

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 920/2016

Date of Institution ... 23.08.2016
Date of Decision ... 22.06.2022

Wali Khan, Ex-Driver (BPS-4), Government Postgraduate College,
Bannu.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Higher
Education Department, Peshawar and two others.

... (Respondents)

Inayat Ullah Khan,
Advocate,

... For appellant.

Muhammad Adeel Butt,
Additional Advocate General

... For respondents.

Rozina Rehman
Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

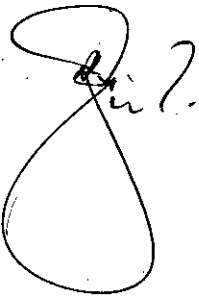
**"On acceptance of this appeal, the impugned orders
dated 14.07.2015 and 25.05.2016, may kindly be set
aside and the appellant may be reinstated into service
with all back benefits and wages of service".**

2. Brief facts of the case are that appellant was initially
appointed as Driver. While serving in the said capacity, appellant
applied for extraordinary leave which was accordingly sanctioned and

granted w.e.f 04.03.2014 to 31.12.2014 vide order dated 04.03.2014. After availing the said extraordinary leave, he requested the respondent No.3 for extension of leave and as such he was verbally assured that the same would be extended. In the meanwhile, without adhering to the due procedure as prescribed under the law and rules, appellant was terminated from service vide order dated 14.07.2015. The appellant came back to Pakistan however he was informed regarding his termination. Feeling aggrieved he submitted departmental appeal within 30 days of the date of information about his termination, however, his departmental appeal was rejected. He then filed writ petition before Hon'ble Peshawar High Court Bannu Bench which was dismissed being not maintainable, hence, the present service appeal.

3. We have heard Inayat Ullah Khan, Advocate learned counsel for the appellant and Muhammad Adeel Butt, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

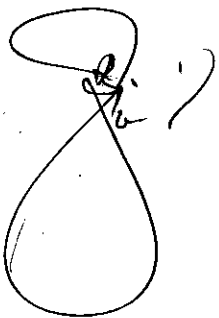
4. Inayat Ullah Khan Advocate, learned counsel for the appellant inter-alia argued that the appellant was not treated in accordance with law hence his rights secured and guaranteed under the law were badly violated. He submitted that no proper procedure was followed before termination of appellant as neither he was served with any absence notice nor any publication was made in the newspaper, thus, the impugned order was passed in violation of the expressed provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Learned counsel further contended that the appellant was not allowed any opportunity of personal hearing and thus he was



condemned unheard. He submitted that the appellant served the Department for about eight years having spotless service career, therefore, the extraordinary leave already granted to the appellant was to be extended as per assurance of authority. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG submitted that extraordinary leave was granted to the appellant w.e.f 04.03.2014 to 31.12.2014 and he was not verbally assured that his leave would be extended. He submitted that the appellant was terminated after fulfilling all codal formalities. Notices were issued to the appellant to resume duty. Final show cause notice was published in daily "AAJ" Peshawar, wherein, the appellant was directed to resume duties but the appellant did not bother to resume his duty.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant applied for extraordinary leave which was sanctioned and granted w.e.f 04.03.2014 to 01.07.2014 (120 days on full pay) and then w.e.f 02.07.2014 to 31.12.2014 (183 days on half pay). This fact is not disputed and proper office order dated 04.03.2014 in this regard is available on file. It is the case of appellant that he further applied for extension of leave which fact was also admitted by the respondents in a letter addressed to the present appellant from the Principal Government Postgraduate College Bannu and has been annexed with the comments, wherein, the application seeking extension of leave for further six months by the appellant has been admitted. The appellant

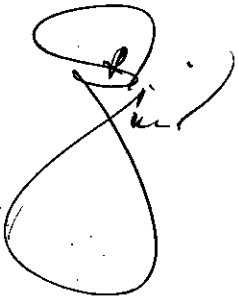
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was a regular employee and there is nothing on file which could show that he had already availed leave or he was not entitled to further leave. His application was not considered and he was not properly informed as per law. Admittedly, the appellant was proceeded against departmentally for willful absence. Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides procedure in case of willful absence which is hereby reproduced for ready reference:

"9. Procedure in case of willful absence. –

Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant".


7. As per law, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued through registered acknowledgement by the competent authority. In the instant case, no such notice is available on file which could show that the



present appellant had properly been informed to resume duty which means that the procedure in case of willful absence prescribed by the law was not properly followed by the competent authority. Even the impugned order dated 14.07.2015 is alien to the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 because the competent authority issued the termination order of the appellant due to long absence. There is no mention as to whether he was removed or dismissed from service.

8. In view of the above, instant service appeal is partially accepted. Appellant is reinstated into service with direction to respondents to conduct de-novo inquiry within 90 days of the receipt of this judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the recorded room.

ANNOUNCED.
22.06.2022


(Rozina Rehman)
Member (J)


(Farzeha Paul)
Member (E)

ORDER

22.06.2022


Appellant present through counsel.

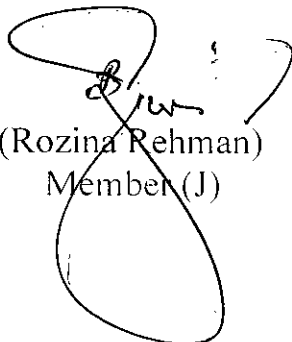
Muhammad Adeel Butt, learned Additional Advocate General for respondents present. Arguments heard. Record perused:

Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is partially accepted. Appellant is reinstated into service with direction to respondents to conduct de-novo inquiry within 90 days of the receipt of judgment. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the recorded room.

ANNOUNCED.

22.06.2022

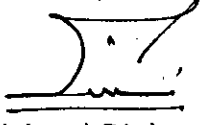

(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

21.10.2021

Counsel for the appellant and Mr. Javidullah, Asstt. AG for the respondents present.

Learned counsel for the appellant seeks adjournment in order to prepare the case. Request is accorded. Case to come up for arguments on 21.02.2022 before the D.B.


(Salah-ud-Din)
Member(J)


Chairman

21.02.2022


Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 24.05.2022. for the same as before.


Reader

24th May, 2022

Junior to counsel for the appellant present. Mr. Naseerud Din Shah, Asstt. AG for the respondents present.

Former seeks adjournment due to non-availability of learned senior counsel for the appellant. The appeal pertains to the year, 2016. Last chance is given to the appellant for arguments, otherwise, the case will be decided on the basis of available record without the arguments. To come up for arguments on 22.06.2022 before the D.B.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

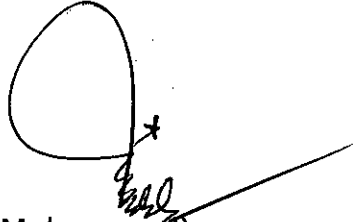
22.03.2021

Junior to counsel for the appellant present.

Addl: AG for respondents present.

Former requests for adjournment as issue involved in the present case is pending before a Larger Bench of this Tribunal.

Adjourned to 19/7/2021 for arguments before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member(J)

12.07.2021

Appellant in person present.

Mr. Kabirulah Khattak, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 21.10.2021.



(ROZINA REHMAN)
MEMBER (JUDICIAL)



CHAIRMAN

17.11.2020

Counsel for appellant present.

Kabirullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment as issue involved in the present case is pending before a Larger Bench of this Tribunal.

Adjourned to 12.02.2021 for arguments before D.B.



(Atiq ur Rehman Wazir)
Member (E)



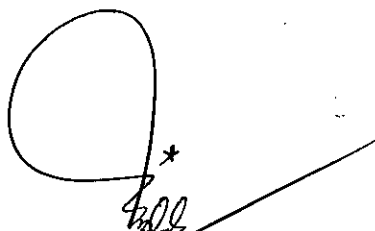
(Rozina Rehman)
Member (J)

12.02.2021

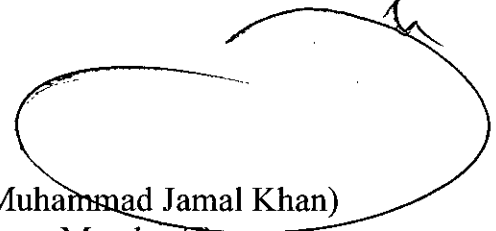
Appellant in person present. Adl: AG alongwith Mr. Jehanzeb, Supdt for respondents present.

Appellant requests for adjournment due to general strike of the Bar.

Adjourned to 22.3.2021 for arguments before D.B.



(Mian Muhammad)
Member (E)



(Muhammad Jamal Khan)
Member (J)

4.5 .2020

Due to COVID19, the case is adjourned to

15/7/2020 for the same as before.

Reader

15.07.2020

Mr. Inayatullah Khan the learned counsel representing appellant is present. Mr. Usman Ghani, District Attorney alongwith representative of the department Mr. Jehanzeb, Superintendent for the respondents is present.

Since the question involved in the instant appeal is with respect to the point as to whether any order by a competent authority can be passed giving it retrospective effect. In this regard all cases pertaining to the point involved are fixed before a full bench of this Tribunal, therefore, this case is adjourned to 14.09.2020 and be placed before Hon'ble full bench of this Tribunal.

(Mian Muhammad)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

14.09.2020

Appellant present in person.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment as his counsel is not in attendance; adjourned. To come up for arguments on 17.11.2020 before D.B.

(Atiq ur Rehman)
Member (E)

(Rozina Rehman)
Member (J)

21.01.2020

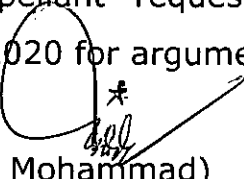
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 05.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

05.03.2020

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 04.05.2020 for arguments before D.B.


(Mian Mohammad)
Member


(M. Amin Khan Kundi)
Member

30.09.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 01.11.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

01.11.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 11.12.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.12.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel seeks adjournment due to general strike of the Bar. Adjourned. To come up for arguments on 21.01.2020 before D.B.


Member


Member

24.06.2019

Appellant in person and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Appellant submitted application for adjournment. Adjourn. To come up for arguments on 23.07.2019 before D.B.


Member


Member

23.07.2019

Clerk of counsel for the appellant Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 21.08.2019 for arguments before D.B.



(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

21.08.2019

Clerk of counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 30.09.2019 for arguments before D.B.


(Hussain Shah)
Member

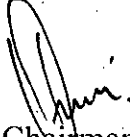

(M. Amin Khan Kundi)
Member

26.12.2018

Miss Roaida Khan, Advocate submitted Wakalat-Nama on behalf of the appellant and requests for adjournment in order to further prepare the brief. Mr. Muhammad Raiz Khan Painda Khel, Asstt. AG for the respondents present.

Adjourned to 27.02.2019 for arguments before the D.B.


Member


Chairman

27.02.2019

Junior to counsel for the appellant and Asstt. AG for the respondents present.

Learned counsel for the appellant requests for adjournment as the learned senior counsel for the appellant is away to conduct cases in Bannu Bench of Peshawar High Court.

Adjourned to 02.05.2019 before the D.B.


Member


Chairman

02.05.2019

Appellant with counsel and Mr. Riaz Paindakhel Assistant Advocate General for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 24.06.2019 before D.B.


Member


Member

07.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018 before D.B.


Reader

19.07.2018


Clerk counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. ~~Clerk~~ counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 13.09.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

13.09.2018

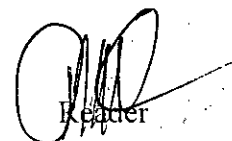
Learned counsel for the appellant and Mr. Usman Ghani Learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member


06.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 26.12.2018 before D.B.

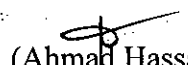

Reader

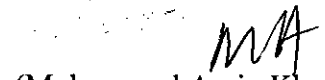
03.08.2017 Clerk of counsel for the appellant and Asstt. AG alongwith Murad Khan, Supdt. for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Adjourned. To come up for final hearing before the D.B on 06.12.2017.


Member


Chairman


06.12.2017 Clerk to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondent also present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 09.02.2018 before the D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Amin Khan Kundi)
Member (J)


09.02.2018 Appellant in person present. Mr. Usman Ghani, Learned District Attorney alongwith Mr. Murad Khan Superintendent for the respondents present. Appellant seeks adjournment as his counsel is not available. Adjourned. To come up for arguments on 26.03.2018 before D.B


(Gul Zeb Khan)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

26.03.2018 Clerk to counsel for the appellant and Mr. Riaz Paindakheil, learned Assistant Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for arguments on 07.05.2018 before D.B


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

19.12.2016

Counsel for the appellant and Mr. Asif Khan, AD alongwith Assistant AG for respondents present. Written rely submitted on behalf of respondents No. 1 to 3. The appeal is assigned to D.B for rejoinder and final hearing on 02.02.2017.

Member

02.02.2017

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 17.04.2017 before D.B.

(ASHFAQUE TAJ)
MEMBER

(MUHAMMAD AMIR NAZIR)
MEMBER

17.04.2017

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Adjourned. To come up for arguments on 03.08.2017 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

07.09.2016

Counsel for the appellant present. Learned counsel for the appellant submitted that the appellant was appointed as Driver in the year 2007, he was terminated from service vide impugned order dated 14.07.2015 without any notice or observing other codal formalities. He next stated that his departmental appeal was rejected on 26.05.2016 and for want of jurisdiction, the Hon'ble High Court Bannu Bench vide its order dated 21.07.2016 advised the appellant to approach proper forum hence this service appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which is within time. The learned counsel submitted that valuable rights of the appellant have been violated due to the impugned unlawful order and no opportunity of hearing and defense has been provided to the appellant which is against the concept the natural justice.

Appellant Deposited
Security & Process Fee

Points urged at the Bar need further consideration. Admit. Subject to deposit of security and process fee within 10 days where-after notices be issued to the respondents for written reply/comments for 03.11.2016 before S.B.

Member

03.11.2016



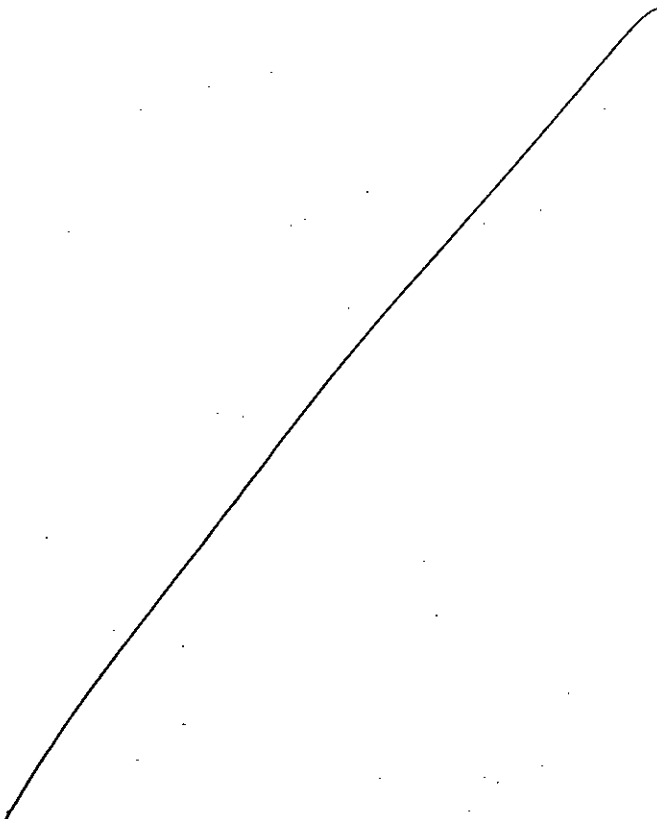
Clerk to counsel for the appellant, Irfanullah, Assistant Director for respondents No. 1, 2 and Allah Dad, Law Officer for respondent No. 3 alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 19.12.2016 before S.B.

Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 920/2016


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/08/2016	<p>The appeal of Mr. Wali Khan resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	2-9-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>07-09-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Wali Khan Ex-Driver GPGC Bannu received today i.e. on 23.08.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Appeal may be page marked.
- 4- Annexures of the appeal may be flagged.
- 5- Five more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1382 /S.T,

DL. 24-8 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Sis

Resubmitted after completion

Ijaz Anwar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 920 /2016

**Wali Khan, Ex-Driver (BPS-4), Government Post Graduate
College, Bannu.**

(Appellant)

VERSUS

**Government of Khyber Pakhtunkhwa, through Secretary
Higher Education Department, Peshawar and others.**

(Respondents)


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3	Service Book	B	8-14
4	Order dated 04.03.2014	C	15
5	Order dated 14.07.2015.	D	16
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Appellant

Through


IJAZ ANWAR
Advocate Peshawar.

&

SAJID AMIN
Advocate Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 873

Dated 23/8/2016

Appeal No. 920/2016

**Wali Khan, Ex-Driver (BPS-4), Government Post Graduate
College, Bannu.**

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Higher Education Department, Peshawar.
2. The Director Higher Education (Colleges), Khyber Pakhtunkhwa Peshawar.
3. The Principal Government Post Graduate College, Bannu. Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 14.07.2015, whereby the appellant has been awarded the major Punishment of Removal from Service, against which his departmental appeal has also been regretted vide order dated 26.05.2016.

Prayer in Appeal: -

On acceptance of this appeal the impugned orders dated 14.07.2015 and 26.05.2016, may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.

Filed to-day

Registrar

Respectfully Submitted:

1. That the appellant was initially appointed as a Driver with the Respondent No. 3 vide order dated 03.08.2007. The appellant after having being found medically fit, duly took over charge of his post and started performing his duties. *(Copy of the appointment order dated 03.08.2007 is attached as Annexure A)*

Registrar

31/8/16

2. That it is pertinent to mention here that the service book of the appellant was also prepared for the purpose of pay and pension. **(Copy of the service book is attached as Annexure B)**

Re-submitted to -day
and filed.

3. That ever since his appointment the appellant has performed his duties as assigned with zeal and devotion and there was no complaint what so ever regarding his performance.
4. That while serving in the said capacity, the appellant applied for Extra ordinary leave which was accordingly sanctioned and granted with effect 04.03.2014 to 31.12.2014, vide order dated 04.03.2014. As there was huge amount as debt, outstanding against his family therefore he had went abroad for the satisfaction of such debt through earning means. **(Copy of the order dated 04.03.2014, is attached as Annexure C)**
5. That after availing the said extra ordinary leave, the appellant requested the respondent No. 3 for the extension of his leave and as such he was verbally assured that the same will be extended therefore, he continued laboring abroad.
6. That in the meantime, without adhering to the due procedure as prescribed under the Law and rules, the appellant was removed from service vide order dated 14.07.2015. It is pertinent to mention here that the removal order was also not communicated to the appellant.
7. That when the appellant came back to Pakistan he reported for duty, however, he was informed that he has been removed from service vide order dated 14.07.2015. However the removal order was not conveyed to the appellant and he was only handed over letter dated 08.08.2015. **(Copy of the letter dated 08.08.2015, is attached as Annexure D)**
8. That aggrieved from the impugned order, the appellant submitted his departmental appeal on 03.12.2015 i.e within 30 days of the date of information about his removal from service, however the departmental appeal was also rejected vide order dated 26.05.2016. **(Copies of the departmental appeal and rejection order dated 26.05.2016, is attached as Annexure E & F)**
9. That thereafter the appellant due to a bonafide mistake filed constitutional petition No. 556-B/2016, before the Honorable Peshawar High Court, Bannu Bench. However the writ petition of the appellant also been dismissed by the Honorable High Court being not maintainable vide order and judgment dated 21.07.2016. Attested copy of the judgment was however provided to the appellant on 25.07.2016. The operative Para of the judgment is reproduced as under;

“For the reasons discussed above this petition being not maintainable stands dismissed in limine, however the petitioner is at liberty to approach proper forum for his grievance, if so desired.”

(Copies of the memo of writ petition and judgment dated 21.07.2016 is attached as Annexure G & H)

10. That the impugned orders are illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF SERVICE APPEAL.


- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are baldly violated.
- B. That no proper hearing has been followed before the removal of the appellant neither he has been served with any absence notice nor any publication has been made in the newspaper, thus the impugned order is passed in violation of the express provisions of Government Servants (E & D) Rules, 2011 and is thus nullity in the eyes of law.
- C. That the appellant has not been allowed opportunity of personal hearing thus condemned unheard.
- D. That no absence notice has been issued to the appellant nor any publication has been made in the news paper before the imposition of penalty upon the appellant.
- E. That the appellant has served the department for about 8 years having unblemished and spotless service career with all his honesty and dedication, therefore the extra ordinary leave already granted to the appellant was to be extended as per assurance of his appointing authority/ respondent No.3.
- F. That the alleged rejection of further leave in the light assurance made by Respondent No.3 as well as impugned order both are discriminatory and arbitrary and also violative of the codal formalities as the worthy principal of the college was very much in the knowledge that the appellant was abroad, but neither any notice nor any advertisement in the news paper was issued against the appellant for joining his duties, as required by the law and rules.

- G. That the appellant is an experience driver and due to poor financial position of his family, hence seeks sympathetic consideration regarding his reinstatement of service with all its back benefits.
- H. That such act of the respondent No.3 of removal of appellant from his service is obviously is against the principle of "audi alterim Partem", therefore liable to be discouraged.
- I. That the impugned orders are not speaking orders and are thus violative of the section 24-A of the General Clauses Act.
- J. That the appellant has been awarded the penalty of removal from service with retrospective effect, as no penalty order can be made to operate with retrospective effect, thus on this score alone the impugned is not sustainable under the law.
- K. That the appellant has never committed any act or omission which could be termed as misconduct albeit he has been removed from service.
- L. That the appellant has an unblemished and spotless service career at his credit, the penalty imposed upon him is too harsh and liable to be set aside.
- M. That the appellant is jobless since his illegal removal from service
- N. That the appellant seeks the permission of this Honorable Tribunal to rely on additional ground at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned orders dated 14.07.2015 and 26.05.2016, may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.


Appellant

Through


IJAZ ANWAR
Advocate Peshawar

&


SAJID AMIN
Advocate Peshawar

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2019

Mr. Wali Khan

Versus

Government of Khyber Pakhtunkhwa through Secretary
Higher Education department Peshawar and others

APPLICATION FOR CONDONATION OF DELAY (if any)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the impugned order dated 14/07/2015 was never communicated to the appellant in time the appellant when he report for duty in the month of February 2016, he was handed over to the impugned order by the Respondent department thereafter the appellant filed the departmental appeal within 30 days of the date of communication of the order however it was rejected on 26/05/2016 on no good grounds after that the appellant filed writ petition before the Peshawar High Court which has been dismissed on 21/07/2016 hence delay in filling the instant appeal deserved to be condoned.
3. That the Respondent department before fulfilling codal formalities terminated the appellant from service which is void order beside that the word termination is not mentioned in E & D rule 2011 as a punishment whether major or minor punishment so it also come under the definition of void order.

4. That no regular or departmental inquiry has been conducted and no opportunity of defense has been provided to the appellant.
5. That the delay if any filling the instant appeal was not willful nor can the same be attributed to the appellant as it was due to the late communication of the order to the appellant by the Respondents, therefore the appellant cannot be made suffered for the faults of others, hence delay if any deserves to be condoned.

Grounds:

- A. That the impugned orders are void order and no limitation run against the void orders.
- B. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities included limitation. The same is reported in 2004 PLC (CS) 1014 2003 PLC (CS) 769.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Appellant

Through

Sajid Amin

Advocate, High Court
Peshawar.

7 (7) ANNEX- "A"

DIRECTORATE OF HIGHER EDUCATION
GOVERNMENT OF NWFP, KHYBER ROAD PESHAWAR
Phone No.9211025-9210217 Fax No.9210242

ORDER

Consequent upon the recommendation of Departmental Selection Committee the following candidates are hereby appointed as Driver BPS-4 against the vacant post of Driver at the college mentioned against each viz Rs. (2700-115-6150) plus other usual allowances as admissible under the Rules in the interest of public service with effect from their date of taking over charge.

S.No.	Name / Father Name/Address	Name of College	Appointed as	Remarks
1.	Wali Khan S/O Abdullah Khan resident of Kotka Babu Jan Daigan Shadi Khan	GPGC, Bannu	Driver	Against Vacant Post.
2.	Dildar Khan S/O Guldar Ali Khan resident of Sher Dil Yarak Khel Mandan.	GPGC, Bannu	Driver	Against Vacant Post.

Terms and Conditions:

1. Their appointments are purely on contract basis.
2. They should produce health and age certificates from the Civil Surgeon concerned.
3. Their services are liable to termination on one month's notice from either side. In case of resignation without notice, their one month's pay / allowances (if any) shall be forfeited to the Govt.
4. No. pensionary benefits what so ever will be allowed.
5. They should be governed by such rules/ policies issued by the Provincial Govt. from time to time.
6. Charge reports should be submitted to all concerned.
7. No. GPF contribution will be made from their salary. However they will contribute 10 % of the pay as C.P. Fund.

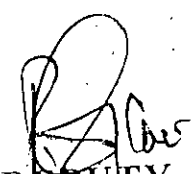
(PROF. AFTAB JEHAN)
DIRECTOR HIGHER EDUCATION

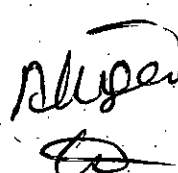
Endst. NO. 16071-75 CA-VII/Estab Branch

Dated 3/8/2007

Copy forwarded to:-

1. Principal GPGC, Bannu w/r to his recommendation bearing No. 945 dated 23-7-2007.
2. DAO Bannu.
- 3-4 Drivers Concerned.


DEPUTY DIRECTOR
HIGHER EDUCATION, NWFP



ANNEX B

1. Name (پت) Wali Khan
2. Nationality and Religion Islam/Pakistan
(قومیت اور مذہب)
3. Residence Kotla Babu Jan Dagan
(مستقل رہائش) Shadi Khan Distt. BANNU
4. Father's Name and Residence Abdullah Khan
(والد کا نام اور پتہ)
5. Date of birth Christian era as nearly as can be ascertained 1974
(تاریخ پیدائش مطابق سن عیسوی)
6. Exact height by measurement 5' 8"
(قد و قامت)
7. Personal mark of identification Moli forehead
(نشان شناخت)

8. Left hand/right hand thumb and finger impressions of (Non-gazetted officer)
(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چھنگلیا) Ring Finger (چھنگلیا کے ساتھ کی انگلی) Middle Finger (انگشت میاںہ)

Fore Finger (انگشت شہادت) Thumb (انگوٹھا)

ولی خان

9. Signature of Govt. Servant (سرکاری ملازم کے دستخط)

10. Signature and designation of the Head of the Officer or other Attesting Officer

(تصدیق کنندہ افسر کے دستخط اور مہر)

ASL

Note: The entries in this page should be renewed or re-aggsted at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 hears under this rule.

ASL

1	2	3	4	5	6	7	8	9
Name of Post	Whether Substantive of officiating any whether permanent or temporary	It officiating state. (1) subatative appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (Pb) Volume II اگر عارضی ہے تو رول کے مطابق پیشکش کا مستحق ہے؟	Pay in substantive position	Additional pay for officiating	Other emoluments falling under the term pay	Date of appoint. Ment	Signature of government servant	Signature of Head of office or attesting officer column 1
			Rs. Ps.	Rs. Ps.	الاولئ	تاریخ تقرری	دستخط کارگری ملازم	دستخط افسر مجاز
(BPS No 4 (2700 - 115 - 6150))								
Driver BPS BANNI	Temp			2700/-		5-9-2007		
(Revised BPS No 4 (3240 - 140 - 7440))								
Driver BPS				3240/-		17-12-2008		
do				3380/-		01-12-08		

Abdul

ASL

8 Signature of government servant	9 Signature and designation of the Head of the office or other attesting officer	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal etc.)	12 Signature of the head of the office or other Attesting Officer	13 Nature and duration of leave taken	13 Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitible to another Government	14 Signature of the Head of the office other attesting officer	15 Reference to any recorded punishment of censure, or reward, or praised o the Government servants
6150)	دستخط سرکاری ملازم دستخط افسر مجاز	تاریخ انقطاع ملازمت	وجوہات انقطاع ملازمت ترقی تبادلی یا برطرفی	دستخط افسر مجاز	رخصت کی نوعیت و معیار	چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین Period Government to which debitible	دستخط افسر مجاز	سزایا جزایا غیر مناسب کارکردگی کا ریکارڈ
440)	Principal P. G. C. Bannu	30/11/07	Medical	دستخط افسر مجاز	6 pay	Appointed as Driver in BPS N-4 vide DHE NWFP Resh. Order No 16071-75/CA-VII/EC/96 Branch alt. 3/9/2007 on Contract basis.	دستخط افسر مجاز	Dr
12/8	Principal P. G. C. Bannu	30/11/08	Medical	دستخط افسر مجاز	6 pay	Dr	دستخط افسر مجاز	Dr

District Accounts Office
BANNU

Service verified from 01-12-07
10-30-11-2008
Rool & other Office Bannu

Principal
P. G. C. Bannu

Principal
P. G. C. Bannu

Principal
P. G. C. Bannu

1	2	3	4	5	6	7	8	9
Name of Post	Whether Substantive of officiating any whether permanent or temporary	It officiating state. (1) subatative appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (Pb) Volume ii اگر عارضی ہے تو رول کے مطابق پیشکش کا مستحق ہے؟	Pay in substantive position تختواہ بطور عارضی ملازمت	Additional pay for officiating زائد تختواہ بطور قائم مقام	Other emoluments falling under the term pay ماسوائے تختواہ دیگر الاؤنس	Date of appoint. Ment تاریخ تقرری	Signature government servant تختواہ کی ملازمت	Signature Designated Head office or attesting column تختواہ کی سربراہی
			Rs. Ps.	Rs. Ps.				
Driver post G.P.S. BANNI	عارضی مستقل قائم مقام		A	3520/3920 P.M.		12/2010		
do			H	3560 P.M.		12/2010		
do				Rs = 5890 P.M.		01/27/2011		
do				Rs = 6120 P.M.		01/12/2011		
do				6350 P.M.		12/2012		
do				6580 P.M.		12/2013		

Office of the Accountant General
Khyber Pakhtun Khwa Peshawar
Pay Fixed in the Revised Basic Pay Scales B
Pay Fixed @ Rs 3240 w.e.f. 07-2007
Adj 140 2440 84
Pay Fixed @ Rs 3240 w.e.f. 01-07-2008
R.B.P.S - 5200 2200 2150 84
Pay Fixed @ Rs 5890 w.e.f. 01-07-2011
Date of Next Increment is on 01-12-2011

Accounts Officer
Pay Fixation Party
Peshawar

Aliga

8	9	10	11	12	13	14	15	
Signature of Government servant	Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the office or other Attesting Officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government	Signature of the Head of the office or other attesting officer	Reference to any recorded punishment of censure, or reward, or praised or the Government servants
دستخط رکاری ملازم	دستخط افرمجاز	تاریخ انقطاع ملازمت	وجوہات انقطاع ملازمت ترقی تدارک یا بطرفی	دستخط افرمجاز	رضعت کی نوعیت و مقدار	چار ماہ تک کی ارضعت کے لئے اوسط گوارا کا مشن Period: Government to which debitable	دستخط افرمجاز	سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ

Principal 30/11/2010
 Pay & bonus for the month
 9/1/2010 amounting to 5226/-
 Principal
 G.P.C. Bannu
 Principal
 G.P.C. Bannu

(2100)
 Service Verified from 1-12-2008
 To 30/11/2009
 Root & other Office Record
 Principal
 G.P.C. Bannu

Principal 30/06/2011
 P.G.C. Bannu
 Scale Revised
 Principal
 G.P.C. Bannu
 Principal
 G.P.C. Bannu

Principal 30/11/2011
 P.G. College Bannu
 Principal
 G.P.C. Bannu
 Principal
 G.P.C. Bannu
 Principal
 G.P.C. Bannu

Principal 30/11/2011
 G.P.C. Bannu
 Service Verified from 1-12-2011
 To 30/11/2012 from Acct.
 Root & other Office Record
 Principal
 G.P.C. Bannu
 Principal
 G.P.C. Bannu
 Service Verified from 1-12-2013
 To 30/11/2013 from Acct.
 Root & other Office Record
 Principal
 G.P.C. Bannu

1	2	3	4	5	6	7	8
Name of Post	Whether Substantive of officiating any whetlier permanent or temporary	It officiating state. (1) subatative appointment of (ii) whetlier service counts for pension under rule 3-20 C.S.R. (Pb) Volume ii	Pay in substantive position	Additional pay for officiating	Other emoluments falling under the term pay	Date of appoint. Ment	Signature of government servant
			Rs. Ps.	Rs. Ps.			
درجہ ملازمت	عارضی مستقل قائم مقام	اگر عارضی ہے تو رول کے مطابق پیشکش کا مستحق ہے؟	تختواہ بطور عارضی ملازمت	نہ تختواہ بطور قائم مقام	ماسوائے تختواہ دیگر الاؤنس	تاریخ تقرری	دستخط سرکاری ملازم
Driver Post							
G.P.C. Bannu				Rs = 6810/-		12/2014	
				Rs = 6810/-		12/2014	

Signature of the Head Office attesting in attestation column

All Gov

9	10	11	12	13	14	15	
Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the officer or other Attesting Officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government	Signature of the Head of the office other attesting officer	Reference to any recorded punishment of censure, or reward, or praised of the Government servants
دستخط افسر مجاز	تاریخ انتقال ملازمت	وجوہات انتقال ملازمت ترقی جابر یا برطرفی	دستخط افسر مجاز	رضعت کی نوعیت ومعیار	چار ماہ تک کی رخصت کے لئے اوسط تنخواہ کا مہین Period گورنٹ	دستخط افسر مجاز	سزا یا جزا غیر مناسب کارکردگی کا ریکارڈ

دستور
سرکار

443
15-2-16

Drank = 111729 days
Salem 7 (120) days

Leave from 4/3/2014 to 31/12/2014
on full pay
on 1/2 pay

on 2/7/14 to 31/14
12 on 1/2 pay

(i) 4/3/2014 to 31/12/2014
(120 days) in full pay

(ii) 2/7/2014 to 31/12/2014
(183 days) in half pay

vide Principal
Govt. Post Graduate
College Badli
Office Endst. no
1352-54 dt:
4/3/2014

Principal
G.P.G.C. Badli

Termination Order
in No. M. Wali Khan
Driver G.P.C. Badli
vide D.H.K. 12/16/15
No 1765-5-47 dt. 14-7-2015
Endst. no Principal G.P.C. Badli
No 1452-53 dt. 8/8/2015
Terminated from Service W.B.F.
01/01/2015.

Principal
G.P.G.C. Badli

Handwritten initials

ANNE

OFFICE OF THE PRINCIPAL GOVT POST GRADUATE COLLEGE BANNU

OFFICE ORDER

Under the leave Rules, 1984, sanction is hereby accorded in respect of Mr. Wali Khan Driver of Govt Post Graduate College Bannu as per detailed below:-

- 1. wef: 4/3/2014 to 1.7.2014 120 days on full Pay
- 2. Wef: 2/7/2014 to 31/12/2014 183 on half Pay.
(183 days).

Notes:

Necessary Entry to this effect should be made in his Service Book.

[Signature]
(Prof: Sharifullah Khan)
PRINCIPAL

Govt Post Graduate College
Bannu Professor

Order No. 352-54 / dated Bannu the 4/3/14

Copy to the:-

- 1) The District Accounts officer, Bannu
- 2) The Superintendent, local College.
- 3) P/File of the official

[Signature]
PRINCIPAL
Govt Post Graduate College
Bannu
Principal
G.P.G.C Bannu
Professor
G.P.G.C Bannu

Wali Khan
etc
[Signature]
ASC

[Signature]

16- ANNEA



OFFICE OF THE PRINCIPAL, GOVT. POST-GRADUATE COLLEGE BANNU
OUTSIDE MIRYAN GATE BANNU CITY
PH & FAX# 0928-660011, E-mail: Cs_gpgcbannu@yahoo.com, riaz_gpgcbannu@yahoo.com
Web Site: www.gpgcbannu.edu.pk

No. _____/GPGC/Bannu

Dated: ____/____/2015

To
Mr. Wali Khan (Ex-Driver) GPGC, Bannu
Residence: Village Babo Jan Degan Shadi Khan
District Bannu.

Subject: TERMINATION ORDER

Memo:
You are hereby informed that the Director Higher Education (the competent authority) has terminated your services vide his notification No: 17645-47 dated 14/07/2015, due to long absence from duty without any information to the quarter concerned. (Copy of the notification attached). *Terminated from service W.E.F. 01/01/2015*

Encl: (a.a)

Sd/-
(Professor Sharifullah Khan)
PRINCIPAL
GOVT POST GRADUATE COLLEGE BANNU

Endstt: No. 1419-53 Dated 8/8 /2015

Copy for information to:

1. PS to Secretary Higher Education Khyber Pakhtunkhwa, Peshawar.
2. The Director Higher Education Khyber Pakhtunkhwa, Peshawar his No. 17645-47 dated 14/07/2015.
3. District Account Officer Bannu.
4. Office file

etc
[Signature]
asc

[Signature]
PRINCIPAL
GOVT POST GRADUATE COLLEGE BANNU

[Signature]

Mugall
[Signature]

(17)

ANNEX E

(17)

To,

The Director Higher Education KPK Peshawar

Subject:

Departmental Appeal against the order of Termination vide No. 1451/Govt Post Graduate Collage Bannu Dated: 08/08/2015 received and communicated to the appellat on 10/03/2016, passed by the principal GPGC Bannu.

Prayer:

on acceptance of this departmental appeal the impugned order of removal from service of Appellant referred above may very kindly be set aside by re-instating the appellat as driver (BPS 4) in service with full back benefits.

Respected sir,

1. That the Appellant was appointed as driver vide order dated 03/08/2007 at GPGC Bannu and he functioned as such at the entire satisfaction of his superiors.
2. That The Appellant was granted extra ordinary leave with effect from 04/03/2014 to 31/12/2014 which is evident from his service book, Photo copy of service book is enclosed herewith.
3. That The Appellant having some domestic problems submitted an application for extension of his leave and he was given the impression that the said extension was granted and as such the appellat was proceeded abroad, Saudi Arabia for earning money for satisfaction of family debts were from he returned back in February 2016.
4. That The appellat when appeared before the principal GPGC Bannu for re-joining his service as driver, he was on 10/03/2016 informed by giving the termination order dated 08/08/2015 and hence this departmental appeal inter alia on the following grounds.

etc
ABC

Accepted

18

Grounds of Appeal

1. That The Appellant has served about eight years the unblemished and spot less service carrier and with all his honesty and dedication, Therefore the extra ordinary leave already granted to the appellant was to be extended as the same impression was given to the appellant but its subsequent rejection and that too without notice is obviously against the principal of natural justice.
2. That The alleged rejection of further leave as well as the impugned order of termination both are discriminatory and arbitrary and also violative to the codal formalities as the worthy principal was very much in the knowledge that the appellant was abroad but neither any notice nor any advertisement in the international NEWS Paper was issued to him as required by the law and rules.
3. That The appellant is an experienced driver and the lonely source of income of his large family seeks a sympathetic view with regard to his reinstatement moreover the post of driver at GPGC Bannu is still lying vacant therefore it will also be in the best interest of the institution to oblige the humble appellant.
4. That The appellant seeks permission of his personal appearance before your honor for detail explanation of his case with humble prayer.

It is therefore respectfully prayed that on acceptance of this departmental appeal the impugned order of removal from service of Appellant referred above may very kindly be set aside by re-instating the appellant as driver (BPS 4) in service with full back benefits.

Date: 12/03/2016

Handwritten initials and signature

Handwritten signature

Wali Khan S/O Abdullah Khan
R/O Kotka Babu Jan Village Degan Shadi Khan
Area Suranni Bannu.

(Your's Humble Appellant)

Handwritten signature



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 9210215

No. 15213 /CA-VII/Estt: Branch/A-167

Dated Peshawar the 26/8 2016

To

Mr. Wali Khan, Ex-Driver,
R/O Kotka Babu Jan, Village Degan Shadi Khan,
Area Surrani(Bannu).

Subject: - APPEAL.
Memo:-

I am directed to refer to the subject noted above and to inform you that you were removed from service on 14.07.2015 while you have submitted appeal for reinstatement on 14.03.2016, which is badly time barred, hence regretted.

Handwritten signature
ABC

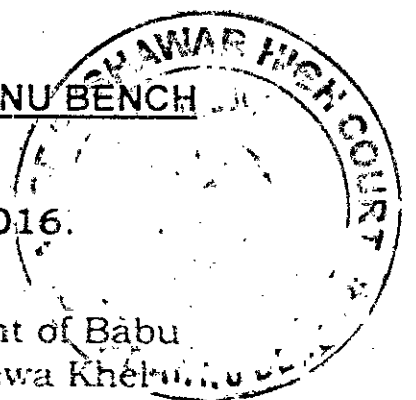
Handwritten signature
DY: DIRECTOR (ESTABLISHMENT)

Handwritten signature

ANNEX "G"

20

BEFORE THE PESHAWAR HIGH COURT BANNU BENCH



WRIT PETITION NO. 556 -B /2016.

Wali Khan S/O Abdullah Khan resident of Babu Jan village Daigan Shadi Khan P/O Mewa Khehli Surani Bannu.

..... (Petitioner)

V E R S U S

1. Government of Khyber Pukhtunkhwa through Secretary Colleges, Peshawar.
2. The Director Higher Education (Colleges), Khyber Pukhtunkhwa Peshawar.
3. Principal Government Post Graduate College, Bannu.....(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAMKISTAN 1973.

PRAYER:-

ON ACCEPTANCE THIS WRIT PETITION, IMPUGNED ORDER PASSED BY RESPONDENT NO.3 VIDE DATED 14/07/2015 WHEREBY PETITIONER HAS BEEN REMOVED FROM SERVICE AS DRIVER, MAY KINDLY BE DIRECTED TO BE SET ASIDE BY DECLARING THE SAME AS UNLAWFUL, ILLEGAL AND MALAFIDE; FURTHER TO DIRECT THE RESPONDENTS TO RE-INSTA TE THE PETITIONER IN SERVICE WITH ALL ITS BACK BENEFITS, OR ANY OTHER RELIEF DEEMS FIT AND APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE, MAY ALSO BE GRANTED IN FAVOUR OF THE PETITIONER.

Filed Today
19/07/2016
Additional Registrar

[Handwritten signature]
ASC

RECEIVED
Peshawar

(21)

INTERIM RELIEF

Interim Relief may also be granted by restraining the respondents from filling up the vacant post of driver of the petitioner till final disposal of instant Writ petition.

Respectfully sheweth

- 1) That the petitioner was appointed as a Driver since 3/08/2007 at Government Post Graduate College, Bannu and has functioned as such at the entire satisfaction of his superiors. *(Photo copy of appointment order is annexed herewith as annexure "A")*.
- 2) That the petitioner was granted Extra Ordinary leave with effect from 04/03/2014 to 31/12/2014 as there was huge amount as debt, outstanding against his family, therefore, he had went abroad for the satisfaction of such debt through earning means.
- 3) That after availing said extra ordinary leave, the petitioner had requested his immediate boss /respondent No.3 for the extension of his leave and as such he was assured that the same will be extended, therefore he continued laboring abroad.
- 4) That meanwhile, the petitioner was removed from service order dated 14/07/2015.
- 5) That the petitioner when came back to

Filed Today

19 JUL 2015

Additional Registrar

ATTESTED
EXCISE
Peshawar High Court
Bannu Bench

ABC



(22)

Pakistan, he filed a departmental appeal on 03/12/2015, copy of which is annexed herewith **as annexure "B"**).

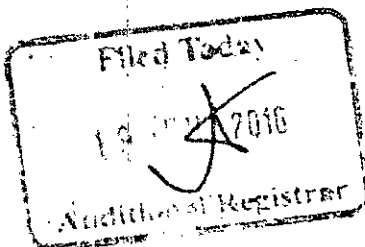
6) That the said order has already be regretted with a view that the same was time barred vide order dated 26/05/2016. (**Copy of order dated 26/05/2016 is annexed herewith as annexure "C"**).


7) That the petitioners being aggrieved from such discriminatory act of the respondents, have no other speedy and efficacious remedy but to invoke the constitutional jurisdiction of this Honourable court, inter alia, on the following grounds.

GROUND S

(i) That the petitioner has served the department for about eight (8) years having unblemished and spotless service career with all his honesty and delegation, therefore the Extra ordinary leave, already granted to the petitioner was to be extended as per assurance of his appointing authority /respondent No.3.

ii) That the alleged rejection of further leave in light of assurance, made by respondent No.3, as well as impugned order, both the are discriminatory and arbitrary and also violative of the codel formalities as the worthy Principal of the college was very much in the knowledge that the petitioner was abroad but




ASC



(23)

neither any notice nor any advertisement in the News paper was issued against the petitioner for joining his duty, as required by law and rules.

- iii) That the petitioner is an experienced driver and due to the long source of his income of his huge family seeks sympathetic consideration with regard to his reinstatement in service with all its back benefit. Moreover post of driver at Government Post Graduate College, Bannu is still lying vacant, therefore, it will be in the best interest of the said Institution/college to have an experienced driver.
- iv) That such act of the respondent No.3 of removal of petitioner from his service is obviously against the principles of "*audi alteram partem*", therefore liable to be discouraged.
- v) That the petitioner also seeks permission to rely and advance additional grounds at the time of hearing of instant Writ petition.

It is therefore, humbly prayed that on acceptance of instant Writ petition, impugned order passed by respondent No.3 vide dated 14/07/2015 whereby petitioner has been removed from service as driver, may kindly be directed to be set aside by declaring the same as unlawful, illegal and malafide;

Filed To

19 JUL 2016

Additional Registrar

ASC

Peshawar
Khan

(5) (24)

further to direct the respondents to re-instate the petitioner in service with all its back benefits, or any other relief deems fit and appropriate, in the circumstances of the case, may also be granted in favour of the petitioner.

INTERIM RELIEF

Interim Relief may also be granted by restraining the respondents from filling up the vacant post of driver of the petitioner till final disposal of instant Writ petition.

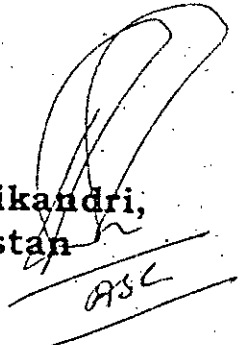
Dated 18/07/2016



Wali Khan Petitioner

Through counsel

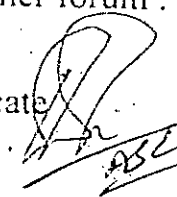
Muhammad Shah Nawaz Khan, Sikandri,
Advocate Supreme Court of Pakistan
(Stationed at Bannu)



CERTIFICATE

This is to certify that no such Writ petition of DB has been instituted before this Honourable court or any other forum.

Advocate



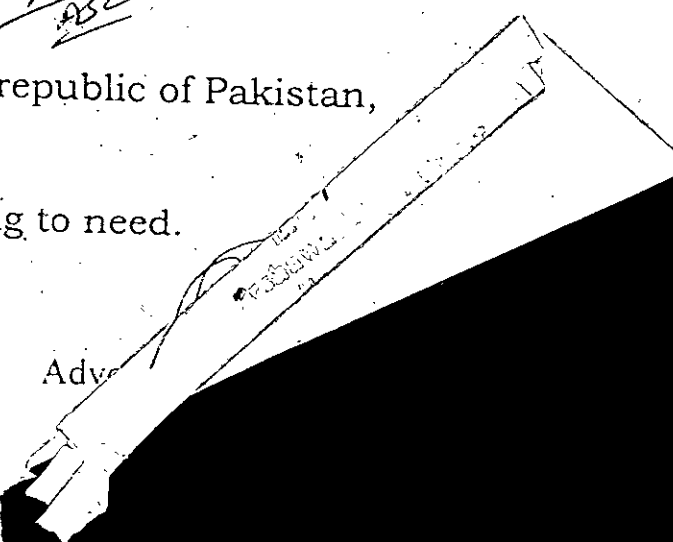
Books of law

- i) Constitution of Islamic republic of Pakistan, 1973.
- ii) Other case law according to need.

Filed Today

18/07/2016

Adve

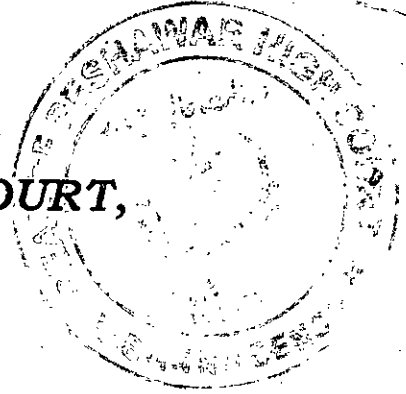


ADVICE

25

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**



(Judicial Department)

W.P No. 556-B/2010

JUDGMENT

Date of hearing 21/07/2016

Appellant-Petitioner by Mr. M.

Sheeh Nawaz Khan Sumbasi Pesh

Respondent _____

MUHAMMAD DAUD KHAN, J:- The petitioner seeks indulgence of this court by invoking writ jurisdiction for redressal of his grievance with a prayer that:-

"On acceptance of this Writ petition, impugned order passed by respondent No.3 vide dated 14/07/2015 whereby petitioner has been removed from service as a Driver, may kindly be directed to be set aside by declaring the same as unlawful, illegal and malafide; further to direct the respondents to re-instate the petitioner in service with all its back benefits"

7/1/16

RECORDED
EXAMINER
Peshawar High Court
Bannu Bench

(26)

2- The learned counsel for the petitioner argued that the petitioner had served the respective department for about 8 years having unblemished and spotless record, therefore the extra ordinary leave already granted as per assurance of his respondent No.3/appointing authority, was to be extended but without any notice, or personal hearing, as required under the law, his services were terminated by the respondent No.3, which was to be discouraged.

3. Arguments heard in motion and available record appended with the petition perused.

4. While going through the record and most particularly through the contents of the petition one could reach to an irresistible conclusion that the petitioner is a civil servant and the matter is of his re-instatement in service, which does fall within the terms and conditions of service as such, comes within the domain of Service Tribunal. The constitutional jurisdiction of the High Court, in such like matters, is barred by explicit provision of Article 212 of the Constitution. It has been settled by

mja

ATTESTED
[Signature]
[Stamp]

27

the Apex court time and again that the matters with respect to the terms and conditions of service, could not be agitated before the High Courts, through constitutional petition under Article 199 of the Constitution. Article 212 (2) of the Constitution, unambiguously bars the jurisdiction of the High Courts in the matters exclusively triable by the Service Tribunal. The constitutional jurisdiction under Art.199 of the Constitution can be invoked only, when there is no alternate remedy, available to the aggrieved party. Keeping in view the nature of grievance of the petitioner, he has the right to invoke the jurisdiction of the Service Tribunal.

5. For the reasons discussed above, this petition being not maintainable, stands dismissed in limine, however, the petitioner is at liberty to approach proper forum for his grievance, if so desired.

Announced.
21/07/2016

Sd/- Muhammad Daud Khan, J

Sd/- Haider Ali Khan, J

CERTIFIED TO BE TRUE COPY

[Handwritten Signature]

Peshawar Bench
Authoris. ... 87 of
The ... Order 1984

[Handwritten Signature]
A/Awan*

POWER OF ATTORNEY

In the Court of Rhyber Pakhtun Khan Justice Tahir Khan
Wali Khan

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Wylhs Pakhtun Khan

} Defendant
} Respondent
} Accused

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

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

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

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

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

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

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

Sajid Amin Advocate


Ijaz Anwar

Advocate High Courts & Supreme Court of Paki

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW C
FR 3 & 4 Fourth Floor, Udou Plaza, Saddar Road, Peshawar
PB-091-527215-1 Mobile-0333-9107225

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SA.No.920/2016

Mr. Wali Khan..... Appellant.

Versus

Govt. of Khyber Pakhtunkhwa
Through secretary and Director,
Higher Education Peshawar.....

Respondents.

Subject. Para Wise Comments On Behalf of Respondents, No.1,2 and 3.

Preliminary Objections.

Respectfully Sheweth:

1. That the Appellant has got no cause of action/locus standi to file the instant appeal.
2. That the Appellant has concealed material facts from the honourable Tribunal.
3. That the Honourable Tribunal lacks jurisdiction to entertain the instant appeal.
4. That the Appellant has not come to the court with clean hands.
5. That the Appellant is estopped by his own conduct to file the instant appeal.
6. That the appeal is hit by doctrine of laches.
7. That the instant appeal is based on mis-conception/mis-statement of facts, hence, liable to be dismissed.

ON FACTS

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct to the extent that extra ordinary leave was granted to the appellant with effect from 4/3/2014 to 1/7/2014 (120days with full pay) and with effect from 2/7/2014 to 31/12/2014 (183 days on half pay) attached as (Annexure-A), while the rest of the para is irrelevant.
5. Incorrect. The appellant was not verbally assured that his leave will be extended, rather the Principal, through the home address of the appellant, informed time and again that your leave is expired on 31/12/2014 and resume your duty otherwise; disciplinary action will be taken against you (Annexure-B&C).
6. Incorrect. The appellant was removed after fulfilling all codal formalities. Notices were issued to resume duty to the appellant on his home address. Moreover, final show cause notice was published in "Daily Aaj Peshawar" on 7/4/2015, wherein the appellant was directed to resume duty within 15 days and explain the reasons of his absentee, otherwise Ex-parte proceedings will be initiated against him, in which his removal is expected (Annexure-D), but the appellant did not bother to reply or resume duty. Hence Ex-parte proceeding was initiated against the appellant and he was removed from

service due to his wilful absence from duty (Annexure-E). Moreover, the removal order was communicated on the home address of the appellant through registry dated 18/8/2016 (Annexure-F).

7. Explained in the preceding para.
8. Correct that the appellant submitted Departmental appeal but his appeal was regretted on the grounds that he was removed from service on 14/7/2015 while he has submitted appeal for re-instatement on 14/3/2016, which is badly time barred (Annexure-G).
9. Correct that the appellant filed writ petition in Peshawar High Court, Bannu bench. However, the said writ petition was dismissed by the Honourable High Court.
10. Incorrect. The impugned order was passed after fulfilling all codal formalities and within the four corners of law.


Grounds;

- A. Incorrect. The appellant has been treated in accordance with law.
- B. Already explained in para-6 on facts, hence needs no further explanation.
- C. Incorrect. The appellant was provided full opportunity of personal hearing as show cause notice was issued to the appellant but he did not bother to appear and explain the reasons of his absence, hence Ex-parte proceedings were initiated against him.
- D. Incorrect. Notices were issued to resume duty to the appellant on his home address. Moreover, final show cause notice was published in "Daily Aaj Peshawar" on 7/4/2015, wherein the appellant was directed to resume duty within 15 days and explain the reasons of his absence, otherwise Ex-parte proceeding will be initiated against him, in which his removal is expected, but the appellant did not bother to reply or resume duty. Hence Ex-parte proceedings were initiated against the appellant and he was removed from service due to his willful absence from duty.
- E. Incorrect. The extension of leave was regretted and the appellant was directed time and again to resume duty but he did not comply the order.
- F. Already explained in para 6 on facts.
- G. That the appellant is irresponsible person as he remained absent from duty without approval of the competent authority.
- H. Incorrect. The Respondent No.3 issued removal order after fulfilling all codal formalities.

- I. Incorrect. The impugned order has been passed in accordance with rules.
- J. Incorrect. The competent authority has issued removal from service order on 14/07/2015 with no such remarks of removal from retrospective date (Annexure-H).
- K. Incorrect. The appellant was removed from service due to willful absence from duty which is considered as misconduct because the competent authority has time and again informed the appellant to resume duty but he did not bother to reply or resume duty.
- L. As replied above.
- M. Needs no comments.
- N. The Respondents may be allowed to raise additional grounds at the time of hearing of appeal.

Prayer:

It is, therefore, humbly prayed that the instant appeal is based on mis-conception/mis-statement and, hence, may graciously be dismissed with costs.



Secretary,

Higher Education Department
Respondent No.1



Director,

Higher Education Department.
Respondent No.2



Principal,

Government Postgraduate College Bannu,
Respondent No.3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.920/2016

Mr, Wali Khan..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa though Secretary and Director higher education & others..... (Respondents)

AFFIDAVIT

I, Asif Khan, Assistant Director (Litigation), Higher Education Department Government of Khyber Pakhtunkhwa, do hereby declare and affirm on oath, that the contents of the Para-wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Deponent


N.I.C# 1736-6043213-9

Annex-A

✓(23)
54

OFFICE OF THE PRINCIPAL GOVT. POST GRADUATE COLLEGE BANNU

OFFICE ORDER

----- Under the leave Rules, 1981, sanction is hereby accorded in respect of Mr. Wali Khan Driver of Govt Post Graduate College Bannu as per detailed below:-

- 1. wef: 4/3/2014 to 1.7.2014 120 days on full Pay
- 2. wef: 2/7/2014 to 31/12/2014 183 on half Pay.
(183 days).

Note: Necessary Entry to this effect should be made in his Service Book.

[Signature]
 (Prof: Sharifullah Khan)
 PRINCIPAL
 Govt Post Graduate College
 Bannu
[Signature] 4/3/14

Encl No 352-54 / dated Bannu the 4/3/2014

Copy to the:-

- 1) The District Accounts Officer, Bannu.
- 2) The SuoDt; local College.
- 3) P/File of the official

[Signature]
 PRINCIPAL
 Govt Post Graduate College
 Bannu
[Signature] 4/3/14

(Amended B)

✓ 53 (2)

No _____ / -Dated Bannu the _____ / 2015
From

The Principal
Govt Post Graduate College
Bannu

To
Mr. Wali Khan (Driver)
Kakta Bani Jan Dangan Shadi Khan,
Tehsil Distt: Bannu

Subject:- ARRIVAL REPORT FOR DUTY;

Memo:
It is stated that your Earned leave is expired on 31-12-2014 But you are still absent from your duty.
You are directed to resume your duty under the leave Rule, 1973 other wise disciplinary action will be taken against you.
You are once again directed that arrival should resume your duty within three days and submit the reason of absence of one month.
If you are failed, your Services will be also terminated.

SO / -
PRINCIPAL

Govt Post Graduate College
Bannu

Radst No. 178 / -Dated Bannu 29/1/15
Copy to the:- Director of Higher Education, KSK, Peshawar for information Please.

PRINCIPAL
Govt Post Graduate College
Bannu

178
[Handwritten signatures and initials]

(Anex-C)

92/22

No 171 /-P/ File/Wali kham Driver/GPGC/Bannu / 2015
From

The Principal
Govt Post Graduate College
Bannu

To

Mr. Wali kham (Driver)
Kakta Saku Jan Dangan Shadi kham
Tank District Bannu.

Subject:-

ARRIVAL REPORT FOR DUTY /2nd NOTICE:

Re:-

You Mr. Wali kham S/o Abdullah kham

Driver Govt Post Graduate College Bannu were given a notice on 29/1/2015 to report on duty within three days of the receipt of the notice but you failed. You were also asked to submit reasons of your absence from duty after the expiry of your earned leave you neither reported on duty nor did you submitted reasons for your absence in the given time. Instead you submitted an application for extension of leave for further 6 months which is contrary rules, hence not acceptable.

You are hereby directed again to ensure your arrival on duty within 15 days after the receipt of this notice failing which, disciplinary action would be taken against you which may result in termination of your services.

sd/
PRINCIPAL

Govt Post Graduate College Bannu

Encl No 272 /-Dated Bannu the 29/1/2015

Copy to the:-

1. Director of Higher Education,
Higher Education, Khyber Pukhtoon kha
Peshawar

ana
PRINCIPAL

Govt Post Graduate College
Bannu



شوک از نوٹس

آپ ولی خان (ڈرائیور) کوئٹہ بانی جان دیگان شادی خان تحصیل وڈسٹرکٹ بنوں کو Extra ordinary leave (چھٹی بغیر تنخواہ) مورخہ 24 مارچ 2014ء تا 01 جولائی 2014ء اور 2 جولائی 2014ء سے 31 دسمبر 2014ء تک کی منظوری زیر چھٹی نمبر 54-352 مورخہ 4 مارچ 2014ء دی گئی تھی چھٹی کے خاتمے پر آپ کو دوبارہ اپنی ڈیوٹی اسٹیشن پر حاضری دینا تھا مگر آپ ایسا کرنے میں ناکام رہے جس کی وجہ سے آپ کو دفتر ہذا سے زیر چھٹی نمبر 169 مورخہ 29/1/2015ء اور زیر چھٹی نمبر 272 مورخہ 20/2/2015ء نوٹس بھیجا گیا تھا کہ آپ اپنی ڈیوٹی پر حاضر ہو کر اپنی غیر حاضری کی وجہ بتائیں مگر تا حال آپ سناہنی ڈیوٹی پر حاضر ہوئے اور نہ ہی غیر حاضری کی وضاحت کی۔ لہذا آپ کو آخری بار تنبیہ کی جاتی ہے کہ آپ اس نوٹس کی اشاعت کے بعد 15/ پندرہ دنوں کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور اپنی غیر حاضری کی وجہ بتائیں بصورت دیگر آپ کے خلاف حکومت خیر بختونخوا کے 2011 E&D Rules کے مطابق یکطرفہ کارروائی عمل میں لائی جائے گی جس میں ملازمت سے برخاستگی بھی شامل ہے۔

پرنسپل گورنمنٹ پوسٹ گریجویٹ کالج بنوں

InfoKPGovt @InfoKPGovt www.infokhyberpakhtunkhwa.gov.pk Sand KP to 8333 INF(P)1812

(Handwritten signature)

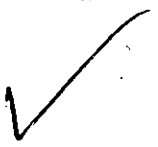
Annex - E

50/16



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 9210215



Dated Peshawar the 14/7 2015

TERMINATION ORDER

The Competent Authority is pleased to issue the termination order of Mr. Wali Khan Driver at GPGC Bannu due to long absence from duty without any information to the quarter concerned.



Endst; No. 17645-47

DIRECTOR HIGHER EDUCATION

Copy of the above is forwarded to the.

1. Principal Govt; Post Graduate College Bannu.
2. District Account Officer Bannu.
3. PA to Director Higher Education Khyber Pakhtunkhwa Peshawar.



3. Bannu

DY: DIRECTOR (ESTABLISHMENT)

*Supdt
For n/s please
←
24/7/15*

1129

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Amma-F 49/8

Received a registered addressed to _____ Date Stamp _____

Initials of Receiving Officer _____

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ Weight _____ Kilo _____ Grams _____

Name and address of sender _____ 18/8

No. 1130

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Received a registered addressed to _____ Date Stamp _____

Initials of Receiving Officer _____

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ Weight _____ Kilo _____ Grams _____

Name and address of sender _____ 18/8

No. 1131

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Received a registered addressed to _____ Date Stamp _____

Initials of Receiving Officer _____

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ Weight _____ Kilo _____ Grams _____

Name and address of sender _____ 18/8



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA,
KHYBER ROAD PESHAWAR**

Phone #: 091-9210242, 9211025/Fax # 9210215

No. 15213 /CA-VII/Estt: Branch/A-167/

Dated Peshawar the 26/8 2016

To

Mr. Wali Khan, Ex-Driver,
R/O Kotka Babu Jan, Village Degan Shadi Khan,
Area Surrani(Bannu).

Subject: - APPEAL.
Memo:-

I am directed to refer to the subject noted above and to inform you that you were removed from service on 14.07.2015 while you have submitted appeal for reinstatement on 14.03.2016, which is badly time barred, hence regretted.

[Signature]
DY: DIRECTOR (ESTABLISHMENT)

[Signature]
ASC

ANNEX

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 920/2016

Wali Khan(Appellant)

VERSUS

Govt of Khyber Pakhtukhwa through Secretary higher
Education Department others..... (Respondents)

<p><u>REJOINDER TO THE PARA WISE REPLY ON</u> <u>BEHALF OF THE APPELLANT</u></p>
--

Respectfully submitted:

The appellant submits his rejoinder as under:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appellant has illegally been removed from service hence he has got the necessary cause action/ locus standi to file the instant appeal.
2. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court and nothing has been concealed.
3. Contents incorrect and misleading, the appellant is an aggrieved civil servant, and moreover the matter relates to his terms and condition of his service hence only this honorable tribunal has got jurisdiction to entertain and adjudicate the instant appeal.
4. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.
5. Contents incorrect and misleading, no rules of estoppel is applicable to the instant case.
6. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.

7. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court.

ON FACTS

1. Contents need no reply, however contents of Para-1 of the appeal are true and correct.
2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.
3. Contents need no reply, however contents of Para-3 of the appeal are true and correct.
4. Contents need no comments to the extent of admission. Rest of the Para is incorrect. Contents of Para-4 of the appeal are true and correct.
5. Contents of Para-5 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
6. Contents of Para-6 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
7. Contents need no comments, however contents of Para 7 of the appeal are true and correct.
8. Contents need no comment to the extent of admission, rest of the Para is incorrect, no order of removal was ever communicated to the appellant and the appellant preferred his departmental appeal within thirty days from the date information of his removal from service.
9. Correct, however the appellant was given liberty to approach appropriate forum.
10. In correct. The impugned order was passed without adopting codal formalities.

GROUND

The Grounds (A to N) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for.

Wd/ur
Appellant

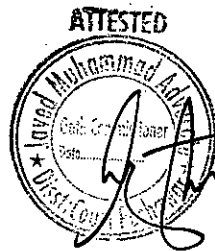
Through

Yasir Saleem
YASIR SALEEM
Advocate High Court.

Jawad Ur Rehman
JAWAD-UR-REHMAN
Advocate, Peshawar.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.



Wd/ur
Deponent

17-4-17

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 920/2016

Wali Khan(Appellant)

VERSUS

Govt of Khyber Pakhtukhwa through Secretary higher
Education Department others..... (Respondents)

<p><u>REJOINDER TO THE PARA WISE REPLY ON</u> <u>BEHALF OF THE APPELLANT</u></p>
--

Respectfully submitted:

The appellant submits his rejoinder as under:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appellant has illegally been Removed from service hence he has got the necessary cause action/ locus standi to file the instant appeal.
2. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court and nothing has been concealed.
3. Contents incorrect and misleading, the appellant is an aggrieved civil servant, and moreover the matter relates to his terms and condition of his service hence only this honorable tribunal has got jurisdiction to entertain and adjudicate the instant appeal.
4. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.
5. Contents incorrect and misleading, no rules of estoppel is applicable to the instant case.
6. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.

7. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court.

ON FACTS

1. Contents need no reply, however contents of Para-1 of the appeal are true and correct.
2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.
3. Contents need no reply, however contents of Para-3 of the appeal are true and correct.
4. Contents need no comments to the extent of admission. Rest of the Para is incorrect. Contents of Para-4 of the appeal are true and correct.
5. Contents of Para-5 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
6. Contents of Para-6 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
7. Contents need no comments, however contents of Para 7 of the appeal are true and correct.
8. Contents need no comment to the extent of admission, rest of the Para is incorrect, no order of removal was ever communicated to the appellant and the appellant preferred his departmental appeal within thirty days from the date information of his removal from service.
9. Correct, however the appellant was given liberty to approach appropriate forum.
10. In correct. The impugned order was passed without adopting codal formalities.

GROUNDS

The Grounds (A to N) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for.

[Signature]
Appellant

Through

[Signature]
YASIR SALEEM
Advocate High Court.

[Signature]
JAWAD-UR-REHMAN
Advocate, Peshawar.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.

[Signature]
Deponent

ATTESTED

[Signature]

17-4-13

WAKALATNAMA

(Power of Attorney)

BEFORE THE SERVICES TRIBUNAL KPK., PESHAWAR.

Service Appeal NO. 920/2016.

Wali Khan

(Petitioner)
(Plaintiff)
(Applicant)
(Appellant) ✓
(Complainant)
(Decree Holder)

Govt. of Khyber Pakhtunkhwa etc

VERSUS

(Respondent) ✓
Defendant)
(Accused)
(Judgment Debtor)

I/we, Wali Khan (EX-Driver) appellant

_____ in the above
noted Service Appeal, do hereby appoint and constitute **Inayat Ullah
Khan** Advocate Peshawar to appear, plead, act, compromise, withdraw or refer
to arbitration for me/ us as my/ our Counsel in the above noted matter, without
any liability for that default and with the authority to engage/ appoint any other
Advocate/ Counsel at my/ our matter.

Attested & Accepted



Inayat Ullah Khan
Advocate High Court, Peshawar.
LL.M (UK)
House No.460 Street No.12,
E/4, Phase-VII, Hayatabad Peshawar.
Cell: 0333-9227736

CLIENT

Wali Khan



Appellant

ایڈوکیٹ: محمد علی

بار کونسل ایسوسی ایشن نمبر: _____

رابطہ نمبر: 03330260000

پشاور بار ایسوسی ایشن، خیبر پختونخوا

بعدالت جناب: محمد عبدالرشید

منجانب: <u>امداد</u>	دعویٰ:
<u>محمد خالد بنام ابو جعفر</u> <u>ریٹائرمنٹ</u>	علت نمبر:
	موردہ:
	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی کارروائی متعلقہ

آن مقام کابل کیلئے روڈ اینڈ اسٹریٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے 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 مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 26-12-18

المواہد العبد

مقام کابل کے لیے منظور ہے۔