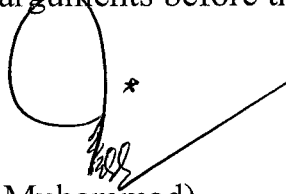
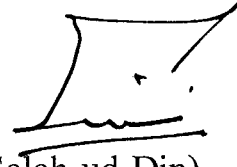


31.10.2022

Mr. Shabir Ahmad, Superintendent on behalf of the applicant present. None present on behalf of respondent, therefore, notice be issued to him through registered post and to come up for reply as well as arguments before the D.B on 20.12.2022.

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(Mian Muhammad)
Member (E)




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(Salah-ud-Din)
Member (J)

FORM OF ORDER SHEET

Court of _____

12(2) CPC Petition No. 422/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/07/2022	<p>The application U/S 12(2) CPC in appeal no. 873/2018 submitted by District & Session Judge, Abbottabad, may be entered in the relevant Register and put up to the Court for proper order please.</p> <div style="text-align: right; margin-right: 50px;">  REGISTRAR </div> <p style="text-align: center; margin-top: 20px;">This application be put up before Division Bench at Peshawar on <u>22.8.2022</u>. Original file be requisitioned. Notices to the petitioners be also issued for the date fixed.</p> <div style="text-align: right; margin-right: 100px;"> CHAIRMAN </div>
22.08.2022	<p><i>Notices issued to the parties</i></p>	<p>Nemo for the petitioners.</p> <p>Notices be issued to both the parties and to come up for reply as well as arguments on 31.10.2022 before D.B.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (Rozina Rehman) Member(J) </div> <div style="text-align: center;">  (Salah-Ud-Din) Member(J) </div> </div>

(1)

6

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

422
MS

Petition No. ___/2022
In Service Appeal No. 873/2018
Decided vide Judgment dated: 11.01.2022

Titled ^{High Court Peshawar. through Registrar} ~~Administrative Offices, Peshawar High Court Peshawar.~~
^{High Court Peshawar.}
District and Sessions Judge, Abbottabad.

....PETITIONER/ RESPONDENT

VERSUS

1. Shakeel Asharf Ex-Junior Clerk Sessions Court, Abbottabad.

....RESPONDENT/ APPELLANT

~~Administrative Offices, Peshawar High Court.~~

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10 Application for suspension order 28 - 29

Petitioner

District and sessions Judge
Abbottabad
**DISTRICT & SESSIONS JUDGE
ABBOTTABAD**

Dated: 25/10/2022

1

Before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar

Petition No. 1422/2022

In Service Appeal No. 873/2018

Decided vide Judgment dated: 11-01-2022

Khyber Pakhtunkhwa
Page No. 789
Date 25/7/22

Titled:

- 1) Administration Offices, Peshawar High Court Peshawar through Registrar High Court Peshawar
 - 2) District and Session Judge, Abbottabad
-Petitioner/Respondent

VERSUS

Shakeel Ashraf Ex-Junior Clerk Sessions Court, Abbottabad.....
Respondent/ Appellant

Petition under section 12(2) of the Civil Procedure code 1908, against the Judgment dated 11/1/2022 passed in the titled appeal whereby this Honorable Tribunal while accepting the appeal of the appellant /Respondent remanded his case to conduct proper proceedings.

Prayer in Petition

On acceptance of this petition, the Judgment dated 11/1/2022 may graciously be set aside and the titled appeal may be dismissed.

Respectfully shewith,

Brief facts leading to the instant petition are as under;

1) That Mr. Shakeel Ashraf (appellant of the titled appeal now respondent in this petition) was serving as Junior Clerk in district courts Abbottabad since 2003. That while serving in the said capacity, the appellant was proceeded against departmentally and dismissed from service vide order 26/08/2009. **(Copy of the dismissal order dated 26/08/2009 is attached as Annexure A)**

2) That against the said order of dismissal from service, appellant of the titled departmental appeal and later on service appeal No. 1374/2010, before this Honorable Tribunal. The Honorable Tribunal while accepting the service appeal vide judgment dated 24/10/2017, set aside the order dated 26/8/2009, with directions to departmental/petitioners to conduct de-novo inquiry against the

**Filed to-day
Registrar**

appellant within three months from the date of receipt of the judgment and in case the inquiry is not concluded in scheduled time, the appellant shall stand reinstated into service. **(Copy of the Judgment dated 24.10.2017 is attached as Annexure B)**

3. That after receiving the copy of the Judgment dated 24.10.2017, de-novo departmental inquiry was initiated against the appellant of the tilted appeal by the petitioners department. However, the appellant did not associate himself with the proceedings despite service, hence the inquiry office on the basis of record, held him proved guilty of the charges of absence. Accordingly, he was awarded penalty of reduction to lower stage in time scale vide order dated 10.02.2018. **(Copies of the inquiry proceedings and order dated 10.02.2018, is attached as Annexure C & D)**
4. That in the meantime, the appellant instead of joining his duties, filed execution petition *No. 97 of 2018, titled "Shakeel Ashraf Vs Government"* for the implementation of the judgment dated 24.10.2017. Vide order dated 16.10.2018 in the said execution petition, this Honorable Tribunal set aside the penalty order dated 10.02.2018 operative part of the order is reproduced below;

"As the respondents failed to comply with the directions of the Tribunal within the stipulated period hence, the impugned order was illegal and not sustainable. Resultantly, impugned order is set aside and the judgment of this tribunal dated 24.10.2017 would be implemented and the appellant stands re-instated in service in accordance with the directions contained in the said judgment.

(Copy of the order dated 16.10.2018 is attached as Annexure E)

5. That at the same time when the execution petition No. 97 of 2018 was pending, appellant of the titled appeal also filed a service appeal No. 873/2018, instituted on 05.07.2018, in the Honorable Tribunal against the penalty order dated 10.02.2018. It is pertinent to mention here that though the execution petition was pending, however the appellant concealed this fact from the Honorable Tribunal. **(Copies of the service appeal are attached as Annexure F)**
6. That in compliance of the order dated 16.10.2018 in the execution petition No. 97 of 2018 (as referred in Para No.4 above), the Petitioner/ Department vide order 23.10.2019, ordered reinstatement of the appellant of the titled appeal w.e.f. 24.10.2017 with directions to joint his duties within period of 07 days otherwise the order of reinstatement shall

3

stand withdrawn automatically. However, the appellant Shakeel Ashraf did not join his duty in the time period stipulated in the order of reinstatement, therefore, he was removed from service vide order dated 31.10.2019. **(Copies of the order dated 23.10.2019 is attached as Annexure G)**

7. That virtue of the order dated 16.10.2018, passed by this Honorable Tribunal in the execution petition, whereby the order dated 10.02.2018 was set aside and subsequent development made pursuant to the order dated 16.10.2018, the appeal No. 873/2018, stood infructuous, but the appellant concealed these facts from the honorable tribunal by not bring the same into the notice during pendency of appeal. Consequently, vide the impugned Judgment dated 11.01.2022, the Honorable Tribunal while accepting service appeal No. 873/2018 of the appellant against the order dated 10.02.2018, set aside the penalty order and reinstated him into his original position with directions to the department to conduct fresh inquiry. *(Copy of the Impugned Judgment dated 11.01.2022 is attached as Annexure H)*
8. This the petitioners only came to know about the order dated 11.01.2022, when the same was communicated to this office vide letter dated 31.03.2022, for implementation.
9. That since the impugned Judgment dated 11.01.2022 is the result of fraud, misrepresentation and concealment of facts made by the appellant of the titled appeal, therefore the same is liable to be set aside inter alia on the following grounds;

GROUND OF PETITION

- A. That the appellant has concealed true facts from the honorable tribunal and has made misrepresentation, thus impugned judgment is liable to be set aside.
- B. The judgment dated 11.01.2022 is passed in service appeal No. 873/2018 wherein the penalty order of reduction to lower stage in time scale dated 10.02.2018 was assailed. However, the said order dated 10.02.2018 was set aside by this Honorable Tribunal vide order dated 16.10.2018, in execution petition No. 97/2018 filed for implementation of the judgment dated 04.10.2017. The order dated 16.10.2018 of the Honorable Tribunal had attained finality and was also stood implemented after reinstatement of the appellant. Thus on this score alone the impugned judgement being not implementable is liable to be set aside.

4

- C. That It is pertinent to mention here that both orders of the Service Tribunal are self-contradictory as in the order dated 16.10.2018 passed in the execution petition, the Honorable tribunal while implementing the Judgment dated 24.10.2017, ordered reinstatement of the applicant. On the other hand in the judgment dated 11.01.2022, the Honorable Service Tribunal again set aside the same order dated 10.02.2018 but remanded the case to the department to conduct proper inquiry.
- D. That after reinstatement of the appellant he pursuant to the order dated 16.10.2018, he did not join his duty and remained absent, hence was again removed from service vide the order dated 31.10.2019. The order dated 31.10.2019 has not been challenged by before any forum and is still intact therefore, he being an already removed employee cannot be subjected to fresh proceedings. On this score alone the impugned judgment is liable to be set aside.
- E. That the appellant/respondent in the instant petition has concealed material facts from the honorable Tribunal and had not come to the court with clean hands.
- F. That the impugned judgment and order of this Honorable Tribunal is the result of misrepresentation and concealment of facts on part of the appellant hence liable to be set aside on this score alone.
- G. That besides the above stated grounds, the petitioners also seek permission of the Honorable Tribunal to rely on additional grounds at the time of hearing of the instant petition.

It is, therefore, humbly prayed that on acceptance of this Petition, the Judgment dated 11.01.2022 may graciously be set aside and the titled appeal may be dismissed.

Petitioner

District and sessions Judge
Abbottabad
DISTRICT & SESSIONS JUDGE
ABBOTTABAD

5 A

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

Petition No. ____/2022

In Service Appeal No. 873/2018

Decided vide Judgment dated: 11.01.2022

Titled Administrative Judge Peshawar High Court Peshawar.
District and Sessions Judge, Abbottabad.

.....PETITIONER/ RESPONDENT

VERSUS

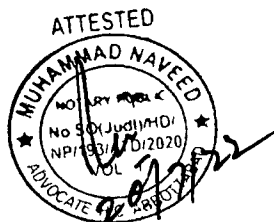
1. Shakeel Asharf Ex-Junior Clerk Sessions Court, Abbottabad.

.....RESPONDENT/ APPELLANT

~~2. [Illegible Name] Peshawar High Court~~
~~[Illegible Name] Respondent~~

AFFIDAVIT

I, **Mr. Shabir Ahmad, Superintendent, District and Sessions Court Abbottabad**, on this 25/7/22 day, of July 2022, do hereby solemnly affirm and declare on oath that the contents of the above Petition are true and correct to the best of my knowledge and belief and nothing has been kept back or concealed from this Honorable Tribunal.



[Signature]
DEPONENT
Superintendent to
District & Sessions Judge
Abbottabad

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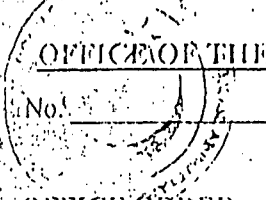
Annexure A

6

Annexure

(9-10)

10/1/21
26.5.2009 1305-10/2/2009



OFFICE OF THE DISTRICT & SESSIONS JUDGE, ABBOTTABAD

No. _____

Dated Abbottabad the _____ / 2009

OFFICE ORDER

WHEREAS Mr. Shakeel Ashraf, Junior Clerk, remained absent from duty unauthorizedly from 05.06.2009 to 23.06.2009;

AND WHEREAS his explanation was called for vide this office No. 1104-1/4 on 10/06/2009 which was received by him on 23/06/2009 but no reply was offered by him till date;

6-25

AND WHEREAS he was also informed on 23/06/2009 to appear before standing Medical Board fixed for 25/06/2009 to assess his psychological suitability for service in this Department but he did not obey the said order;

AND WHEREAS he is again absent unauthorizedly from 24/06/2009 till date without any intimation to this office;

AND WHEREAS his unauthorized absence is a misconduct within the meaning of Govt of NWFP (Efficiency and Discipline) Rules 1973;

AND WHEREAS a notice was issued to the said official vide this office order No. 1316-2/4 dated 10th July, 2009 asking him to show cause his to why the major penalty of dismissal from service shall not be imposed upon him;

notice
has been
received to

AND WHEREAS the said official has failed to respond to the said notice till date despite service;

AND WHEREAS the said official has opted to remain absent unauthorizedly till date;

NOW THEREFORE Mr. Shakeel Ashraf, Junior Clerk is dismissed from service with immediate effect.

Attended to be True

Examined
District & Sessions Judge

M. A. T.

(ABDUL MATIN)
District & Sessions Judge,
Abbottabad / Authority

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2

Better Copy

No. 1305-10 /4

Dated Abbottabad the 26/8/2009

Copy forwarded to

1. The Worthy Registrar, Peshawar High Court, Peshawar.
2. The Senior Civil Judge, Abbottabad.
3. The District Accounts Officer, Abbottabad.
4. The Nazir of this court.
5. Clerk of Court of Senior Civil Judge, Abbottabad.
6. The official concerned.
7. Office copy.

(ABDUL MATIN)
District & Sessions Judge,
Abbottabad / Authority.

Annexure

5
B

B

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1374/2010

Date of Institution ... 12.07.2010

Date of Decision ... 24.10.2017



Shakeel Ashraf son of Raja Muhammad Ashraf, R/O Abbasi Street near Small Industrial Estate, Mandiyan, Abbottabad. ... (Appellant)

VERSUS

1. The Administrative Officer, Peshawar High Court, Peshawar through Registrar, Peshawar High Court, Peshawar and another. ... (Respondents)

MR. ASLAM KHAN KHATTAK, ... For appellant
Advocate

MR. KABEERULLAH KHATTAK, ... For respondents.
Addl. Advocate General

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBER

Handwritten signature/initials

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 26.08.2009 by the Competent Authority, against which he filed departmental appeal on 29.09.2009. The said departmental appeal was rejected on 10.06.2010 and the appellant thereafter filed the present service appeal on 12.07.2010.

ATTESTED

Handwritten signature
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS.

3. The learned counsel for the appellant argued that in the year, 2009, the appellant proceeded on leave for 15 days on medical grounds and thereafter he could not join his duty. That the Competent Authority himself assumed the role of Authorized Officer under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 and issued show cause notice and then dismissed the appellant. That no charge sheet etc. was issued to the appellant nor any enquiry was conducted. That no Authorized Officer was appointed and no personal hearing was afforded to the appellant. That in the alternative the whole proceedings were illegal as the proceedings were conducted under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the year, 2009 when the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue. He pressed into service some judgments of the Superior Courts reported as 2008-PLC(C.S) 1055, 2003-PLC (C.S) 395 and 1996-SCMR-630 in support of his contention that non appointment of the Authorized Officer is an illegality. He further relied upon another judgment reported as NLR 1991-TD-271, in support of his contention that major punishment could not be granted in case of absence.

4. On the other hand, the learned Additional Advocate General argued that the departmental appeal was time barred and the present service appeal is also time barred and the appellant was required to have filed the present service appeal within 120 days after filing of the departmental appeal. The learned Addl. A.G also argued that the present service appeal is time barred for 3 days on the ground that it was filed after 32 days of the rejection of the departmental appeal. He further argued that the appellant was a Psyche case and despite directions by the Competent Authority, he did not appear before the Psychiatric. That show cause notice was issued to the appellant by the Authority which is available on file. That the

ATTESTED

EXAMINER

18
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Authority has rightly imposed the penalty of dismissal from service upon the appellant.

CONCLUSION.

5. The applicability of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 is to be decided first. The employees of the Courts subordinate to the High Court do not fall within the definition of "person in Government service" as per definition given in Section-2(c) of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which means that the appellant being employee of the subordinate court to the High Court is not a person in Government service for the purpose of the said Ordinance. Therefore, the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 are applicable to the present case.

6. Coming to limitation, the present appeal was dated as 10.07.2010 and received in the office as 12.07.2010 as 11th July 2010 was Sunday. The departmental appeal is also not time barred as limitation starts from the date of communication. The appellant was dismissed due to absence and he was not communicated the order on the same day. The appellate authority has also not ruled about limitation of departmental ~~authority~~ ^{appeal}.

Under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the case of willful absence three options were available for proceedings departmentally. The one was Rule 8-A under which the proceedings could be initiated and can be taken to its logical end by the Authorized Officer and not by the authority. The second was the regular enquiry under Rule 5 of the said rules and its regular enquiry was also to be conducted by the Authorized Officer and not by Authority. The third was dispensing with the regular enquiry under sub rule 2 of Rule 5 of the said rules and it was also to be made by the Authorized Officer and

ATTESTED

EXAMINER
Pakhtunkhwa

11

not by the Authority. But in the case in hand, the whole proceedings were undertaken by the Authority and the Authority did not proceed under any of the above mentioned three options. Neither he proceeded under Rule 8-A nor he conducted the regular enquiry nor he dispensed with the conduct of the enquiry. The whole proceedings are therefore *coram-non-judice* and are void.

8. The comments of the District & Sessions Judge, Abbottabad to the present appeal suggests that the appellant was a case of psyche and was referred to Standing Medical Board but not appeared before the said Board. But the said proceedings were not culminated into its logical end and the penalty of dismissal was awarded only on the ground of absence from duty.

9. Consequently, this appeal is accepted and the Authority is directed to proceed afresh against the appellant under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in the light of observations made above and to conclude the enquiry within a period of 3 months from the date of receipt of this judgment. In case the Authority comes to the conclusion that the appellant should be proceeded on medical grounds, then he should be referred to the Standing Medical Board within further period of 3 months and could proceed accordingly. In case time schedule is not honored, the appellant shall be reinstated in service. The issue of back benefits of the appellant shall be subject to the final outcome of denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Amruneed SD/- Niqaz Muhammad Khan,
24.10.17 Chairman

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SD/- Gulzar Khan,
Member

17

Annexure

C

IN THE COURT OF SENIOR CIVIL JUDGE, ABBOTTABAD.

Inquiry of Shakeel Ashraf

12

O-----01
20.01.2018

Inquiry file in respect of Shakeel Ashraf, Ex-Moharrir received back with the findings of inquiry officer. In the present inquiry, the undersigned was appointed as authorized officer vide order dated 07.12.2017 of learned District & Sessions Judge, Abbottabad. On receipt of inquiry, Mr Ashfaq Ahmad, Civil Judge-IV, Abbottabad was appointed inquiry officer with the direction to proceed against accused/official under Government Servants (Efficiency and Discipline) Rules, 1973.

Inquiry report of learned Civil Judge-IV, Abbottabad/inquiry officer received. According to findings of inquiry officer the official was served with the notice who once on 11.01.2018 appeared ^{before} the inquiry officer, however, again disappeared, therefore, it was held by the inquiry officer that official under inquiry has nothing to say in his defence.

In the circumstances, I being authorized officer while agreeing with the finding/report of inquiry officer found, the ex-junior clerk Shakeel Ashraf found of misconduct as envisaged ⁱⁿ section 3 (b) of Government Servants (Efficiency and Discipline) Rules, 1973 and he is awarded penalty of reduction to a lower stage in a time-scale, as envisaged under section 4 (b) (i) of Government Servants (Efficiency and Discipline).

The inquiry file is sent to learned District & Sessions Judge, Abbottabad for further appropriate order.

NO
(NISAR MUHAMMAD KHAN)
Senior Civil Judge/Authorized Officer,
Abbottabad

ORDER-02
10/02/2018

18

Annexure D B

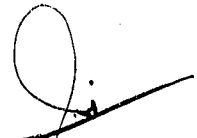
Accused/official submitted an application for earned leave with effect from 18/03/2009 to 17/04/2009 (Flag "A"). The same was received in the office on 06/04/2009. My predecessor in office accepted the application, however, directed the accused/official to appear before Standing Medical Board for his medical examination. (Flag "B"). Despite direction by the authority, accused/official failed to appear before SMB and also intentionally absented himself from duty from 05/06/2009 to 23/06/2009. In consequence thereof, he was served with Show Cause Notice on 10/07/2009, (Flag "C") however, he failed to submit reply to the Show Cause Notice. Resultantly, he was dismissed from service vide order dated 26/08/2009 (Flag "D").

Feeling aggrieved, accused/official preferred a departmental appeal which was rejected vide order dated 10/06/2016. Later on, accused/official filed appeal before worthy Khyber Pakhtunkhwa, Service Tribunal. The said appeal was accepted vide judgment dated 24/10/2017, (Flag "E") whereby, the authority (District Judge) was directed to proceed afresh against the accused/official under KP Government Servants (E&D) Rules, 1973. Accordingly, learned Senior Civil Judge Abbottabad was appointed as Authorized Officer, who appointed Mr. Ishfaq Ahmad, Civil Judge-IV Abbottabad as Inquiry Officer. (Flag "F") Learned inquiry officer conducted fresh inquiry and on conclusion thereof, submitted the report to Authorized Officer (Flag "G")

As per report of inquiry officer, the accused/official was served with the notice who once appeared on 11/01/2018 and thereafter did not appear till conclusion of inquiry. The authorized officer, while agreeing with the findings of inquiry officer, awarded penalty of reduction to a lower stage in a time-scale, as envisaged under section 4(b)(i) of Government Servants (Efficiency and Discipline) Rules, 1973. (Flag "H")

Undersigned being competent authority agree with the view/recommendation of authorized officer. Office shall do the needful accordingly. This file be consigned.

Announced
10/02/2018


SOFIA WAQAR KHATTAK
District Judge Abbottabad/
Competent Authority

37
16.10.2018

Annexure
Shakeel Ashrafs vs Govt

E

14

Learned counsel for the petitioner present. Mr. Shabir Ahmad, Assistant for respondents no.2 alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Main thrust of the arguments of learned counsel for the appellant was that de-novo enquiry was not conducted within the time span specified in the judgment of this Tribunal dated 24.10.2017. Against the deadline of 90 days fixed by this Tribunal, the respondents took 94 days to finalize the disciplinary proceedings, thus it lost legal backing, so the appellant was entitled to be reinstated in service with all back benefits.

On the other hand, learned Addl: AG readout the contents of implementation report submitted by the respondents. They had conceded that de-novo enquiry was concluded in 92 days. However, when learned Addl: AG was confronted on the point that no justification was given for delay caused was available in the said report but he failed to offer any plausible explanation.

From the preceding paras, it has been established that directions of this Tribunal were not complied with in letter in spirit by the respondents, nor were able to justify intentional and deliberate delay in winding up the said case. This Tribunal has given rulings on the same point in a number of Execution Petitions. Attention is also drawn to order sheet dated 29.03.2019 passed in execution petition no 67/2017 titled "Syed Shahinshah-vs-Government" involving identical/similar question.

Reliance is also placed on 2017 PLC(C.S) note 20 and 2007 PLC (CS) 959. When law requires a thing to be done in a particular manner, it must be done in a particular manner, otherwise the same would be nullity in the eyes of law.

Furthermore, the august Supreme Court of Pakistan in its judgment in PLD 2012(SC)923 held that:-

ALLEGED
[Signature]
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---Court order, implementation of---Contempt through disobedience of court order ("disobedience contempt") by executive and its functionaries---Effect---Responsibility for



implementation (of court's orders) had been made obligatory on other organs of the State, primarily the executive-When a functionary refused to discharge its constitutional duty, the court was empowered to punish it for contempt.

As the respondents failed to comply with the directions of this Tribunal within the stipulated period, hence, impugned order was illegal and not sustainable. Resultantly, impugned order is set aside and the judgment of this Tribunal dated 24.10.2017 would be implemented and the appellant stands reinstated in service in accordance with the directions contained in the said judgment. Case to come up for further proceedings on 08.11.2018 before S.B.

(Signature)
(Ahmad Hassan)
Member

8-11-2018

Due to Retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 27-11-2018

Certified to be true copy
(Signature)
MEMBER
ZINDKHIWA SERVICE TRIBUNAL
Peshawar

(Signature)
Reader

Date of Presentation of Application 08-11-18
 Number of Words 1200
 Copying Fee 8.00
 Urgent 2.00
 Total 10.00
 Name of Applicant [Signature]
 Date of Completion of Copy 08-11-18
 Date of Delivery of Copy 08-11-18

52-Annexure

(E)

(15)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Shakeel Ashraf, Ex- Junior Clerk Session Court
AbbotabadAppellant.

Versus

1. Administrative offices, Peshawar High Court
through Registrar High Court Peshawar.
2. District Session Judge, Abbotabad.

.....Respondents

APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED ORDER DATED 10-02-2018
VIDE ANNEXURE 'A' WHEREBY THE
APPELLANT HAS BEEN REDUCED TO
LOWER STAGE IN A TIME SCALE.

PRAYER,

ON ACCEPTANCE OF THE APPEAL, THE
IMPUGNED ORDER DATED 10/02/2018 AT
ANNEXURE 'A' MAY BE SET ASIDE AND
THE APPELLANT MAY BE REINSTATED IN
SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth:-

*Brief facts leading to the instant appeal are as
under:-*

1. That the appellant fell ill during 2009 which badly
has effected his health and thereafter respondent
No.2 has sanctioned him 30 days medical leave
from 18-03-2009 to 17-04-2009 vide annexure 'B'

SB

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2. That the appellant during his one month medical leave did not recover and so he was unable to report his arrival for duty.
3. That the respondent No.2 though was duty bound to extend his medical leave but instead of doing so, he dismissed the appellant from service vide order 26/08/2009 at annexure 'C'.
4. That the appellant against his dismissal order has filed service appeal dated 10/07/2010 before this Hon'ble Tribunal which was accepted vide judgment dated 24/10/2017 at annexure 'D'.
5. That the authority was directed to proceed a fresh against the appellant under Khyber Pakhtunkhwa Government Servant (I&D) Rules 1973 in light of observance and to conclude the denovo enquiry within a period of 3 months.
6. That the enquiry was conducted but was not being completed within the specified period and the impugned order dated 10/02/2018 at annexure 'A' has been passed by respondent No.2 and the

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appellant has been awarded major penalty of reduction to lower stage in a time scale.

7. That the appellant has filed his departmental appeal dated 09/03/2018 vide annexure 'I' and 90 days have been passed and no reply has been received so far and hence this appeal inter-alia on the following grounds:-

GROUNDS:

- A. That the appellant was dismissed from service due to his absence of 18 days from duty due to his illness. His appeal has been accepted and the authority has been directed to proceed a fresh against the appellant under the Khyber Pakhtunkhwa Government Servants (I&D) Rules 1973 and to conclude the enquiry within a period of 3 months from the date of receipt of judgment. The judgment dated 24/10/2017 vide order No. 2347/ST dated 31/10/2017 has been sent to Respondent No.2 at annexure 'I' which might has been received on 2nd or 3rd November 2017 and thereafter, the Respondent No.2 has passed the impugned order dated 10/02/2018 much after 3

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months which is in violation of the judgment dated 24/10/2017 and now the appellant is entitled for reinstatement in service with all back benefits.

B. That the reduction to lower stage in time scale is major penalty which has been imposed upon the appellant by the authorized officer which was the duty of the authority. To this effect the impugned order dated 10/02/2018 at annexure 'A' is illegal and is liable to be set aside on this score alone. Moreover, the reduction in lower grade i.e, Naib Qasid is beyond his cadre as the appellant was directly appointed as Junior Clerk.

C. That no duration has been specified while imposing the penalty on the appellant which has rendered illegal the impugned order 10/02/2018 while reducing the appellant to a lower stage.

D. That the denovo enquiry has not been concluded within 3 months which is in violation of the judgment dated 24/10/2017 of this Honourable Tribunal. So the impugned order dated 10/02/2018 is illegal and is not sustainable under the law and is liable to be set aside.

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E. That the impugned order dated 10/02/2018 at annexure 'A' is illegal, malafide, without jurisdiction and without lawful authority and is liable to be set aside.

F. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, prayed that on acceptance of appeal, the impugned order dated 10/02/2018 at annexure 'A' may be set aside and the appellant may be reinstated in service with all back benefits to meet the ends of justice.

Dated: 5/07/2018


Appellant
Through 
Aslam Khan Khattak
Advocate, Peshawar.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

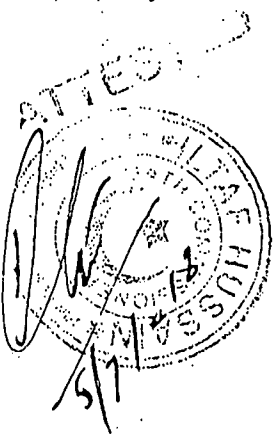
Shakeel Ashraf, Ex- Junior Clerk Session Court
AbbotabadAppellant.

Versus

Administrative offices, Peshawar High Court through
Registrar High Court Peshawar Etc
.....Respondents

Affidavit

I, Shakeel Ashraf, Ex- Junior Clerk Session Court
Abbotabad, do hereby solemnly affirm and state on oath that
the departmental appeal has never been returned to me with
direction to approach the proper forum. My above statement is
true and correct to the best of my knowledge and belief and
nothing wrong has been stated by me in the matter.



[Handwritten Signature]
Deponent



Annexure

(6) (21)

OFFICE OF THE
DISTRICT AND SESSIONS JUDGE
ABBOTTABAD

Phone: 0992-931005
Fax: 0992-330149
Email: dsjatd@gmail.com

OFFICE ORDER

Consequent upon the order dated 16.10.2018 of Hon'ble K.P Service Tribunal Peshawar, in Execution Petition No. 97/2018 (titled: Shakeel Ashraf Vs Govt), Mr. Shakeel Ashraf is reinstated in service as Junior Clerk with effect from 24.10.2017. However, intervening period of absence with effect from 26.08.2009 to 23.10.2017 is treated as extra ordinary leave (leave without pay). He is directed to join his duties within period of 07 days from the date of issuance of this order otherwise this order shall stand withdrawn automatically, and appropriate orders shall be passed under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.


Fazal Subhan
District & Sessions Judge,
Abbottabad

No 1987-1992-2/52⁸⁴/_{2/4} Dated Abbottabad the 23, Oct /2019

Copy forwarded for information and further necessary action to the: -

1. Registrar, Peshawar High Court, Peshawar.
2. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
3. Senior Civil Judge Abbottabad (Admn).
4. District Comptroller of Accounts, Abbottabad.
5. Official concerned by name.
6. Office copy.


District & Sessions Judge,
Abbottabad



شکل اشرف

صبا عالی

از علم با او از عقل و حس با او
 نود و نه ساله
 بسیار در فضا بسیار در دیانت
 در آن پیران و کوه و در آن پیران و کوه
 جوان بسیار در آن پیران و کوه
 خود خوشی با او و در آن پیران و کوه
 در آن پیران و کوه

در آن پیران و کوه
 در آن پیران و کوه
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 محمد اشرف و محمد رضا
 عبد الله بن عبد الله بن عبد الله
 محمد اشرف و محمد رضا

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کچھالک فضا - اسٹیشن اراک علیہ وسلم ۱۲ ۱۷ اسٹیشن

سرکار سپر ٹیکس اسٹیشن

انٹو انٹری

نوٹس بنام

عطا علی امین

اسٹیشن سپر ٹیکس

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اسٹیشن اراک علیہ وسلم

اسٹیشن اراک علیہ وسلم
ڈسٹرکٹ کورٹ

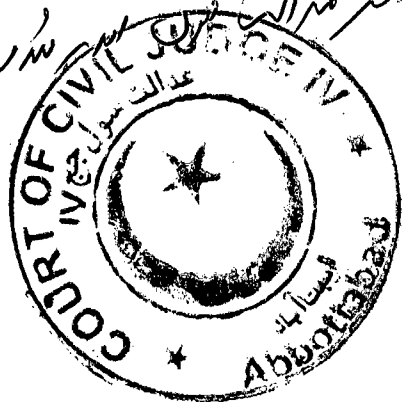
اسٹیشن اراک علیہ وسلم

سول جج
✓

۱۱/۱۸

اسٹیشن اراک علیہ وسلم

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(H) Annexure

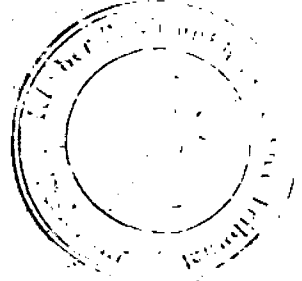
(H) 24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 873/2018

Date of Institution ... 05.07.2018

Date of Decision ... 11.01.2022



Shakeel Ashraf, Ex-Junior Clerk Session Court Abbottabad.

... (Appellant)

VERSUS

Administrative Offices, Peshawar High Court through Registrar High Court
Peshawar and one another. ... (Respondents)

Aslam Khan Khattak,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...

...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant while serving as Junior Clerk in the Court of District & Session Judge Abbottabad, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 26-08-2009, against which the appellant filed service appeal No. 1374/2010 in this tribunal, which was decided vide judgment dated 24-10-2017 with direction to the respondents to conduct de-novo inquiry. As a result of de-novo proceedings, the appellant was awarded with major punishment of reduction to lower stage in time scale, against which the appellant filed departmental appeal, which was not responded, hence the instant service appeal with prayers that the impugned order dated. 10-02-

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2018 may be set aside and the appellant may be re-instated with all back benefits.

02. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence from duty, but was re-instated by judgment dated 24-10-2017 of this tribunal and de-novo proceedings were ordered to be completed within 90 days, but the de-novo proceedings were not concluded within the statutory period, hence an irregularity was committed by the respondents and the respondents has passed the impugned order dated 10-02-2018 much after three months, which is violation of judgment of this tribunal and now the appellant is entitled for re-instatement in service with all back benefits; that reduction to lower stage in time scale is major penalty by the authorized officer, which however was duty of the authority and to this effect, the impugned order is illegal and is liable to be set aside on this score alone; that reduction in the lower grade i.e. naib Qasid is beyond his cadre as the appellant was directly appointed as junior clerk; that no duration has been specified while imposing the penalty on the appellant which has rendered the impugned order dated 10-02-2018 as illegal.

03. Learned Deputy District Attorney for the respondents has contended that the instant appeal is liable to be dismissed on the ground that the appellant is an irresponsible employee, who had earlier been awarded major penalty on the charges of absence; that the appellant challenged such dismissal in the service tribunal and this tribunal vide judgment dated 24-10-2017 ordered for de-novo inquiry; that during the course of de-novo proceedings, the appellant did not appear before the inquiry officer till conclusion of the inquiry, hence he has been awarded major punishment of reduction to lower stage in time scale; that the appellant has got no cause of action to file the instant appeal as during inquiry proceedings, the appellant completely failed to justify his absence before the inquiry officer, therefore, he was rightly penalized; that the appellant was granted

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30 days leave on medical ground subject to the condition that he should appear before the medical board but he did not appear before the medical board; that as per law, the appellant was required to apply for extension in leave as well as appear before the medical board, but he failed to do so and resultantly after observing all the codal formalities, he was dismissed from service; that de-novo inquiry was conducted as per law and rule and well in time and the appellant was served with proper notices but the appellant did not appear before the board on the fixed date, thereafter fresh notices were served upon him but again he did not appear before the inquiry officer, hence the inquiry officer submitted its report on 20-01-2018 and in light of findings of the report, the appellant was awarded with major punishment of reduction to lower stage in time scale.

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

05. Perusal of record would reveal that the appellant is a psyche patient, hence was referred to standing medical board, but he did not appear before the standing medical board. The appellant was granted leave on medical grounds, but after expiry of such leave, the appellant neither resumed his duty nor requested for extension of leave. However, the said proceedings did not culminate into its logical end and the penalty of dismissal was awarded only on the ground of absence from duty. Dismissal of the appellant, however was set aside by this tribunal vide judgment dated 24-10-2017 and respondents were directed to conduct de-novo inquiry with specific direction to refer the appellant to standing medical board. The respondents conducted de-novo inquiry but neither the appellant appeared before the inquiry officer, nor the standing medical board constituted for the purpose, hence the appellant was again awarded with major punishment of reduction to lower stage in time scale.

06. We have noticed that the major penalty of reduction to lower stage in time scale was awarded without specification of time, which was not in

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accordance with law. Secondly, the appellant was directly recruited as junior clerk and his reduction to the lower stage in time scale lacks clarification as to which would be the lower stage in time scale when the appellant was appointed as junior clerk.

07: In view of the foregoing discussion, the impugned order is set aside and the case is remanded to the respondents to conduct proper inquiry keeping in view the lacunas left in the de-novo proceedings strictly in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

11.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

Copy
etc copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**Before the Honorable Khyber Pakhtunkhwa
Service Tribunal Peshawar**

Petition No. _____/ 2022

In Service Appeal No. 873/2018

Decided vide Judgment dated: 11-01-2022

Titled:

- 1) Administration Offices, Peshawar High Court Peshawar through Registrar High Court Peshawar.
- 2) District and Session Judge, Abbottabad
.....Petitioner/Respondent

VERSUS

Shakeel Ashraf Ex-Junior Clerk Sessions Court, Abbottabad.....

Respondent/ Appellant

Petition under section 12(2) Civil Procedure Code 1908

**APPLICATION FOR SUSPENSION OF OPERATION OF
IMPUDNED ORDER DATED 11/1/2022 TILL THE DECISION
OF INSTANT PETITION.**

Respectfully shewith,

- 1) That the titled petition is being filed today before this Honorable Tribunal, contents of the same may kindly be treated as integral part of this application.
- 2) That the petitioner/departmental has brought a good prima facie case and balance of convenience also lies in his/ its favour.
- 3) That if the operation of the impugned judgment dated 11/1/2022 is not suspended, the petitioner/department will

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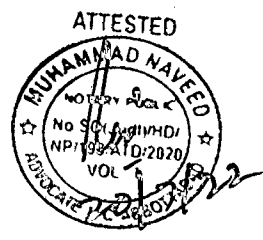
suffer irreparable loss and purpose of filing of accompanying petition will be defeated.

It is, therefore, humbly prayed that on acceptance of this Petition, the Judgment dated 11.01.2022 may graciously be suspended till final disposal of the instant petition.

Petitioner
DISTRICT & SESSIONS JUDGE
ABBOTTABAD

AFFIDAVIT

I, Mr. Shabir Ahmad, Superintendent, District and Sessions Court Abbottabad, on this 25/7 day, of July, 2022, do hereby solemnly affirm and declare on oath that the contents of the above Petition are true and correct to the best of my knowledge and belief and nothing has been kept back or concealed from this Honorable Tribunal.



[Signature]
DEPONENT
Superintendent to
District & Sessions Judge
Abbottabad

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *Recd*

12(2)

422

DF

APPEAL No..... of 2022.

District & Sessions Judge Abbottabad

Appellant/Petitioner

Versus

Shakeel Ashraf

RESPONDENT(S)

Respondent

Notice to Appellant/Petitioner

*Shakeel Ashraf Ex-Junior
Clerk Sessions Court, Abbottabad*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal

on *31/10/2022* at *4.30pm*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply & Arguments

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *201*

APPEAL No. *12(2) 422* of 20 *22*

District & Session Judge Abbottabad
Appellant/Petitioner

Versus

Shahid Maqsood

RESPONDENT(S)

Notice to Appellant/Petitioner

District & Session Judge, Abbottabad

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *31/11/2022* at *Peshawar*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*For Reply
&
Arguments*

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

DB

No.

APPEAL No. 12(2) 422 of 20 22

District & Session Judge Abbottabad
Appellant/Petitioner

Versus

Shakeel Ashraf

RESPONDENT(S)

✓
Notice to Appellant/Petitioner Administration Officer, Peshawar
High Court Peshawar through Registrar
High Court Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 31/10/2022 at 9:00am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Handwritten notes:
Received without copy of Appeal Reply & Arguments
25/10/22

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.