court decision in appeal no. 1256/1999 (copy attached).

In light of the above and keeping in view my 5-6 years long service, it is requested to please reinstate my service on purely humanitarian grounds as I am poor person and having 8 dependents.

Thanks

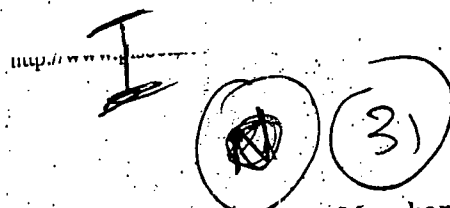
Regards

Zaheen khan

Cnic: 17201-2220296-7

cell # 03339555967

named P.A. to DG OFWM
Rej
4/5
Raj

http://www. 

2021 S C M R 1313

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Mazhar Alam Khan Miankhel and Sayyed Mazahar Ali Akbar Naqvi, JJ

QUETTA DEVELOPMENT AUTHORITY through Director General---Appellants

Versus

ABDUL BASIT and others ---Respondents

Civil Appeal No. 1562/2020, C.M.A. No. 259-Q/2020 in C.A. No. 1562/2020 and C.A. No. 1563/2020, C.M.A. No. 260-Q/2020 in C.A. No. 1563/2020, C.A. No. 1564/2020, C.M.A. No. 262-Q/2020, C.A. No. 1565/2020 and C.M.A. No. 264-Q/2020 in C.A. No. 1565/2020, decided on 31st May, 2021.

(On appeal from the judgment dated 16.9.2020 passed by the High Court of Balochistan, Quetta in C.P. No.970/2015, C.P. No.1011/2015, C.Ps. Nos. 1258/2015, 1257/2018)

(a) Civil service---

---Civil Procedure Code (V of 1908), S. 11---Appointment orders, restoration of---Res-judicata, principle of---Applicability---Appellant Authority/employer ("the Authority") in the present round of litigation, had once again raised the same points of facts and the law raised in an earlier round of litigation involving other similarly placed employees regarding nature of appointments and then dismissal from service of the respondent-employees---Earlier part of the litigation had come to an end and had attained finality between the parties---Questions in the earlier round of litigation once decided by the competent Court of law, could not be re-agitated again by the Authority---Such aspect/issue would act as res judicata against the Authority precluding it to question the order of appointments of respondents and then their dismissals---Pros and cons of the appointments and the dismissal orders of similarly placed employees were thoroughly considered by the High Court and then upheld by the Supreme Court in the earlier round of litigation; they had attained finality, and were not open to any further dilation and consideration---Appeals were dismissed.

(b) Constitution of Pakistan---

---Art. 25---Civil service---Appointment orders, restoration of---Relief of restoration of appointments orders granted to similarly and equally placed employees---Present employees/respondents were appointed on the same terms and conditions of service as that of similarly placed employees ("earlier litigants") who had been given relief of restoration of their appointment orders by declaring the orders of their withdrawal/cancellation as null and void---Present respondents were hired and fired together in the same manner as earlier litigants and were standing on the same pedestal as them---Both sets of appointees could not be separated from each other with regard to their appointments and dismissal---Only difference between the two sets was that the earlier group/earlier litigants litigated for their rights and second group, i.e. the present respondents, did not go into litigation earlier and through present litigation sought the relief already given to the first group who litigated---To claim such a relief was the fundamental right of respondents and the Constitution extended protection to such right and as such they could not be treated differently; this was the mandate of Art. of 25 of the Constitution---Respondents being equally and similarly placed as the earlier litigants, they become entitled to the same relief which was extended to them---Appeals were dismissed.

Hameed Akhtar Niazi v. Secretary, Establishment Division 1996 SCMR 1185; Tara Chand v. Karachi Water and Sewerage Board 2005 SCMR 499; Government of Punjab v. Sameena Parveen 2009-SCMR 1 and Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others 2014 SCMR 1336 ref.

(c) Constitution of Pakistan---

gement

---Art 199--- Constitutional petition before the High Court---Laches, principle of---Scope---Rule of
laches was applied in accordance with facts and circumstances of each case, and it could not be made
a rule of universal application.

Syed Ayaz Zahoor, Advocate Supreme Court for Appellant (Via Video Link, Quetta) (in all
cases):

Gul Hassan Tareen, Advocate Supreme Court (Via Video Link, Quetta) and Syed Rifaqat
Hussain Shah, Advocate-on-Record for Respondents (in C.As. Nos. 1562-1563/2020).

Nemo for Respondents (in C.As. Nos. 1564-1565/2020).

Date of hearing: 31st May, 2021.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.---The Quetta Development Authority ('QDA')
duly advertised different posts in various pay scales. After completing all the codal formalities under
'Quetta Development Authority Employees (Service) Regulations 2010', ('Regulations'), Departmental
Selection Committee recommended the names of successful Applicants/candidates for appointment to
different posts. The Director General ('DG'), QDA in exercise of powers conferred upon him under
'Quetta Development Authority Ordinance, 1978', ('The Ordinance'), vide its order dated 8th January,
2013 issued their appointment orders and resultantly almost all such appointees submitted their
joining reports for their respective posts. But just after few days of such exercise, their appointments
were withdrawn/ cancelled by the DG, QDA, ('the appointing authority'), vide its two different orders
dated 24th January, 2013 and 12th February, 2013. For ready reference both the orders are reproduced
hereinbelow respectively:-

"QUETTA DEVELOPMENT AUTHORITY

Dated Quetta the 24 January 2013

ORDER

No.1-16/78(135) Admn: 1860-66/. In view of weak financial position of QDA, decreasing of
interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid,
the recruitment orders of staff issued vide this office order No.1-16/78(135) Admn: 1574 to
1732 dated 8th January 2013 and No.1-16/78(135) Admn: 1733 to 1855 dated 9th January
2013 are hereby withdrawn/cancelled.

Sd/-

DIRECTOR GENERAL

Quetta Development Authority"

ORDER - dated-12.2.2013:

"No.1-16/78(135) Admn:525-30). In view of weak financial position of QDA, decreasing
interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid,
the recruitment orders of staff issued vide this office order No.1-16/78(135)Admn: 1553-60
dated 8th January 2013, office order No.1-16/78(135) Admn: 1561-67 dated 8th January 2013
and No.1-16/78(135) Admn: 1567-74 dated 8th January 2013 are hereby
withdrawn/cancelled"

2. The said orders were questioned before The High Court of Balochistan, Quetta ('The High
Court'). The High Court vide its detailed and elaborate consolidated judgment dated 12th January,
2015 rendered in different Writ Petitions, filed by some of the affectees, set aside the above noted
withdrawal/cancellation orders by allowing their Writ Petitions, and declared the said orders to be null
and void having no legal effect and their appointment orders were restored. This Court vide its

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dated 18th September, 2015 passed in Civil Petition No.167/2015, etc dismissed the Civil Petitions and refused to grant the leave to appeal by upholding the judgment of The High Court dated 12th January, 2015. The said order was complied with and acted upon to the extent of the Petitioners of the Writ Petitions. (33)

The present Respondents, being the remaining affectees of the withdrawal/cancellation orders (noted above) regarding their appointments, submitted their applications for reinstatement in the light of judgments rendered by The High Court and The Supreme Court noted above, but the present Appellant-DG, QDA, turned down their request. They being aggrieved and having no other remedy, approached The High Court with their respective Constitutional Petitions which were allowed vide the impugned judgment dated 16th September, 2020 and the Respondents, herein, were ordered to be reinstated to their respective posts in the light of recommendations of the Departmental Selection Committee and their respective appointment orders. The DG, QDA, feeling aggrieved, approached this Court with leave of this Court dated 23rd December, 2020.

3. Learned counsel for the parties were heard and record of the case perused. The main contention of the learned counsel for the Appellant was that the Constitution Petitions before The High Court filed by the Respondents were hit by the principle of laches as many of the same were filed by the Respondents after about two years and ten months. Besides the above, his next stance was that the Respondents were project employees and as per terms and conditions of their appointment orders, their services were liable to termination without assigning any reasons. Whereas the learned counsel for the Respondents, simply sought for the alike treatment to the Respondents vide the same appointment orders dated 8th January, 2013 on similar terms and conditions of service, as per mandate of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ('The Constitution'). He further argued that principle of laches in such circumstances, loses its force. He went on to maintain that orders of withdrawal/cancellation of appointment orders had earlier been struck down qua the litigating affectees in earlier round of litigation and the same has attained finality, validity of which now cannot be considered/challenged in the present set of Writ Petitions.

4. Perusal of the record would reveal that process and procedure of appointment of the present Respondents and the Petitioners of earlier Writ Petitions, as noted above, had never been a question under dispute. It was the subsequent two orders of withdrawal/cancellation of the appointments made by the DG, QDA, as reproduced above. The legality/validity of the said two orders was elaborately discussed and considered by The High Court in its earlier consolidated judgment dated 12th January, 2015 and the same was upheld by this court vide its judgment dated 18th September, 2015. The present Appellant had contested the earlier round of litigation, and was fully aware of the entire episode in the Courts. The Appellant, (the same authority/person) in the present round of litigation, has once again raised the same points of facts and the law regarding nature of appointments and then dismissal from service of the Respondents and the learned counsel for the Appellant, even argued the same points today in the Court. The earlier part of the litigation has come to an end and has attained finality between the parties. That, questions once decided by the competent Court of law, cannot be re-agitated again by the Appellant. This aspect/issue will act as res judicata against him precluding him to question the order of appointments and then dismissals. The pros and cons of the appointments and the dismissal orders of the Petitioners in earlier round of litigation, were thoroughly considered by The High Court and then upheld by this Court. These have attained finality, not open to any further dilution and consideration.

The present round of litigation has been narrowed down only to the question of entitlement of the Respondents as per the mandate of Article 25 of the Constitution. Whether they can be extended the same relief/benefit as was extended to their similarly placed colleagues through the intervention of the Court in an earlier round of litigation. We in the peculiar circumstances of the case, legally can only look into this aspect of the case. It's a matter of record that present Respondents were appointed on the same terms and conditions of service as that of the Petitioners of earlier Writ Petitions who have been given relief by the Court by restoring their orders of appointment and declaring the orders of withdrawal/cancellation as null and void, having no legal effect. The present Respondents were

not go to litigation earlier and through instant litigation has sought the relief already given to the first group who litigated. To claim such a relief is their fundamental right and the Constitution extends protection to their such right and as such they cannot be treated differently. The scale of justice has to be balanced on the same pattern. This is the mandate of Article of 25 of the Constitution. The law of the land in this regard has become well established. References in this regard can be made to the cases of Hameed Akhtar Niazi v. Secretary, Establishment Division (1996 SCMR 1185), Tara Chand v. Karachi Water and Sewerage Board (2005 SCMR 499), Government of Punjab v. Sameena Parveen (2009 SCMR 1) and Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others (2014 SCMR 1336). When we hold that the Respondents being equally and similarly placed as the Petitioners of earlier Writ Petitions, then they become entitled to the same relief which was extended to them.

5. In view of the law laid down by this Court (noted above), we cannot non-suit the Respondents and allow the laches to be a stumbling block in the way of dispensation of justice. This will amount to a refusal of a fundamental right accrued in their favour after earlier decisions of The High Court and this Court. The rule of laches is applied in accordance with facts and circumstances of each case. It cannot be made a rule of universal application. The question of laches, in the circumstances loses its force. The earlier judgment of The High Court was upheld by this Court and has attained finality. So, The High Court has very aptly dealt with the matter in favour of present Respondents in the present round of litigation.

6. We in the circumstances find no merit; hence these appeals are dismissed with no order as to costs. All the CMAs are also disposed of accordingly.

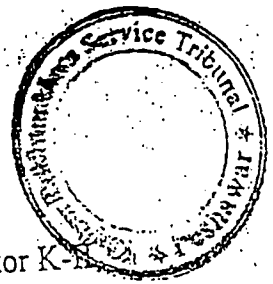
Appeal dismissed.

MWA/Q-3/SC

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 213/2017

Date of institution ... 27.02.2017
Date of Decision ... 06.08.2019



Arif Shah S/O Haji Alaf Shah R/O House No. 99, Street No.4, Sector K-1
Phase-III, Hayat Abad, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary C&W Department,
Peshawar & one other. ... (Respondents)

Mr. Muhammad Ilyas Orakzai
Advocate. ... For appellant.

Mr. Muhammad Jan
Deputy District Attorney ... For respondents.

MR. MUHAMMAD HAMID MUGHAL
MR. HAMID FAROOQ DURRANI

MEMBER(J)
CHAIRMAN

ATTEST

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER:- Learned counsel for the

appellant and Mr. Muhammad Jan learned Deputy District Attorney along with
Shahroom SDO for the respondents present.

2. Feeling aggrieved against the order dated 18.08.2010 of cancellation of his
appointment order dated 29.07.2010, the appellant approached this Tribunal by filing
the present service appeal for his reinstatement as Lab Attendant with back benefits.

3. Learned counsel for the appellant argued that vide order dated 29.07.2010 of the
Chief Engineer Central Design Office C&W Department Peshawar, the appellant was
appointed as Lab Attendant; that the appointment order of the appellant as well as

6.8.2019

(36)

appointment orders of twenty (20) other officials were cancelled vide impugned order dated 18.08.2010 due to non-observance of codal formalities in the appointment process; that several officials mentioned in the impugned order dated 18.08.2010 have already been reinstated by this Tribunal vide common judgment dated 12.06.2012 passed in Service Appeal bearing No.3125/2010 which judgment was upheld by the august Supreme Court of Pakistan vide judgment dated 19.09.2012 in Civil Petitions No.401 to 409-P/2012; that another official namely Adnan Yaqoob named in the impugned order was also reinstated by this Tribunal vide judgment dated 26.01.2018 in Service Appeal bearing No.308/2016. Learned counsel for the appellant stressed that the appellant being a similarly placed person is also entitled to similar relief.


4. As against that learned Deputy District Attorney argued that the matter cancellation of appointment order pertains to the year 2010 while the appellant approached this Tribunal in the year 2017 as such the present service appeal is hopelessly time barred. Further argued that the appellant was appointed without fulfillment of codal formalities thus the appointment of appellant was illegal.

5. Arguments heard. File perused.

6. Vide the impugned order dated 18.08.2010, not only the appointment order dated 29.07.2010 of the appellant was cancelled but twenty (20) other officials also appointed in the month of July, 2010, were also deprived from service. Admittedly several officials mentioned in the impugned order were later on reinstated in service vide common judgment dated 12.06.2012 passed in Service Appeal bearing No.3125/2010 and the august Supreme Court of Pakistan vide its judgment/order dated 19.09.2012 upheld the aforementioned common judgment of this Tribunal. Similarly Service Appeal bearing No.308/2016 of Adnan Yaqoob also mentioned in the impugned order, was also accepted vide judgment dated 26.01.2018.

6.8.2019

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

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7. When other officials who earlier challenged the impugned order dated 18.08.2010 through service appeals have been reinstated in service and issue involved in the case of appellant and those other officials is one and the same i.e. appointment without fulfilment of codal formalities, this Tribunal is of the considered opinion that the appellant is also entitled to reinstatement in service. This Tribunal however observes that at a belated stage i.e. in the year 2017, the appellant approached this Tribunal and assailed the order pertaining to the year 2010.

8. As a sequel to above, in the interested of justice and similarity of point involved in the present service appeal and above mentioned service appeals, the delay in filing the present service appeal is condoned while relying upon the judgment of Apex Court reported in 2002 PLC (C.S) 268. The impugned order dated 18.08.2010 in relation to the appellant, is also set aside and the appellant is reinstated in service without back benefits. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
06.08.2019

Certified to be true copy
 EX-111111
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Appeal: 20-8-19
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بعدالت

K.P Service Tribunal, Peshawar

2ء مخائب
بنام

Zabeen Khasi

vs

Govt of KP

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے جیسی صاحب ری کار کا کارہا متعلقہ

کیلئے سپردنمان علمی چارج

آن مقام پیشاد

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 ثالث و فیصلہ پر حلف دینے جو اب وہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی 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 مختار 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 باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھد یا کہ سندر ہے۔

Attested & Accepted

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ماہ

المقوم

ذی بیگ خان

کے لئے منظور ہے۔

مقام