

11.10.2022


Counsel for petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Imran Akbar, Assistant for respondents present.

Implementation report on behalf of respondents have already been submitted. Copy of the implementation report is handed over to learned counsel for petitioner today, who stated that he felt satisfied with the implementation report. As such the execution petition stands implemented.

In view of the above, instant petition is disposed off. File be consigned to record room.

Announced.

11.10.2022

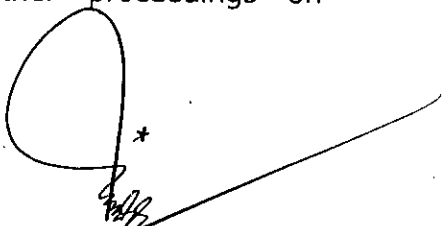

(Fareeha Paul)
Member (E)

19.08.2022

Nemo for the petitioner. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Imran Akbar Assistant for the respondents present.

Representative of the respondent department submitted copy of Notification No. Estt:I/PF/Mushtaq Ali/17485-93 dated 21.06.2022 whereby the judgement of Service Tribunal dated 16.07.2021 has conditionally/provisionally been implemented by reinstating the appellant as Tehsildar (ACB, BS-16) into service from the date of his "dismissal from service" subject to the outcome of CPLA pending before the august Supreme Court of Pakistan. Copy of the Notification is placed on file. Copy thereof be also provided to learned counsel for the petitioner/petitioner as none of them is in attendance in the court today. Notice be issued to the petitioner and his counsel to attend the court on the next date. Adjourned. To come up for further proceedings on 11.10.2022 before S.B.

Counsel was informed telephonically for the date fixed 11/10/2022.

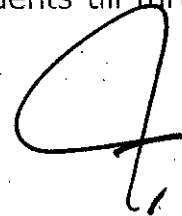

(Mian Muhammad)
Member (E)

EP 229/2021

31.05.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

There is no proper representation on behalf of the respondents side as no responsible and well conversant officer is before the court nor direction of the Tribunal has been implemented. The respondents are finally directed to implement the judgment of this Tribunal on or before 01.07.2022 as they could not so far produce any order suspending the judgment of this Tribunal. Salaries of the respondents are also attached till further orders. The Accountant General Khyber Pakhtunkhwa be directed not to release salaries of the respondents till further order by the Tribunal.



Chairman

01.07.2022

None for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Qasim Khan, Superintendent for respondents present.

Representative of the respondent department submitted notification No. Estt:1/PF/Mushtaq Ali/17485-93 dated 21.06.2022 which is placed on file. As the petitioner is not present therefore notices be issued to the petitioner and his counsel for the date fixed. To come up for further proceedings on 19.08.2022 before S.B.



(Fareeha Paul)
Member (E)

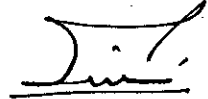
Counsel infor-
By Telephone

11-8-22

10.01.2022

Nemo for the petitioner. Mr. Muhammad Haroon, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought time for submission of implementation report. Adjourned. To come up for implementation report before the S.B on 23.02.2022.

Notice for prosecution of the instant execution petition be issued to the petitioner as well as his counsel for the date fixed.



(Salah-Ud-Din)
Member (J)

24.02.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 24.03.2022 for the same before D.B.

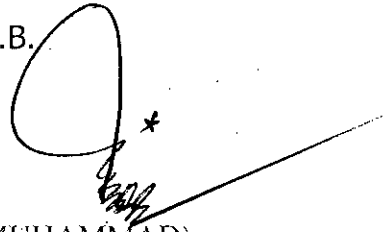


Reader

24.03.2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Qasim Khan, Supdt for respondents present.

Learned AAG requested for adjournment on the ground that application for early hearing and transfer has been submitted in the august Supreme Court of Pakistan. He therefore, requested for adjournment to seek outcome of that application till next date. Copy is placed on file. Request is acceded to. Adjourned. To come up for further proceedings on ~~31.05.2022~~ before S.B.







(MIAN MUHAMMAD)
MEMBER(E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 229 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2021	<p>The execution petition of Mr. Mushtaq Ali submitted today by Mr. Amjad Ali Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>19/11/21</u></p> <p> CHAIRMAN</p>
	19.11.2021	<p>Petitioner in person present. Notices be issued to the respondents for submission of implementation report on 10.01.2022 before the S.B.</p> <p> (Salah-Ud-Din) Member (J)</p> <p>2 13</p>

	GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.	
091-9213989	Peshawar Dated the <u>21</u> /06/2022	091-9214208

NOTIFICATION:

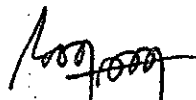
No. Estt:I/PF/Mushtaq Ali/ 17485-93 In compliance with the Service Tribunal Khyber Pakhtunkhwa order / Judgment dated 16.07.2021, in Execution Petition No.229/2021 in Service Appeal No.387/19 the Competent Authority is pleased to re-instate Mr. Mushtaq Ali as Tehsildar (ACB, BS-16) into service from the date of his dismissal from service 07.12.2018 subject to outcome of the CPLA pending before the Supreme Court of Pakistan. The issue of back benefits shall be subject to the outcome of the CPLA pending before the Supreme Court of Pakistan.

**With the approval of
Competent Authority**

No. & Date Even.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Assistant Secretary (Litt-I & II) Board of Revenue.
4. PS to Senior Member, Board of Revenue.
5. PS to Member-III, Board of Revenue.
6. PA to Secretary-I, Board of Revenue.
7. Officer concerned.
8. Office order file.


(NOOR KHAN)
Assistant Secretary (Estt:)
Board of Revenue

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

EP NO: 229/2021

Service Appeal No. 387/2019

Mushtaq AliAppellant

VERSUS

Government of Khyber Pakhtunkhwa,
Secretary Board of Revenue (R&S) Department, Peshawar
& othersRespondents

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1.	Application for implementation		1-2
2.	Copy of judgment dated 16.07.2021	A	3-20
3.	Wakalatnama		21

Appellant

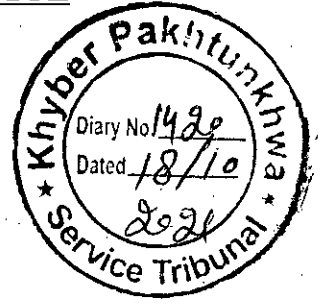
through

Amjad Ali
Advocate
Supreme Court of Pakistan
At Mardan

E.P No: 229/2021

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

SA 387/19



Musthaq Ali (Ex-Tehsildar) S/o Charagh
R/o Shaheed abad Shawa, Tehsil Razar,
District Swabi.....**Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar.
 2. The Senior Member Board of Revenue, Civil Secretariat, Peshawar
 3. Deputy Commissioner Swabi.
-**Respondents**

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT OF HON'BLE KPK SERVICE
TRIBUNAL, PESHAWAR DATED 16.07.2021 IN
ITS TRUE LETTER AND SPIRIT.**

Respectfully Sheweth

Sir,

Appellant humbly submits as under:-

1. That appellant was appointed as Junior Clerk vide order dated 01.02.1984 in District Peshawar in Commissioner Office.
2. That appellant was transferred to Mardan Commissioner Office in 1988, when Mardan was raised as Division.
3. That appellant was promoted as Senior Clerk and then promoted as Assistant (BPS-15) in the year 1993.
4. That thereafter, due to his satisfactory services, the appellant was further promoted as Tehsildar (BPS-16) vide order dated 20.12.2017.
5. That during his service as Tehsildar, the appellant was served with a charge sheet / statement of allegation, which was properly relied by the appellant and denied the allegations leveled against him.

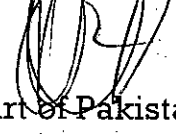
(2)

6. That appellant was not associated with any inquiry proceedings nor any opportunity has been given to appellant for his personal hearing, and thus he was dismissed from service.
7. That appellant filed departmental appeal, which was dismissed vide order dated 01.03.2019.
8. That the impugned dismissal and order dated 28.11.2018 and appellate Order dated 01.3.2019 passed by respondents No.1 & 2 were illegal, therefore, being dissatisfied the appellant approached Hon'ble KPK Service Tribunal, Peshawar and Hon'ble Tribunal pleased to passed an order in favour of the appellant on 16.07.2021.
9. That after announcement of order dated 16.07.2021, the appellant approached the Department / respondents time and again for the implementation of order passed by this Hon'ble Tribunal, but in vain.
10. That the respondents are willfully avoiding act upon the order passed by this Hon'ble Tribunal.
11. That the appellant have right as per Article-4 of the Constitution to be dealt with accordance with law and is also entitled to be re-instated in service with all back benefits.

It is, therefore, humbly requested that, on acceptance of this application the respondents may kindly be directed to implement/ act upon the order of this Hon'ble Tribunal and re-instate the petitioner in his service with all back benefits.

Appellant 

through

Amjad Ali
Advocate
Supreme Court of Pakistan
At Mardan 

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.



 Deponent

(A) 3

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



Service Appeal No. 387/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 371

Dated 20/3/2019

Mushtaq Ali, (Ex.-Teshildar), S/o Charagh
R/o Shaheed Abad Shawa Tehsil Razha, District Swabi.

.....Appellant

V E R S U S

- 1) Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar.
2. The Senior Member Board of Revenue, Civil Secretariat, Peshawar
- 3) Deputy Commissioner Swabi.

.....Respondents

Filed to-day

Registrar

20/3/19

**APPEAL U/S 4 OF KP SERVICE
TRIBUNAL ACT, 1974 AGAINST ORAL
DISMISSAL ORDER DATED 07.12.2018,
WHEREBY SERVICE OF THE
APPELLANT WERE DISMISSED, AND
APPELLATE ORDER DATED 01.03.2019
WHEREIN DEPARTMENTAL APPEAL
FILED BY PETITIONERS HAS BEEN
DISMISSED, WHICH IS ILLEGAL
AGAINST LAW AND FACTS.**

PRAYER:

*On acceptance of this appeal, the
impugned dismissal order dated
07.12.2018 and appellate order dated
01.03.2019 may please be set-aside
and appellant may please be
reinstated in service with all back
benefits.*

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No: 387/2019

Date of Institution ... 20.03.2019

Date of Decision ... 16.07.2021



Mushtaq Ali, (Ex.Teshildar), S/o Charagh R/o Shaheed Abad Shawa Tehsil Razarr, District Swabi. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar and two others. ... (Respondents)

Present:

MR. AMJAD ALI, Advocate --- For Appellant.

MUHAMMAD ADEEL BUTT, Additional Advocate General --- For respondents.

AHMAD SULTAN TAREEN --- CHAIRMAN
ROZINA REHMAN --- MEMBER(Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN. The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby his dismissal from service purporting it being against the facts and law on the subject.

2. The appellant, as he claims, was appointed as Junior Clerk in the year 1984 who in progression of his career held the post of Senior Clerk, then Assistant and then as Tehsildar (BPS-16). During his service as Tehsildar under the Senior Member Board of Revenue (SMBR), Khyber Pakhtunkhwa Peshawar, he was served with the charge sheet/statement of allegations as reproduced herein below:-

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(5)

- a. During surprise visit of Deputy Commissioner office Swabi on 29.05.2017 to the Arms License Branch a register "Labeled as PS Swabi containing 557 entries alongwith 17 License copies (15 of which were found signed under fake signatures) and five copies were recovered" through the issuance of Manual License copies was banned with the introduction of Computerized Arm License Branch on 21.02.2017
- b. He did not bother to check original CNICs at the time of submission of applications for fresh Non Prohibited bore arm licenses which resulted in the issuance of Arms Licenses to the Minors (age less than 21 years) and ineligible persons in violation of rules/policy.
- c. Some private persons/individuals were seen making entries of their choice in the official record (e.g Mr. Sajid Ali son of Muhkim resident of Maneri who was caught red handed by the DC while making entries in the official record).
- d. This act on his part tantamount to misconduct and liable him to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

3. The Appellant, as directed to submit his written defense to the Inquiry Officer, submitted the same well in time. However, he in his appeal has purported to have not been associated with the inquiry proceedings or of having been given any opportunity of personal hearing before his dismissal from service vide impugned order dated 07.12.2018. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated 01.03.2019, and in follow-up, the present service appeal was preferred. After its admission for full hearing, Respondents were put on notice for attendance and their written reply/comments. They emerged as contestants of the Appellant's appeal and filed their written reply refuting the relief sought by him.

4. We have heard the arguments and perused the record.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(6)

5. It was argued on behalf of the appellant that he had got no legal role as far as issuance of arms licenses is concerned, which is a matter governed by the prescribed rules. The appellant's role in the affairs of License Branch of DC office Swabi was nothing more than a support staff working under direct supervision of the Office Superintendent having delegated signatory powers to sign the licenses given by the DC. So, it was not possible for the appellant to forge the signatures of the Superintendent under his nose. The counsel for the appellant concluded his arguments with the submission that entire proceedings against the appellant are sham and illegal and he was made a scapegoat.

6. Conversely, it was argued on behalf of the respondents that the appellant was custodian of the record of the License Branch. He misused his position by allowing private persons to collaborate with him in preparation of fake record of licenses and for forgery of the signatures for issuing licenses with fake signatures. He was caught red handed by the then Deputy Commission during his surprise visit of the license branch. After fact finding inquiry, he was found liable for disciplinary proceedings. So he was properly served with charge sheet and statement of allegations for conducting inquiry through a duly appointed Inquiry Officer. He was found guilty by the Inquiry Officer and the Competent Authority having satisfied itself about due course of the inquiry proceedings proceeded further to issue him final show cause notice. The Appellant could not offer sufficient cause to absolve him from the penalty proposed in the show cause notice, and it was his fate to get the major penalty because of his grave misconduct. Learned AAG concluded his submissions with the argument that the penalty imposed upon the appellant is outcome of valid disciplinary proceedings leaving no room for any leniency in favor of the appellant and he vehemently pressed for dismissal of appeal.

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ATTESTED

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EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

(7)

7. We have carefully weighed the argument advanced from both sides in juxtaposition with the record available on file. The pertinent questions which emerge for our determination are: (1) That in view of the facts of the disciplinary proceedings culminating in imposition of major penalty upon the Appellant, whether he and exonerated co-accused were *in pari delicto* meaning "in equal fault"? and (2) Whether the incident taken as ground for disciplinary action against the Appellant emanates from the affairs of the License Branch of Deputy Commissioner office in District Swabi, which are subject of collective responsibility; if so, whether isolation of the Appellant for punishment withstands the test of fairness in such treatment?

8. Needless to say that the appealat hand has been preferred to impugn the imposition of major penalty upon the Appellant resulting from allegations enumerated in the charge sheet and statement of allegations which have been reproduced herein above as part of the facts. Dr. Qasim ADC (Additional Deputy Commissioner), Mardan was appointed as Inquiry Officer (for short "IO"). The Inquiry Report as submitted by him is available on file being part of written statement/comments of the respondents. As the record procured by the IO during inquiry proceedings was not annexed with the written reply of respondents, it was in the course of further proceedings that they were directed vide order dated 11.03.2020 to produce copy of complete inquiry record. The same after several adjournments was produced on 10.02.2021 and was placed on file. When the Appellant purports to have not been associated with the inquiry proceedings, the litmus test of the Inquiry Report has become necessary. So, before scanning the inquiry record, Rules 11 and 12 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 are reproduced herein below for advantage:-

Dr. Qasim ADC

ATTESTED

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of nonobservance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No.V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents, and receiving evidence on affidavits; and

(c) issuing commissions for the examination of witnesses or documents.

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ATTESTED

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 EXAMINER
 Khayee Paktukhwa
 Service Tribunal
 Peshawar

(9)

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

9. It is pertinent to point out that the inquiry report as produced on record reveals the disposal of disciplinary proceedings initiated by issuing of charge sheet and statement of allegations separately to one Imtiaz Ahmed, Superintendent of Deputy Commissioner (DC) Office, Swabi and to Mushtaq Ali, the Appellant. After preliminary discussion, the IO when came on description of inquiry proceedings, he maintained that after launching inquiry proceedings, the official namely Imtiaz Ahmed Superintendent was summoned who appeared and submitted his respective formal statement alongwith the relevant documents in support of his assertion in context of allegations. Similarly, Mushtaq Ali Assistant also appeared and submitted his written statement having no documents in his support. The IO in addition to the said statement of Imtiaz Ahmed also got from him his detailed para-wise written statement which in essence, as particularly discussed by the IO in his report, was treated as evidence against the appellant. Reportedly, the IO stood contented after appearance of on Sahib Zada Assistant of DC office before him who furnished copies of the documents and statements, which certainly were part of the inquiry reports previously conducted for fact finding in relation to matters of the License Branch of DC Office, Swabi; and he i.e. IO neither strived for any more evidence nor did he summoned the appellant to confront him with the record so procured or to afford him with opportunity of saying anything in defense about the material collected as proof of charges against him what to say of opportunity of cross-examination

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ATTESTED

when no statement was recorded by the IO himself. Even, the IO did not feel it important to associate the Departmental Representative with the inquiry

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 EXAMINER
 Khuzdar District
 Service Tribunal
 Khuzdar

proceedings despite the fact that it was specifically provided in the statement of allegations that the accused and a well conversant representative of the Director Land Records Office shall join the proceedings on the date, time and place fixed by the IO. The significance of presence of the Departmental Representative is evident from provisions of Rule 13 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 as reproduced herein below:-

13. Duties of the departmental representative.---The departmental representative shall perform the following duties, namely:

(a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;


(b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and

(c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

10. The IO in his report, based on statements and documents presented before him, in the mode and manner herein above stated, found the job description of the appellant as License Clerk which therefrom is copied below:-

- i. Receiving applications for arms licenses and its submission to the Deputy Commissioner for approval as per authorized monthly quota of the District;
- ii. After approval and then before the issue of arms license, depositing of its fee in the NBP through challan under proper head of account;
- iii. At the end of each and every month, reconciliation of all challan from the concerned District Accounts Office, through which the license fee was deposited during the month;
- iv. At the time of receiving applications for arms licenses, checking of original CNICs of each applicant especially for fitness of his age for arms licenses; and

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Tribunal

(11)

v. **Maintaining of the entire office record of the branch including license issue register.**

11. The observations of the IO following the job description of the appellant include that the accused official did not show efficiency in discharging of functions and had not acted honestly and flouted the orders alongwith prescribed rules and regulation relating to the 'Arm License' and such wrongful acts committed by the accused rendered him liable to be proceeded against under Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011. On plain reading of the said observation, it seems quite random. After sideline discussion by the Inquiry Officer in the given style, his account under the caption of findings in the inquiry report is copied therefrom herein below:

"Keeping in view the above facts and position of the matter it has become clear that the accused official namely Mushtaq Ali, License clerk (Assistant) has committed gross negligence in performing his assigned duty while his posting in the License Branch and has recklessly and unlawfully allowed un-authorized persons to work in the government office. The irresponsible way of function which the accused official performed, has also inflicted considerable financial loss to the Government exchequer who has covertly maintained a fake and parallel record in the branch in order to collect ill-gotten money. Since the Computerization of Arms license was put in place at that time, then the illegal act in preparation of manual license copies is also added in his wrongdoings. Moreover, the fee accrues from the license copies, were unlawfully retained by the accused official and he did not deposit it into the Government treasury and this irresponsible act of the accused official is also counted in his offense."

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12. Although the IO in his observations after disclosing the job description of Appellant held him merely negligent but in the same report ahead, he in his findings randomly linked his negligence with financial loss to the

government exchequer. Yet he could not make any material point to justify the embezzlement of the license fee by the Appellant and issuance of fake licenses under the fake signature of the competent authority and of retaining parallel and bogus record. Quite contrarily, the IO in recommendation part of the inquiry report, all of a sudden proposed that the appellant was found involved in issuance of licenses under fake signatures of the competent authority and that he retained parallel and bogus record; and also recommended imposition of major penalty upon the appellant with recovery of the amount from the appellant. The co-accused namely Imtiaz Ahmed, Superintendent of Deputy Commissioner office, Swabi was exonerated in his inquiry with a presumptive view that had he been involved in the above game or have any sort of connivance with the dealing hand (License Clerk), he would have never disclosed it before the competent authority in time.

13. Leaving the findings and recommendations of IO against the appellant aside for a while, let us observe that in view of our discussion having already gone herein above with reference to style of inquiry proceedings; the IO except association of appellant for one time to receive his written statement in answer to the charge sheet and statement of allegations, had provided no other opportunity of defense as required under sub rules (1) and (4) of Rule 11 of the E&D Rules, 2011. Thus, the impugned order based on such inquiry report is not tenable for this single reason as the competent authority was under legal obligation firstly to determine whether the inquiry was conducted in accordance with provisions of E&D Rules and after satisfaction as to its having been so conducted, it was to further determine whether the charge or charges had been proved against the accused or not. As the competent authority not only failed in determination of compliance of the IO with rules

ATTESTED


 Khairul Pakir
 Secretary
 Peshawar

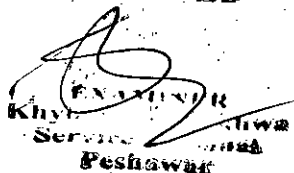
but also proceeded further quite erroneously by relying upon the factual part of the Inquiry Report based on the record never confronted to the appellant for its rebuttal. Therefore, we are constrained to examine the case on facts to bring a clear picture of the issues of License Branch of DC Office, Swabi as they were purported to have existed at the time of inquiry conducted by Dr. Qasim, ADC, Mardan; so that we, before parting with this judgment, could be able to give a direction for merit based inquiry, if viable.

14. Before initiation of the formal inquiry under E&D Rules 2011 in pursuance to the charge sheet and statement of allegations served upon the appellant, a fact finding (preliminary) inquiry was conducted by the Additional Deputy Commissioner, Swabi. The IO in his report also adverted to the record of the preliminary inquiry as given to him. It would be useful to copy herein below the relevant part of the main inquiry report comprising discussion relating to the preliminary inquiry:-

"From the record presented to the undersigned and the statements submitted by the concerned officials, it reveals that Mushtaq Ali, Assistant was assigned to perform his duty as 'License Clerk' vide office order bearing No.3531/DCS/EA dated 30.12.2016 who remained in the same branch till sealing of the section by the ADC, Swabi vide order No.1466/DCS/EA dated 08.06.2017 and subsequently he was transferred from his position vide order bearing No. 1478/DCS/EA dated 09.06.2017. After sealing, an inquiry Committee comprising Additional Deputy Commissioner and Assistant Commissioner, Swabi was constituted to probe the matter vide order dated 1366-72/DCS/PS dated 29.05.2017 who jointly conducted the inquiry proceedings and after recording statements of all the concerned officials they formed their opinions and recommended some suggestion which include:

1. Sealing of the License Branch.
2. Transfer of the License Clerk from the post of License Clerk.
3. Detail investigation through District Police Officer following lodging an FIR against the three private persons.

ATTESTED


 Khyl
 Swabi
 Peshawar

(14)


4. Probing the embezzlement through the Anti-Corruption Establishment.
5. Investigation regarding issue of licenses to under aged with person of out-Districts.
6. Verification of channels used in the issuance of private licenses during the period of the accused license clerk and
7. Serving of charge sheets and statement of allegations on the official.

15. The IO having discussed the preliminary inquiryas copied above, while concluding the discussion, had observed that out of above recommendation, suggestions at serial No. 1, 2, 4 and 7 were taken into account whereas the rest were not followed for unknown reasons. Notwithstanding his observation about not following the recommendations at serial No. 3, 5 and 6, the IO himself was vested with powers within meaning of Rule 12 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 to deal at least with two points i.e. 2 and 3 for bringing clear picture of the things at the canvas. However, he also did not enter in the said area for reasons best known to him. To our mind, the argument before us that Appellant was made scapegoat seems not without force because the grey area of the affairs was left unattended.



16. It is noteworthy that the disciplinary action against the Appellant was not initiated in pursuance to the preliminary inquiry. Rather it commenced in pursuance to the letter to letter No. 15064/ACE dated 4-10-2017 after about one year from the date of said letter on the subject of "Open Inquiry No. 8/2017-DE against Superintendent, License Clerk, Deputy Commissioner office, Swabi and others' issued from the Directorate of Anticorruption Establishment (ACE) Khyber Pakhtunkhwa, Peshawar addressed to the Deputy Commissioner, Swabi. The latter, vide his office letter No. 228/DCS/EA (CR) dated 10-11-2017, sent the case to the Commissioner.

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Mardan stating therein that the matter was referred to Assistant Director Crimes, ACE, Mardan for proper probe and legal action. The matter was probed by them and recommended for departmental inquiry. He i.e. the Deputy Commissioner added that the appointing authority is the Senior Member Board of Revenue (SMBR). The said correspondence, certainly is not deniable by the respondents being part of their record, presumably excludes the allegation of corruption when the anticorruption watchdog seized with the Open Inquiry No. 8/2017 had sent the case to the department for action at their end. If the Deputy Commissioner, Swabi was sure about charges of misappropriation of public money by the Appellant besides fraud and forgery attributed to the latter, the former was legally supposed to report the said charges to the local police so as to bring the Appellant to justice through his criminal prosecution. However, the Deputy Commissioner could not dare to invite the criminal investigation by reporting of crime to the police, but they had not abandoned the said charge in departmental proceedings. Anyhow, the said omission on part of the controlling authority of the License Branch gives rise to a presumption that they avoided to open a Pandora box and decided to rub the issue under carpet by making the Appellant scapegoat for departmental action.

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17. The Appellant has not been charged for disciplinary action on the basis of direct evidence rather the charges against him pertain to the record in his custody purporting the same as fake/bogus with inference against him that it was prepared by him or by his connivance with Mr. Intiaz Ahmed Superintendent who was co-accused with the Appellant. The Inquiry Report divulges the focus of the Inquiry Officer on fixing the Appellant alone by his all-out ignorance about the contributory role of all those who come in

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

between the License Clerk and the Deputy Commissioner in scheme of things significant in a regulated chain workable towards issuing of arm licenses under the rule.

18. The matter of arms licenses is not a matter of discretion of the executive but it is a regulated exercise under Khyber Pakhtunkhwa Arms rules 2014. Under the said rules, the "Deputy Commissioner" meaning the Deputy Commission of the concerned district and the "Secretary" meaning Secretary to Government Home and Tribal Affairs Department are only two competent authorities under the said rules to issue the licenses of different category prescribed by rules. The matter of licenses which were taken into account for disciplinary action against the appellant was within the competence of Deputy Commission Swabi. Part-II of the Rules 2014 deals with grant of licenses for possession and going armed. Sub-Rule (1) of Rule 13 provides that a license for possession of arm or ammunition and for going armed may be granted, under these rules in form XI by the Deputy Commissioner. Nowhere in the said rules is provided that the Deputy Commissioner or the Secretary being competent authority under the rules have got any competency to delegate their powers of issuance licenses to any of their sub-ordinate. Interestingly, there is copy of an office order of the DC Swabi as part of complete record of inquiry produced on direction of this Tribunal. The said order bearing No. 930 was issued by the DC Swabi on 31-03-2015 to authorize Mr. Imtiaz Ahmed, Superintendent, DC Establishment, Swabi as signatory authority for arms license copies subject to approval of the competent authority. The said Superintendent (co-accused with the appellant) submitted an office note to the Deputy Commissioner stating therein that fresh manual arms licenses copies are being prepared and issued

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 DEPUTY COMMISSIONER
 KHYBER PAKHTUNKHWA
 GOVERNMENT
 SWABI

under his fake signature in the previous date without any record/prior approval of the competent authority, in contravention of the Government Policies. Irrespective of question of competency of the Superintendent as to his being signatory of arm licenses, it was duty of the IO to get specimen signatures of the said Superintendent for their comparison with the signature on the license copies recovered from the License Branch and purported to have been issued with fake signature. Why this exercise was omitted seems to be a matter in between the IO and the Superintendent namely Imtiaz Ahmad who was simply exonerated by the former and the latter stood absolved from vicarious liability because he had pointed out the game to the Deputy Commissioner. Anyhow, when the IO was competent to embark upon the said exercise of comparison of signature within the meaning of Rule-12 discussed above, the omission on his part is apt to give rise to an inference that had he embarked upon the exercise of comparison of signature, it would have gone against the Superintendent. If there was any illegality or irregularity in issuance of the licenses linked with contributory role of the Superintendent, was screened none else but by the IO who had dealt both the Superintendent and the appellant in one and the same inquiry report on the basis of charge sheet separately issued to Imtiaz Ahmad, Superintendent and the appellant. The proof of this allegation as issuing of licenses with fake signatures of the Superintendent hinged upon the comparison of his admitted signatures with the purported fake signature. Although, there was a specific allegation in charge sheet of the Superintendent as to his connivance with the appellant and another namely Rashid Niaz, Naib Qasid but this part of the allegation in charge sheet of Imtiaz Ahmad, Superintendent remained unattended and he was absolved merely on a presumptive recommendation.


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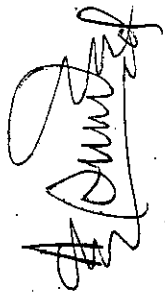
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

19. From the discussion having so far gone, possible factual and legal inferences include: (1) The Deputy Commissioner being license issuance authority, in absence of any express provision in the Arms Rules about delegation of signatory power to any of his subordinate, had committed irregularity himself by authorizing the Superintendent of his office for this job. (2) If the illegalities in issuing of arms licenses were rampant as purported, expediency of a broad based investigation by the Anticorruption Establishment was unavoidable in the public interest but maybe in backdrop of some hidden agenda, it did not go deeper and opined for a departmental action only. (3) The Deputy Commissioner Swabi, in particular nature of the charges, was not supposed to withhold the opportunity of criminal investigation by local police having not reported the crime under due course of law, if he was sure about forgery and misappropriation of public money in affairs of the License Branch directly under his control. However, he for the reasons best known to him could not do so. (4) The inquiry conducted as part of disciplinary proceedings against the appellant was not fair in terms of collection of record without its confronting the accused; and thus the appellant suffered on account of proceedings conducted having no regard to the due process and necessity of fairness of trial. (5) In the statement of allegations served upon Imtiaz Ahmed, Superintendent, his connivance is alleged with the appellant and with Rashid Niaz, Naib Qasid. However, this part of the charge sheet against the Superintendent was not investigated by the IO. Moreover, the role of Naib Qasid was included in this head of the Charge against Imtiaz Ahmed Superintendent but there is no clue in the inquiry report that whether afore-named Naib Qasid was proceeded against or not. (6) In absence of inquiry in respect of the charge sheet against the Superintendent, we are unable to exclude the liability of the Superintendent

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Khyl Service Peshawar

due to his close control over the License Branch being signatory of the licenses and a proxy in between the Branch and the Competent Authority i.e. the Deputy Commissioner. (7) In presence of shortfalls of the inquiry proceedings as deducted from the inquiry for discussion having gone in this judgment, the entire edifice of enquiry proceedings does not qualify the test of the procedure provided under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011; but the competent authority blindly relied upon the inquiry report without prior satisfaction as to its having been conducted in compliance with the said rules. In view of the inferences enumerated herein before, our answer to the formulated questions follows: The first question whether the appellant and the exonerated co-accused were *in paridilicto* meaning "*in equal fault*", is answered in affirmative. The said doctrine of *in paridilicto* is based on the maxim namely "*in pari delicto potiores conditio defendant*" which signifies that in a case of equal or mutual fault, the position of the defending party is the better one. The second question was related to the ground for disciplinary action against the appellant as to its emanating from the affairs of the License Branch of Deputy Commissioner's office in District Swabi, being subject of collective responsibility; if so, whether isolation of the appellant for punishment withstands the test of fairness in such treatment. In view of our observations about charge sheet against the Superintendent, the former part of the second question is answered in affirmative while its latter part about test of fairness is answered in negative. In view of the given answers to the formulated questions, it is safe to hold that Mushtaq Ali the appellant and Mr. Imtiaz Ahmed, the Superintendent were supposed to sink together and sail together. However, the IO recommended his exoneration with inquiring to charges against him particularly the charge of his connivance with the appellant. In the purported



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(20)

case taken as ground for disciplinary action against the appellant, the trail even goes to the Deputy Commissioner who being at helms of the affair failed to meet the standard of prudence and left the matter at mercy of the Superintendent by delegating him the powers of signatures.

20. In sequel to the details captured herein above, we hereby accept the Appellant's appeal as prayed for. Consequently, the impugned order of appellant's dismissal from service and that of the appellate authority maintaining the same are set aside with direction to the respondents to pass necessary orders to reinstate him in service from the date of his dismissal and to restore him all back benefits which he missed in between the dates of his dismissal and this judgment. This judgment will not be an impediment for the departmental authorities, if they deem it appropriate to hold an all-encompassing inquiry into financial and administrative affairs of the License Branch under control of the Deputy Commissioner, Swabi, for the period of incumbency of Mushtaq Ali the appellant, Mr. Imtiaz Ahmed the then Superintendent and of Mr. Rashid Niaz the then Naib Qasid. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.07.2021

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ROZINA REHMAN)
MEMBER(I)

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 14-8-21
Number of Words 6400
Copying Fee 66/-
Urgent _____
Total 66/-
Name of Counselor _____
Date of Completion of Copy 30-8-21
Date of Delivery of Copy 30-8-21

معدالت صواب سروس ٹریبونل اینڈ

2021 صواب اسلام آباد

21/10/21

مورخہ:

مقدمہ:

دعویٰ:

بنام:

حکومت

مستأن علی

Execution باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آئن مقام کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان ایڈل سروس

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ
برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر
دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا
اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقررہ میں جو خرچہ جانہ
التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہوا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔
لہذا وکالت نامہ لکھ دیا کہ سنڈرھے۔

2021

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المرقوم:

العبد

گواہ

العبد

Amjad Ali
ADVOCATE
SUPREME COURT

مقام کے لیے منظور ہے۔

Attested, Acephta

Amjad Ali
Mardan

Be 10 5 5 06

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان



IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Case No. CPLA No. 550-P/2021

Title: Govt. of KP, Secretary Board of Revenue(R&S) Department, Peshawar & others
Versus Mushtaq Ali.

SUBJECT: APPLICATION FOR EARLY HEARING & TRANSFER

CATEGORY OF CASE: Service Matter/ Re-instatement in to Service

BRIEF OF CASE (FROM TRIAL COURT TO IMPUGNED ORDER):- The Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar accepted the Service Appeal No.387/2019 of the respondent vide impugned judgment dated 16/07/2021 which is now under execution before the Tribunal.

Nature of Proceeding before lower Court:- (Execution Petition) before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar asking for implementation of the judgment and order dated 16/07/2021 which is impugned before this august Court in CPLA No.550-P/2021.

Relief claimed in main case. Suspension of the impugned Judgment & Order dated 16/07/2021 passed in Service Appeal No. 387 of 2019

GROUND/ REASON OF URGENCY:

1. Respondent filed Execution Petition before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar
2. Hon'ble Tribunal directed the petitioners to implement the judgment passed in Service Appeal No. 387 of 2019

PROOF OF URGENCY:

(Attached/ Not attached)

PRAYER:

It is respectfully prayed that the Petition... may kindly be Transferred to the Principal seat at Islamabad and may kindly be fixed in the 3rd Week of March, 2022

UNDERTAKING:

Certified that this is 1st application by the AOR/Applicant for early fixation of instant case.

M. D. Humayun
(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For the Government of KP

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 550-P/2021

Government of Khyber Pakhtunkhwa through Secretary Board of
Revenue, Revenue & Estate, Department, Peshawar.

-----PETITIONERS

VERSUS

Mushtaq Ali

-----RESPONDENT

Appeal from : *Khyber Pakhtunkhwa, Service Tribunal,
Peshawar*
Counsel for Petitioner : *Advocate General, Khyber Pakhtunkhwa,
Peshawar*
Instituted by : *Moin-ud-Din Humayun, AOR*

OR
/

(A)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

Government of Khyber Pakhtunkhwa through Secretary Board of Revenue, Revenue & Estate, Department, Peshawar & Others

-----PETITIONERS

VERSUS

Mushtaq Ali

-----RESPONDENT

CONCISE STATEMENT

1- Subject matter and the law Reinstatement in Service with Back Benefits

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
KPK Service Tribunal Peshawar	a) 20/03/2019 b) 16/07/2021	Respondent filed service appeal which has been accepted

Points noted in the impugned Judgment	Treatment of points in the impugned judgment
The respondent's role in the affairs of License Branch of DC Office Swabi was nothing more than a support staff working under direct supervision of the Office Superintendent having delegated signatory powers to sign the licenses given by the DC. So, it was not possible for the respondent to forge the signatures of the Superintendent under his nose. The learned counsel for the	From the discussion having so far gone, possible factual and legal inferences include: (1) the Deputy Commissioner being license issuance authority, in absence of any express provision in the Arms Rules about delegation of signatory power to any of his subordinate had committed irregularity himself by authorizing the Superintendent of his Office for this job. (2) If the illegalities in issuing of Arms Licenses were rampant as purported, expediency of a broad based investigation by the Anti-Corruption Establishment was unavoidable in the public interest but may be in back drop of some hidden agenda; it did not go deeper and opined for a departmental action only. (3) the Deputy Commissioner Swabi, in particular nature of the charges, was not supposed to withhold the opportunity of criminal investigation by local police having not reported the crime under due course of law, if he was sure about forgery and misappropriation of public money in affairs of the License Branch directly under his control. However, he for the reasons best known to him could not do so. (4) The inquiry conducted as

respondent contended that the entire proceedings against the respondent are sham and illegal and he was made a scapegoat.

Learned AAG on behalf of the petitioners contended that respondent was custodian of the record of the License Branch. He misused his position by allowing private persons to collaborate with him in preparation of fake record of licenses and for forgery of the signatures for issuing licenses with fake signatures. He was caught red handed by the then Deputy Commissioner during his surprise visit of the Licenses Branch. After fact finding inquiry, he was found liable for disciplinary proceedings. So he was properly served with charge sheet and statement of allegations for conducting inquiry in the matter. He was found guilty by the inquiry Officer and the Competent Authority satisfying itself about due course of the inquiry proceedings proceeded

respondent was fair in terms of collection of record without its confronting the accused; and thus the respondent suffered on account of proceedings conducted having no regard to the due process and necessity of fairness of trial. (5) In the statement of allegations served upon Imtiaz Ahmed, Superintendent, his connivance is alleged with the respondent and with Rashid Niaz, Naib Qasid. However, this part of the charge sheet against the Superintendent was not investigated by the IO. Moreover, the role of Naib Qasid was included in this head of the Charge against Imtiaz Ahmed superintendent but there is no clue in the inquiry report that whether afore-named Naib Qasid was proceeded against or not. (6) In absence of inquiry in respect of the charge sheet against the Superintendent, we are unable to exclude the liability of the Superintendent due to his close control over the License Branch being signatory of the licenses and a proxy in between the Branch and the Competent Authority i.e. the Deputy Commissioner. (7) in presence of short falls of the inquiry proceedings as deducted from the inquiry for discussion having gone in this judgment, the entire edifice of inquiry proceedings does not qualify the test of the procedure provided under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011; but the Competent Authority blindly relied upon the inquiry report without prior satisfaction as to its having been conducted in compliance with the said rules. In view of the inferences enumerated herein before, our answer to the formulated questions follows: The first question whether the respondent and the exonerated co-accused were in equal fault, answer is in affirmative. This signifies that in a case of equal or mutual fault, the position of the defending party is the better one. The second question was related to the ground for disciplinary action against the respondent as to its emanating from the affairs of the License Branch of Deputy Commissioners office in District Swabi, being subject of collective responsibility; if so, whether isolation of the respondent for punishment withstands the test of fairness in such treatment. In view of our observations about charge sheet against the Superintendent, the former part of the second question is answered in affirmative while its latter part about test of fairness is answered in negative. In view of the given answers to the formulated questions, it is safe to hold that Muztaz Ali the respondent and Mr. Imtiaz

(c)

<p>cause notice. The respondent could not offer sufficient cause to absolve him from the penalty proposed in the show cause notice, and it was his fate to get the major penalty because of his grave misconduct.</p>	<p>recommended his exoneration with inquiring to charges against him particularly the charge of his connivance with the respondent. In the purported case taken as ground for disciplinary action against the respondent, the trial even goes to the Deputy Commissioner who being at helms of the affair failed to meet the standard of prudence and left the matter at mercy of the Superintendent by delegating the powers of signatures.</p> <p>We hereby accept the respondent appeal and set aside the dismissal order of respondent from service with direction to pass necessary orders to reinstate him in service from the date of his dismissal and to restore him all back benefits. This judgment will not be an impediment to hold conduct inquiry into financial and administrative affairs of the License Branch under control of the Deputy Commissioner, Swabi, for the period of incumbency of Mushtaq Ali the respondent, Mr. Imtiaz Ahmed the then Superintendent and of Mr. Rashid Niaz the then Naib Qasid.</p>
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LAW/RULING ON THE SUBJECT

FOR

- 1- CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973
- 2- KP SERVICE LAWS

CERTIFICATE:

Certified that I, myself prepared the above concise statement which is correct.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

①

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

1. Government of Khyber Pakhtunkhwa through Secretary Board of Revenue, Revenue & Estate, Department, Peshawar.
2. Senior Member Board of Revenue, Civil Secretariat, Peshawar.
3. Deputy Commissioner Swabi

PETITIONERS

VERSUS

Mushtaq Ali, (Ex-Tehsildar) S/o Charagh R/o Shaheed Abad Shawa Tehsil Razha, District Swabi

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE
212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/
ORDER OF THE LEARNED KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR DATED 16/07/2021
PASSED IN SERVICE APPEAL NO.387/2019

RESPECTFULLY SHEWETH;

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?

2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
3. Whether the respondent was not custodian of record of the license Branch?
4. Whether the respondent has misused his position by allowing private persons to collaborate with him in preparation of fake record of the arm licenses and for forgery of the signatures for issuing licenses with fake signature?
5. Whether the respondent was not caught red handed by the Deputy Commissioner, Swabi during his surprise visit of the license branch?
6. Whether a proper disciplinary proceeding was not initiated against respondent after fact finding inquiry and was accordingly charge sheeted, statement of allegation was issued to the respondent and an inquiry officer was appointed by the competent authority?
7. Whether a proper and regular inquiry was not conducted against the respondent in which the respondent was found guilty of grave misconduct and consequently recommended for major penalty?
8. Whether the Hon'ble Tribunal was not required to hold that the salary and back benefits will be subject to fresh inquiry while holding that the inquiry is not in accordance with law?
9. Whether the allegation against the respondent is not that of fake signature on the arm license and not the competency under the law to issue license?
10. Whether the Investigation Officer has not made comparison of signature of the Superintendent and so fake signature on the license through his own observation which resulted in to declaring the signature as fake?
11. Whether there is any malafide on the part of Investigation Officer or Competent Authority?

- 2
12. Whether the departmental proceeding against the respondent was not in best interest of the public?
 13. Whether the respondent was not posted as license clerk and to perform the following duties
 - i. *Receiving applications for arms licenses and its submission to the Deputy Commissioner for approval as per authorized monthly quota of the District;*
 - ii. *After approval and then before the issue of arms license, depositing of its fee in the NBP through challan under proper head of account;*
 - iii. *At the end of each and every month, reconciliation of all challan from the concerned District Accounts Officer, through which the license fee was deposited during the month;*
 - iv. *At the time of receiving applications for arms licenses, checking of original CNICs of each applicant especially for fitness of his age for arms licenses; and*
 - v. *Maintaining of the entire office record to the branch including license issue register.*
 14. Whether the Inspector Stamps Commissioner Officer, Mardan has not noticed irregularities during his audit/inspection?
 15. Whether the Hon'ble Service Tribunal has not exceeded its power while deciding the case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That respondent was initially appointed in Commissioner's Office of District Peshawar in the year 1984, was transferred to Commissioner's Office Mardan in the year 1988.
2. That respondent was promoted as Senior Clerk and then as Assistant (BPS-15) in the year 1993, and thereafter, further manipulated promotion as Tehsildar (BPS-16) in the year 2017 on acting charge basis despite the fact that the inquiry was in process against the respondent.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 550-A/2021

Government of Khyber Pakhtunkhwa through Secretary Board of
Revenue, Revenue & Estate, Department, Peshawar.

-----**PETITIONERS**

VERSUS

Mushtaq Ali

-----**RESPONDENT**

Appeal from : *Khyber Pakhtunkhwa, Service Tribunal, Peshawar*
Counsel for Petitioner : *Advocate General, Khyber Pakhtunkhwa, Peshawar*
Instituted by : *Moin-ud-Din Humayun, AOR*

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5.	Comments		28-29
6.	Charge sheet along with stay application		30-31
7.	Enquiry report	09-11-2018	32-37
8.	Show cause notice along with reply	19-11-2018	38
9.	Reply to show cause notice	26-11-2018	39
10.	Notification regarding dismissal from service	07-12-2018	40
11.	Departmental appeal		41-43
12.	Letter regarding rejection of departmental appeal	01-03-2019	44
13.	Stay application	24-09-2021	45-46
14.	Affidavits	24-09-2021	47-48
15.	Notice to the respondent	24-09-2021	49

CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

- (4)
3. That the respondent while posted as Assistant in the Arm License Branch of the office of Deputy Commissioner, Swabi the then Deputy Commissioner Swabi on surprise visit of the arm License Branch of Deputy Commissioner Office Swabi on 29/05/2017 and a register "labeled as PS Swabi containing 557 entries alongwith 17 Licensed copies, 15 of which were found signed under fake signatures and five copies were recorded through issuance of manual license copies which was banned with the introduction of computerized Arm License on 21/02/2017. No rules regulations were framed and private person was making entries in the official record.
 4. That proper departmental proceeding was initiated and charge sheet, statement of allegation was issued to the respondent. An enquiry officer was appointed who conducted proper & regular inquiry in the matter and submitted its findings.
 5. That on receipt of findings of inquiry officer proper show cause notice was issued to the respondent and vide order dated 07/12/2018 respondent was dismissed from service.
 6. That the respondent filed departmental appeal which was rejected by the Competent Authority on 01/03/2019.
 7. That the respondent being aggrieved filed Service Appeal No. 387/2019 in which comments were called from the petitioners which were accordingly filed refuting the stance of respondent.
 8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted Service Appeal No.387/2019 of respondent vide impugned judgment/ order dated 16/07/2021.
 9. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 16/07/2021 in Service Appeal No.387/2019, prefer this CPLA before the august Court.

10. That the petitioners seek leave to appeal against the impugned judgment / order dated 16/07/2021 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.387/2019.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 16/07/2021 in Service Appeal No.387/2019 may graciously be granted.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

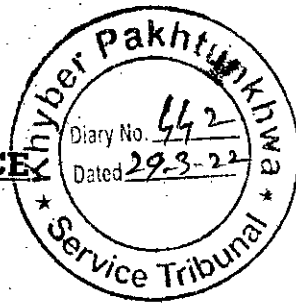
ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

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



In re:
CM for Implementation

Musthaq Ali **Appellant**

VERSUS

Govt. of KP through Secretary Board of
Revenue (R&S) Department, Peshawar & others **Respondents**

**APPLICATION FOR FIXATION AN EARLY
DATE OF HEARING IN THE ABOVE TITLED
CM FOR IMPLEMENTATION**

Respectfully Sheweth

Sir,

Appellant humbly submits as under:-

1. That the above titled CM for implementation is pending adjudication before this hon'ble Tribunal and the same is fixed for 31.05.2021.
2. That the date fixed in the titled CM is a lengthy one, therefore, through instant application the appellant request this august Court for acceleration of the same, because the respondents are not implementing the manifest judgment/ order passed by this Hon'ble Tribunal.
3. That appellant is jobless and is facing great hardships.

Put up to the worthy chair with relevant app. - on

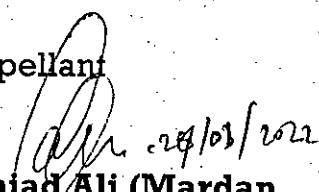
29/3/2022

Ready

4. That despite clear cut directions, the respondents are not reinstating the appellant into his service.
5. That the respondents are willfully avoiding act upon the order passed by this Hon'ble Tribunal.

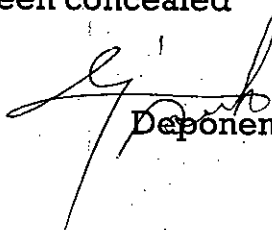
It is, therefore, humbly requested that, on acceptance of this application, the date fixed in the above titled petition may graciously be accelerated and the case be fixed to a nearest possible date.

Dated; 29.03.2022

Appellant
through 
Amjad Ali (Mardan)
Advocate Supreme Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.


Deponent



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 2056-5 /ST Dated: 17/06 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

- 1 The Accountant General,
Government of Khyber Pakhtunkhwa,
Peshawar.

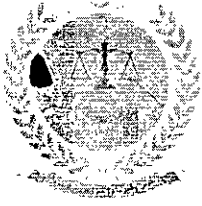
Subject: SALARY ATTACHMENT OF THE RESPONDENTS TILL FURTHER IN EXECUTION PETITION NO. 229/2021 IN CASE TITLE Mr. MUSHTAQ ALI VS GOVT. OF KHYBER PAKHYUNKHWA THROUGH SECRETARY BOARD OF REVENUE (R&S) DEPARTMENT, PESHWAR.

I am directed to forward herewith a certified copy of Order dated 31.05.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEMAKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No: 2053-55 /ST Dated: 17/06 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

- 1 Government of Khyber Pakhtunkhwa Through Secretary Board of Revenue (R&S) Department, Peshawar.
- 2 The Senior Member Board of Revenue, Civil Secretariat, Peshawar.
- 3 Deputy Commissioner, Swabi.

Subject: DIRECTION FOR IMPLEMENTATION OF JUDGMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN EXECUTION PETITION NO. 229/2021 IN CASE TITLE Mr. MUSHTAQ ALI VS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY BOARD OF REVENUE (R&S) DEPARTMENT, PESHAWAR

I am directed to forward herewith a certified copy of Order dated 31.05.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEM AKHTAR)

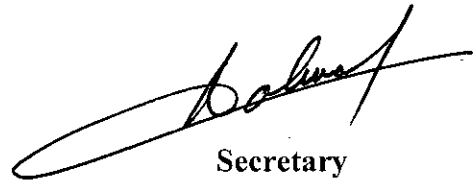
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CASE TITLE:- EXECUTION PETITION NO.229/2021 MUSHTAQ ALI VERSUS GOVT OF HYBER PAKHTUNKHWA.

SUBJECT: - APPLICATION FOR RELEASE OF SALARY.

1. Case titled Mustaq Ali (Ex Tehsildar), Service Appeal No. 387/2019 S/O Charagh, R/O Shaeed Abad Shawa, Theshil Razar, District Swabi versus Government of Khyber Pakhtunkhwa Peshawar, was decided on 16.07.2021.
2. That the subject Execution Petition was pending adjudication before this Hon,ble Tribunal Peshawar.
3. That vide order dated 31.05.2022 this Hon,ble Tribunal was pleased to attached the salary of the respondent in the subject case.
4. That in response, the respondents implemented the order and submitted implementation report on 01.07.2022, but the release of salary was not incorporated in the order dated 01.07.2022.
5. As the Judgment of this Hob,ble Service Tribunal has already been implemented therefore the salary of respondent may kindly be released.



Secretary
Board of Revenue.
Revenue and Estate Department

Dated 27.07.2022

*Order
27.07.2022
Be placed in file.
Since order/judgment of
the Tribunal seems to have
been implemented, therefore
salaries of the respondents
are released.*

27/7/22

Before The Honorable Khyber Pakhtunkhwa
Service Tribunal, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

832

Case No. 27/07/2022

● Subject Application for releasing of salary

① Case Titled Mushtaq Ali S.A No. 387/19
Ex (Tehsildar) S/O Changan R/O Shaked Abad
Shewa, Tehsil Rajar dist Swabi versus govt
of Khyber Pakhtunkhwa.

② That the subject Execution petition was
pending adjudication before this Honorable
Tribunal Peshawar.

③ That order dated 31.05.2022
this Honorable Tribunal was placed to attached
the salary of the respondents in the subject
case.

④ That order dated 31.05.2022 applicant/
respondent submitted implementation report
on 1.07.2022.

⑤ As the judgment of this Honorable Service
Tribunal is implemented attached salary
may please be release.

Dated 27.07.2022

Put up to the worthy chair-man
with relevant execution petition.

Reader

27/7/2022

Yours faithfully

Junran

27-07-2022

Junran Akbar
Assistant (BOR)