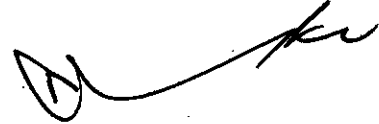


19th Sept 2022 1. None for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Miss. Sahira Mushtaq, Dy: Director, Special Education, Social Welfare Abbottabad for respondents present

2. Representative of the respondents submitted a reply annexing there-with copy of the order dated 13.07.2020, whereby, in compliance of the judgment of this Tribunal, the petitioner was reinstated into service w.e.f 24.09.2016 but after the de-novo enquiry conducted against him, he was again dismissed from service on 10.09.2021. Through this petition the petitioner has sought his reinstatement into service, which, according to the papers submitted by the representative of the respondents, had been made rendering this petition as fruitless. The petitioner has again been dismissed vide order dated 10.02.2021, therefore, there is no need to keep this petition pending further and is thus disposed of accordingly. Consign.

3. *Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal on this 19th day of September, 2022.*

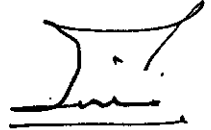


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

19.01.2022

Petitioner in person present. Ms. Saira, Deputy Director on behalf of respondents No. 2 & 3 alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Petitioner requested that time may be granted to him to engage a counsel. Adjourned. To come up for further proceedings on 14.02.2022 before the S.B at Camp Court Abbottabad.

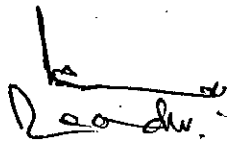


(Salah-ud-Din)
Member (J)

Camp Court A/Abad

14-2-2022

Due to retirement of worthy chairman case is adjourned. To come up for the same as before on 18-7-2022.



18th July 2022 None for the petitioner present. Syed Naseer Ud Din Shah, Asst: AG alongwith Mr. Sahadat Ali, Store Incharge for respondents present.

Implementation report not submitted. Representative of the respondents seeks time to submit the same on the next date. Last opportunity granted to submit proper implementation report positively. To come up for implementation report on 19.09.2022 before S.B at camp court Abbottabad.



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

EP 106/20

18.11.2021

Petitioner in person and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Mst. Saira Mushtaq, Deputy Director, Special Education for the respondents present.

The representative of the respondents seeks time to submit implementation report. Request is accorded. To come up for implementation report on 01.12.2021 before the S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

01.12.2021

Petitioner in person and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Saadat Ali, Store Keeper for the respondents present.

The representative of the respondents being Store Keeper is not in a position to assist the Tribunal about implementation of the judgment at credit of the petitioner. Respondents No. 2 & 3 are directed to attend the Tribunal personally on the next date for their response to the execution petition. Respondent No. 2 if not able to personally attend, he will depute a well-conversant officer not below the rank of BPS-17 to represent him and answer the queries; while respondent No. 3 shall attend in person. Case to come up on 19.01.2021 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

21.09.2021 Nemo for parties. Mr. Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Previous date was changed on Reader Note, therefore, both the parties be put on notice for 16.11.2021 before S.B at Camp Court, Abbottabad.



(ATIQ UR REHMAN WAZIR)

16.11.2021 Petitioner with counsel and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

MEMBER (E)
CAMP COURT, ABBOTTABAD

Learned AAG seeks short adjournment to contact the respondents to implement the judgment in its letter and spirit and submit report on next date. Request is accorded. Case to come up for implementation report on 18.11.2021 before S.B at camp court, Abbottabad.

8.11.2021 Petitioner in person and Mr. Muhammad Riaz Khan Paindakheil, Asstt. AG for the respondents present.

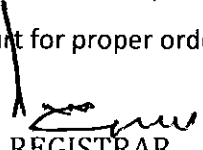


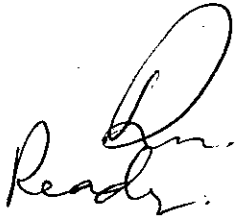
The representative of the respondents submit its submission report. Request is accorded to come up for implementation report on 18.11.2021 before S.B at camp court, Abbottabad.

Chairman
Camp Court, A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____
 Execution Petition No. 106 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.07.2020	<p>The execution petition of Mr. Muhammad Sajjad received today by post through Mr. Pervaiz Abbasi Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before touring S. Bench at A.Abad on <u>17-11-20</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
17.11.2020		<p>None for the petitioner has forth come at the moment i.e 11:10 A.M. Notice be issued to the respondents for attendance and submitting implementation report for 21.01.2021 before S.B at Camp Court, Abbottabad.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER CAMP COURT ABBOTTABAD</p>
21.1.21		<p>Due to covid-19, The case is adjourned to 21.9.2021 for the same.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD

Muhammad Sajjad S/o Muhammad Riaz, Caste Awan, Resident
of Mohallah Awanabad, Jhangi Syedian, Abbottabad.

.....PETITIONER

V/S

Government of KPK through Secretary, Social Welfare Special
Education and Women Empowerment Peshawar etc.

.....RESPONDENTS

APPLICATION FOR IMPLEMENTATION

INDEX

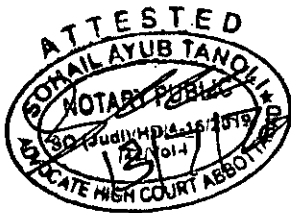
S. #	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Application alongwith affidavit		1-3
2.	Copy of order	"A"	4
3.	Copies of the departmental representation and appeal	"B & C"	5 - 9
4	Copy of judgment <i>and Application</i>	"D & E"	10 - 20
5	Wakalatnama		21



Dated: 13 /07/2020

.....Petitioner

Through



Muhammad Sajjad
PARVEZ ABBASI
&
RIZWAN ALI
Advocates High Court, Abbottabad

BEFORE THE KPK SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD

E. P. No. 106/20

Muhammad Sajjad S/o Muhammad Riaz, Caste Awan, Resident
of Mohallah Awanabad, Jhangi Syedian, Abbottabad.

.....PETITIONER

Khyber Pakhtukhwa
Service Tribunal

Diary No. 528

Dated 20-7-2020

V/S

1. Government of KPK through Secretary, Social Welfare
Special Education and Women Empowerment Peshawar.
2. Director, Social Welfare Special Education and Women
Empowerment Peshawar.
3. District Officer, Social Welfare Special Education and
Women Empowerment Peshawar.
4. Superintendent, Government Institute for the Blind
Abbottabad.

.....RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT OF THIS HON'BLE TRIBUNAL / COURT
DATED 23-01-2020 IN APPEAL NO. 219/2017
RESPONDENTS MAY BE DIRECTED TO REINSTATE
THE PETITIONER IN SERVICE (AS PER JUDGMENT
OF THIS HON'BLE COURT).

Respectfully Sheweth:

1. That the petitioner was appointed as cane worker (BPS-06) at Govt Institute for the Blind Abbottabad on 16-05-2008. On certain allegation major penalty of removal from service was imposed on petitioner vide impugned order dated 23-09-2016. (Copy of the order is attached as annexure "A").
2. That, feeling aggrieved petitioner filed departmental representation on 08-06-2016 and thereafter filed service appeal on 08-02-2017. (Copies of the departmental representation and appeal are attached as annexure "B & C").
3. That, the appeal of the petitioner was accepted on 23-01-2020, Petitioner was reinstated in service and impugned order dated 23-09-2016 was set-aside.. (Copy of judgment is attached as annexure "D").
4. That after the acceptance of petitioner appeal petitioner move an application for reinstatement but respondents did not give any response to petitioner and delayed the



matter one way or the other pretext, that petitioner have no other option to file instant petition. (Copy of the application is attached as annexure 'E')

It is, therefore, most humbly prayed that on acceptance of instant petition respondents may please be directed to reinstate the petitioner accordingly in the light of judgment dated 23-01-2020 passed by this Hon'ble Court / Tribunal.

Dated: 13 /07/2020

.....Petitioner

Through


 PARVEZ ABBASI
 &
 RIZWAN ALI 
 Advocates High Court, Abbottabad

Verification

I, Muhammad Sajjad S/o Muhammad Riaz, Caste Awan, Resident of Mohallah Awanabad, Jhangi Syedian, Abbottabad, verified that the contents of forgoing application are true and correct to the best of my knowledge and belief.

Dated: 13 /07/2020

.....Petitioner



x

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT AT ABBOTTABAD**

Execution Petition No. 106 / 2020 in Service appeal No. 219 / 2017

Muhammad Sajjad.....**Petitioner**

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary Social Welfare, Special Education & Women Empowerment Department.
2. Director Social Welfare, Special Education and Women Empowerment, Khyber Pakhtunkhwa Peshawar
3. District Officer, Social Welfare, Special Education and Women Empowerment, Peshawar.
4. Superintendent Government Institute for the Blind, Abbottabad.....**Respondents.**

Respectfully Sheweth,

REPLY ON BEHALF OF THE RESPONDENTS

1. Correct to the extent that the conduct of the petitioner never remained up to the mark. He often violated the terms and condition of his service by indulging himself in activities which were prejudice & harmful to the Department of Social Welfare on one side and to employees of the Department (his colleagues) on the other side. He leveled serious heinous & immoral allegations against his immediate officers; other high ups of the department to whom he was having no access or direct nexus. The petitioner was also found involved in the criminal and heinous offence of adding toxic piles/ poison in the water cooler of the Government Institute for the Blind, Abbottabad for putting the lives of innocent children with disability into danger. The specimen of the water proved that toxic piles were introduced in the water cooler by the petitioner with malafide intentions. He remained absent from his duty without information and approval of the leave from the competent authority for Eight long months. The reason advance for such long absence is neither logical nor appeal to a prudent mind. He was charge sheeted on the above allegation & making direct correspondence with his high ups and was found guilty. After inquiry and completion of all legal and codal formalities, major penalty i.e. removal from service was recommended ad imposed upon the petitioner.
2. Pertains to record.
3. Correct to the extent that the impugned order dated 23.09.2016 was set aside and the petitioner was reinstated in service vide order No. E-16/378/DSW/Vol-11/391-98 dated 17.07.2020 (**Copy at Annex-A**) and as per direction to the respondents to conduct de-novo enquiry strictly in accordance with the law and rules which was conducted accordingly (**copy of de-novo enquiry Annex-B**).

4. Incorrect, hence denied. The respondents implemented the judgment dated 23.01.2020 of the Honorable Tribunal in letter and spirit. The concluding para of the above judgment is re-produced as under:

"As a sequel to the above, the appeal is accepted, impugned order dated 23.09.2016, is set aside the appellant is re-instated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room". (copy of the judgment dated 23.09.2016 is at Annex-C).

As per the direction of the Honorable Tribunal, de-novo enquiry was conducted (Annex-B) and the Enquiry Officer proved him guilty and the competent authority (Director, Social Welfare, SE & WE) Khyber Pakhtunkhwa awarded major penalty of dismissal from service as provided in Rule-4 (b) of rules ibid with immediate effect dated 10.09.2021 (Annex-D). It is further added that the petitioner did not file departmental appeal to the competent authority against the dismissal order dated 10.09.2021.

In view of the above clarifications / explanations and implementation of the judgment of Honorable Service Tribunal by conducting de-novo enquiry, the petitioner has no right to file the instant execution petition.

It is therefore humbly prayed that the instant execution petition may graciously be dismissed, having no weight and being based on malafide intention as the petitioner has concealed the facts of the case to misguide this Honorable Tribunal.



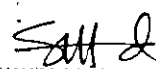
SECRETARY
Social Welfare, Special Education and
Women Empowerment Department
Government of Khyber Pakhtunkhwa
(Respondent No. 1)



DIRECTOR
Social Welfare, Special Education and
Women Empowerment Department
Government of Khyber Pakhtunkhwa
(Respondent No. 2)



DISTRICT OFFICER
Social Welfare, Special Education and
Women Empowerment, Peshawar
(Respondent No. 3)



SUPERINTENDENT
Govt. Institute for the Blind, Abbottabad
(Respondent No. 4)



Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar

Annex A

191

Dated Peshawar the 13/07 /2020

OFFICE ORDER:

No. B-16/378/DSW/Vol-II/ 391-95. In pursuance to the Khyber Pakhtunkhwa Service Tribunal judgment dated 23rd January 2020 in Service Appeal No.219/2017 titled "Muhammad Sajjad S/O Muhammad Riaz (Ex-Cane Worker (B-7) is hereby re-instated into service w.e.f 24.09.2016. He shall however be entitled to draw salary w.e.f 23.01.2020 i.e. the date of judgment of Khyber Pakhtunkhwa Service Tribunal. Back benefits shall be subject to the outcome of de-novo enquiry to be conducted by the Directorate of Social Welfare Khyber Pakhtunkhwa as per order of the Khyber Pakhtunkhwa Service Tribunal.

Sd/---
Director
(SW,SE&WE)

Copy to:

1. The District Accounts Officer, Abbottabad
2. Section Officer (Litigation) Social Welfare Department
3. PS to Secretary (SW,SE&WE)
4. The Assistant Director (Litigation) Social Welfare Department
5. The District Officer Social Welfare Abbottabad
6. Superintendent Government Institute for the Blind Abbottabad
7. PA to DSW
8. Muhammadi Sajjad S/O Muhammad Riaz, Mohallah Awanabad Jhangi Syedan Abbottabad

Assistant Director
(Establishment-I)

Handwritten notes:
Khan in file
M. Riaz

Ammer B

CONFIDENTIAL




Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar.

Dated Peshawar the 13/07/2020

ORDER:


No. E-16/378/Vol-II/DSW/ 402-03. In pursuance to the Khyber Pakhtunkhwa Service Tribunal judgment dated 23rd January 2020 in Service Appeal No.219/2017 titled "Muhammad Sajjad S/O Muhammad Riaz (Ex-Cane Worker (B-6) and in exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), Mr. Shoaib Khan District Officer, Social Welfare Charsadda is hereby nominated as Inquiry Officer to conduct a de-novo inquiry against Mr. Muhammad Sajjad, Cane Worker (BPS-6) office of the Superintendent Government Institute for the Blind Abbottabad, accused of adding toxic pills (Poison) in the drinking water cooler for the students of GIB, Abbottabad.

2. The above official is directed to submit his reply in writing in light of the charge sheet/statement of allegations to the Inquiry Officer within seven days. The Inquiry Officer is directed to submit his recommendations within 15 days positively.


(Habib Khan)
Director (SW, SE & WE)
(Competent Authority)

Copy forwarded to:

1. Mr. Shoaib Khan, District Officer, Social Welfare Charsadda (Inquiry Officer)
2. Mr. Muhammad Sajjad, Cane Worker (BPS-6) Office of the Superintendent, Govt. Institute for the Blind Abbottabad


Director (SW, SE & WE)
(Competent Authority)



✓ 246

GOVERNMENT OF KHYBERPAKHTUNKHWA
Social Welfare Special Education and Women Empowerment
Takht Bhai Road Near Hashtnagar Flour Mill Charsadda

No. DO/SW/CHD/ 3147

Dated Charsadda the 10/10/2020

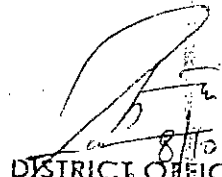
To,

The Director
Social Welfare Special Education & Women Empowerment
Khyber Pakhtunkhwa Peshawar

Subject: ENQUIRY REPORT REGARDING THE CHARGE SHEET OF MUHAMMAD SAJJAD CANE WORKER (BPS-07) GOVT INSTITUTE FOR THE BLIND ABBOTABAD

Kindly refer to your office order bearing No. E-16/378/Vol-II/DSW/402-03 dated 13-07-2020 on the subject and to enclose herewith report of De-novo enquiry ^{along with Enclosures (A-to BD)} regarding the charge sheet of Muhammad Sajjad Cane Worker (BPS-07) Govt Institute for the Blind Abbotabad for your kind perusal and further necessary action as desired please.

Enclose: AS ABOVE


8/10/2020
DISTRICT OFFICER
Social Welfare Department
Charsadda

AD (E-D)

51365
12/10/2020

INQUIRY REPORT REGARDING THE CHARGE SHEET OF MUHAMMAD SAJJAD CANE WORKER (BS-07), GOVERNMENT INSTITUTE FOR BLIND ABBOTTABAD.

The undersigned was nominated as inquiry officer vide letter bearing No.E-16/378/Vol-II/DSW/402-03 dated 13/07/2020 (**Annex-A**) to conduct de novo inquiry into the charges leveled against Muhammad Sajjad Cane Worker (BS-07), Government Institute for Blind Abbottabad in compliance to the Service Tribunal Khyber Pakhtunkhwa Judgment dated 23/01/2020 (**Annex-B**) and as per decision of the scrutiny committee's meeting held on 26/02/2020 under the chairmanship of Additional Secretary (Opinion) Law, Parliamentary Affairs and Human Rights Department Khyber Pakhtunkhwa (**minutes of the meeting at Annex-C**).

BACKGROUND /BRIEF HISTORY OF THE CASE:

Muhammad Sajjad was appointed dated 15/05/2008 as Cane Worker (BS-07) in the Government Institute for Blind Abbottabad operating under the auspices of Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa (**Copy of order as Annex-D**). Consequently, he joined and began to perform his duties at the said institute until he was transferred to Government Institute for the Blind (Male) Peshawar vide order bearing No.E-16/378/DSW/1358-63 dated 22/04/2014 (**annex- E**). However his transfer order was cancelled vide order bearing No.2557-65 dated 25th August 2014 and he resumed his duties at Government Institute for the Blind Abbottabad. On 26/11/2014, an incident took place where Muhammad Sajjad was blamed for mixing Rodenticide in the water cooler being used for drinking purpose in Government Institute for the Blinds Abbottabad. An FIR was registered against him by the then Incharge of the said institute and Muhammad Sajjad Cane Worker was arrested by the police of the City Police Station Abbottabad. The local police conducted the investigation. On completion of investigation, he was charged and referred for trial to Honorable Court. The Senior Civil Judge Abbottabad rejected his bail application on 03/12/2014 with the remarks that "in light of the above mentioned, the accused petitioner does not entitle to the concession of bail, hence, this bail petition is rejected". After that, the accused submitted an appeal before the Additional Session Judge-I Abbottabad who accepted his appeal on 10/12/2014 (**Copy as Annex-F**). Furthermore, Additional Session Judge-I Abbottabad vides its Judgment announced on 05/08/2019 acquitted Muhammad Sajjad in the instant case extending the benefit of doubt.

District Public Prosecutor, Abbottabad has requested Director General Prosecution Home & Tribal Affairs Department Peshawar to approach Advocate General of Government of Khyber Pakhtunkhwa to file an appeal before the honorable Peshawar High Court Peshawar, Abbottabad Bench against the

acquittal of Muhammad Sajjad vide letter No.181/2020/DPP/ATD dated 29th January 2020 (copy enclosed as Annex-G).

In the meanwhile, the Director Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa served charge sheet upon Muhammad Sajjad with the following statement of allegations.

- 1) Involved in criminal act by mixing toxic piles (poison) in drinking water.
- 2) Absence from duty
- 3) Submitting baseless and anonymous complaints.

Muhammad Riazul Haq Sani, Ex-Superintendent Dar ul Aman Abbottabad was appointed as Inquiry Officer to conduct inquiry against Muhammad Sajjad Cane Worker Government Institute for Blind Abbottabad vide order bearing No.E-16/378/Vol-II/DSW/1173-74 dated 01/06/2016(Annex-H). The inquiry Officer conducted inquiry and found Muhammad Sajjad guilty for the above mentioned irregularities and consequently recommended to send Muhammad Sajjad on compulsory retirement in his interest and the Department (Copy of inquiry report as Annex-I).

Consequently Show cause noticed was served upon Muhammad Sajjad Cane Worker GIB Abbottabad with the direction to furnish explanation if any within 15 days to the Competent Authority and show his willingness for personal hearing vide letter No.E-16/378/Vol-II/DSW/3467-70 dated 23/08/2016 (Annex-J), however he failed to submit his written statement/additional information in his defense nor bothered for personal hearing within the stipulated period, hence major penalty (removal from service with effect from 20/09/2016) was imposed and his absence period from 12/12/2104 to 20/08/2015 was treated as leave without pay vide order bearing No.E-3/56/DSW/5143-48 dated 23/9/2016 (Annex-K) .

Muhammad Sajjad filed a Departmental appeal dated 08/10/2016 regarding cancellation of Order bearing No.E-3/56/DSW/5143-48 dated 23/9/2016 and reinstatement of services along with all back benefits (Annex-L). However his appeal was not entertained by the Director Social arguing that proper disciplinary procedure as per Rules was adopted and followed for his removal from services.

Muhammad Sajjad Cane worker filed an appeal before the Khyber Pakhtunkhwa Service Tribunal Peshawar at camp court Abbottabad vide appeal No.219/2107 dated 08.02.2017. The same was decided on 23/01/2020 vide its decision/judgment given below:

— "As a sequel to the above, the appeal is accepted; impugned order dated 23/09/2016 is set aside the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry".

As per judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar at camp court Abbottabad, Muhammad Sajjad, Cane Worker was reinstated into service w.e.f 24.09.2016 with the entitlement to draw salary w.e.f 23/01/2020 vide office order bearing No.E-16/378/DSW/Vol-II/391-98 dated 13/07/2020 (copy at Annex-M)

CHARGE SHEET/ STATEMENT OF ALLEGATIONS OF THE DE-NOVO ENQUIRY:

In pursuance to the Khyber Pakhtunkhwa Service Tribunal Peshawar, at camp Court Abbottabad, Judgment dated 23rd January 2020 in service Appeal No.219/2017, I, the undersigned was appointed as enquiry officer to conduct a de novo inquiry against Muhammad Sajjad, Cane Worker (BPS-07) Superintendent Government Institute for the Blind Abbottabad accused of the following charges:

- 1) That he was involved in criminal act of mixing Toxic Pills (poison) in drinking water cooler for the students of Government Institute for the Blind Abbottabad.
- 2) That he was arrested by the local Police and an FIR was lodged against him under section -337J/511.
- 3) That he remained in Police custody w.e.f 26.11.2014 to 12.12.2014.
- 4) That his services were suspended vide letter /order No.E-16/378/DSW/7448-51 dated 07.01.2015.
- 5) That he remained absent from duty w.e.f. 12.12.2014 to 20.08.2015 without prior permission of the Competent Authority.
- 6) That he is habitual of floating anonymous complaints against his colleagues, officers and Department.
- 7) That his colleagues are fed up of his behavior and submitted complaints to the higher authorities on more than one occasions.

PROCEDURE OF THE INQUIRY

The undersigned being inquiry officer wrote letters to the Superintendent Government Institute for Blind Abbottabad and Station House Officer (SHO) Investigation Police Station Abbottabad to confirm the availability of all staff relevant to the issues and to call up Muhammad Sajjad on the date of my visit to Abbottabad (copies enclosed as annex -N, O). Meanwhile, the undersigned received written statement of Muhammad Sajjad via Pakistan Post Office in the District Office Charsadda (Copy as Annex-P).

The undersigned paid visit to GIB Abbottabad and Police Station Abbottabad as per schedule and took the written statement of all relevant staff in the said institute as per rules 11 (4) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 (**Annex-Q**). Muhammad Sajjad was interviewed in the presence of the Superintendent GIB and District Officer Social Welfare Abbottabad for verification of his statement and was asked that the written statement sent by him be considered his last statement or he had some other documents to produce in his favor. Upon which Muhammad Sajjad informed that he being blind could not get enough time to produce all documentary proofs in such a short span of time, therefore he requested (**copy enclosed as Annex-R**) for more time so that he could provide all necessary documents related to the charges leveled against him. Consequently another opportunity for presenting empirical evidence was granted to him, and after a lapse of more than one month, the undersigned paid another visit to Government Institute for the Blind Abbottabad on 17/09/2020 for cross examination. Muhammad Sajjad was cross examined (**Copy as Annex-S**) in the presence of Mst. Saira Mushtaq, Social Welfare Officer Abbottabad and other staff members as per Ibid Rules. He was also given the opportunity to ask cross questions from all the relevant staff of GIB which were recorded in writing (**Copies as Annex-T, U, V, W, X**).

CIRCUMSTANTIAL FACTS AND WRITTEN STATEMENTS

CHARGE 1:

An eye witness namely Mr. Shah Nawaz reported to the Principal Government Institute for the Blind that Muhammad Sajjad mixed something in the water cooler meant for drinking. The Principal after finding residue of the pills in the water cooler reported incident to the police station, Cantonment Abbottabad. FIR was lodged against Muhammad Sajjad who was arrested on the same day (**Copy as Annex-Y**). The police investigated the issue and submitted Challan for trial in the court for adjudication into the subject case (**copy as Annex-Z**). After trial from 16/01/2015 to 05/08/2019, the honorable Additional Session Judge Abbotabad-I acquitted him giving favor of doubt to Muhammad Sajjad (**Annex-AA**).

Consequent upon his recourse to the Service Tribunal and adjudication therein from 08/02/2017 to 23/01/2020, the Service Tribunal Khyber Pakhtunkhwa decided on 23/01/2020 and set aside his removal from service order dated 23/09/2016 (**Copy as Annex-AB**). Accordingly, the Department reinstated him in service (**Copy as Annex-AC**) and issued order for De Novo enquiry as per spirit of the Service Tribunal decision (**Annex-AD**).

— In compliance, enquiry procedure was adopted. All the actors in the instant case were called, and got their written statements. Mr. Sajjad written statement and personal defense was questioned by everybody in their statements and hence his written statement (**Plz consult Annex-P**) and personal defense was found unsatisfactory. Having had his acquittal by Additional Session Judge-I on doubt, thorough investigation by the police, behavioral insecurity in the institute by his this criminal act as stated by all the employees of the Government Institute for Blind (**Plz consult annex-T,U,V,W,X**) endorsed by the Principal Government Institute for Blind, Muhammad Sajjad is a constant source of insecurity and disturbance in Government Institute for Blind. Moreover, Muhammad Sajjad is a permanent persona non grata in his working place GIB and in Social welfare institutes/Department, which is tantamount to misconduct on his part under Rule 3 (b). of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

CHARGE 2:

Consequent upon FIR No. 1044 under Section 337J/511 of Pakistan Penal Code, Muhammad Sajjad was arrested. His criminal Act was investigated. As per Police investigation he was found guilty and accordingly produced to the court for further trial. Even though the Additional Session Judge acquitted on the plea of doubt. But the police investigation have firm grounds of guilt like in the shape of eye witness, forensic report (**Copy as Annex-AE**), personal investigation (**Plz see Annex-S**) and hence he is guilty in the eyes of police, staff of the GIB and public in general.

CHARGE 3:

Yes. Muhammad Sajjad remained in police custody with effect from 26/11/2014 to 12/12/2014 till his release in the light of the decision of the Additional Session Judge-I Abbottabad which was announced on 10/12/2014 (**Police Investigation at annexure-AF**).

CHARGE 4:

Yes. Muhammad Sajjad Cane Worker GIB Abbottabad was suspended vide office order bearing No. E-16/378/DSW/7448-51 dated 07/01/2015 (**Copy attached-AG**)

CHARGE 5:

An FIR was lodged against Muhammad Sajjad Cane worker GIB Abbottabad bearing No.1044 dated 26/11/2014 under section 337J/511 PPC, subsequently he was arrested by the Police and remained in Police custody w.e.f 26/11/2014 till 12/12/2014. Later on his services was suspended vide order bearing No.E-16/378/DSW/7448-51 dated 07/01/2015.

A letter bearing No. GIB/Atd/Personal/4995-98 dated 12/08/2015 was addressed to D.O SWD Abbottabad by the Superintendent/Principal GIB Abbottabad regarding his absence from the institute w.e.f 12/12/2014 up to 12/08/2015 (**copy as annex-AH**). Muhammad Sajjad came to attend his institute on dated 21/08/2015 upon which the staff of GIB Abbottabad submitted a joint application requesting therein not to allow Muhammad Sajjad to their Institute till the decision of the court which was agreed and forwarded by then Incharge namely Qismat Khan to D.O SWD Abbottabad vide letter No. GIB/ATD/Personal.5010-11 dated 25/08/2015 (**copy as annex-AI**). The attendance register found in the office of Superintendent GIB Abbottabad was also checked wherein he was found absent from his duty. (**Copies of the pages of attendance register for the relevant month are attached as Annex-AJ**).

Muhammad Sajjad remained absent from duty w.e.f 29/06/2013 to 01/07/ 2013 without any intimation/ prior permission of the competent authority and warning in this regard has been issued vide letter No. GIB/ATD/Personal/4450-51 dated 12/07/2013 followed by warning issued by Directorate of Social Welfare (**copies as Annex-AK,AL**).

He was further found absent from duty on 11/10/2013 without any application/ intimation whereby he was served with explanation for willful absence (**Annex-AM**). His explanation was called again for being absent from duty w.e.f 18/11/2013 & 19/11/2013 (**annex-AN**).

Moreover, the absence period from 01/06/2014 to 02/09/2014 in respect of Muhammad Sajjad Cane worker GIB has been declared as extraordinary leave without pay vide order bearing No.E-16/378/DSW/3900-07 dated 24/09/2014 (**as Annex-AO**).

The incumbent has also availed 24 days earned leave on full pay w.e.f 12/07/2016 to 4/08/2016 (**Copy as Annex-AP**)

CHARGE 6:

- 1) Muhammad Sajjad has written a complaint comprising of more than 300 Pages which was directly addressed to Secretary Social Welfare on 03/06/2015 with copies to Secretary Education KPK, Chief information Commission KPK, Chief Secretary KPK, Provincial Ombudsperson KPK, Minister for Social Welfare, Minister for Education, Chief Minister, Governor KPK, Prime Minister of Pakistan, President of Pakistan, Chairman PTI Imran Khan, Chairman NAB Government Of Pakistan, Chairman Right to Organization Muhammad Bilal, MPA PK-44 Abbottabad Mushtaq Ahmad Ghani, MNA Dr. Azhar Jadoon, CEO Anti-

- Corruption Abbottabad, Assistant Director FIA Abbottabad, IG Police KPK, Auditor General Govt. of KPK, Accountant General Government of KPK, District & Session Judge-3 Abbottabad, and Chief Justice High Court KPK(**first and Last Pages as annex-AQ**).
- 2) Muhammad Sajjad has written another complaint of 90 pages on 19/01/2015 addressed to Vice Chancellor Allama Iqbal Open University Islamabad through Regional Director Allama Iqbal Open University Abbottabad with copies thereof to EDO Education Department Abbottabad, D.O. Social Welfare, Director Education KPK, Secretary Education KPK, Secretary Social Welfare, Chief Secretary KPK, Federal Ombudsperson Government of Pakistan, Provincial Ombudsperson KPK, Minister for Social Welfare, Provincial Minister for Education KPK, Chief Minister KPK, Governor KPK, Prime Minister of Pakistan, President of Pakistan, Chairman PTI Imran Khan, Chairman NAB Government Of Pakistan, Chairman Right to Live Organization Muhammad Bilal, MPA PK-44 Abbottabad Mushtaq Ahmad Ghani, MNA Dr. Azhar Jadoon, CEO Anti-Corruption Abbottabad, Assistant Director FIA Abbottabad, IG Police KPK, District Session Judge Abbottabad, Chief Justice High Court KPK, and Chief Justice Supreme Court of Pakistan Islamabad. (**first and Last Pages as annex-AR**)
- 3) He has written two complaints of 07 and 41 pages addressed to Deputy Commissioner Abbottabad dated 05/07/015 & 4/09/015 (**First and Last Pages respectively as Annex-AS,AT**).
- 4) Similarly he has written complaints on 24/04/2012, 12/10/2013, 31/12/2013, 05/02/2014, 09/05/2014, and 03/08/2014 addressed to different quarters (**copies as Annex-AU,AV,AW,AX,Ay,AZ**).
- 5) He has also published his Article in daily "Sarhad". Against which Mst. Shamshad Begum, the then Social Welfare Officer Abbottabad wrote a complaint addressed to District Officer SWD Abbottabad for conducting enquiry against Muhammad Sajjad vide letter No. Do/SWO/F/ATD/2160-62 dated 1/7/2013.

In this regard, an inquiry has been conducted by the Deputy Director SEC (PHC) Abbottabad (**copy of the report as annex-BA**) wherein his action has been proved against the Government servant rule and code of conduct. District Officer SWD Abbottabad has requested Director Social Welfare vide letter No. DO/SWO/F/ATD/2394-95 dated 21/8/2013 to take disciplinary action against Muhammad Sajjad under misconduct Rules 1974, upon which the Director Social Welfare has issued warning to the official under reference.

Similarly, the complaints made by Muhammad Sajjad have been inquired by Riazul Haq Sani, the then Superintendent of Dar ul Aman who has submitted his inquiry report vide letter No. 248-54 dated 18/02/2014 (copy as Annex-BB) wherein Muhammad Sajjad has been found guilty for involving in the blame game against the staff of GIB and seniors staff of Social Welfare Department and has declared him a source of creating unrest in the institute by writing irrational letters to the higher ups directly to seek their sympathy for his wishful thinking.

CHARGE 07:

Muhammad Sajjad does not have cordial relations with his seniors/ juniors and colleagues in the whole institute. After the incident on 26/11/2014, the staff of Government Institute for the Blind Abbottabad moved joint application stated therein not to allow Muhammad Sajjad for duty to their institute as he could do anything harmful once again in the institute (copy as annex-BC). Furthermore, Mr. Riaz Ul Haq Sani ex-enquiry Officer has complained of his abusive language as he had received his call on his office telephone Number dated 30/08/2016 (copy as annex-BD).

CONCLUSION:

Muhammad Sajjad, a Cane worker at GIB Abbottabad, is a persona non grata in his work place and permanent source of disturbance for the workforce of the center besides the center management. He does not perform his duty to the satisfaction of his superiors nor his colleagues are safe of his abusive effects. He is casual in attending his work place and habitually remain absent from duty. His superiors and colleagues equally feel insecure of his baseless complaints and abusive behavior & actions respectively and hence is unwelcomed rather dreadful worker. The working staffs are always vigilant to his nefarious designs of actions and Centre Incharge keep on watching his movements in the Centre.

Having had rendered himself useless rather dangerous to the staff and management besides disgraceful to the top management of the department through his baseless complaints and allegation, I am of the considered opinion that;


1. His acquittal from the charge was based on doubt but still guilty of behavior and action in the eyes of police, GIB staff and management, general public and hence is a persona non grata in the center.
2. He was reinstated after his acquittal but remained willfully absent from duty and rendered himself of misconduct under rule 3 (b) (d).

3. His negative impact on the center is more than the positive effects as entire staff is feeling insecure of his actions and behavior and hence has emanated uncongenial environment in the center.
4. He is a permanent source of mental and social insecurity for the District management and Provincial Management besides his workplace colleagues and management and hence is a burden on the management.

RECOMMENDATIONS:

Having had committed misconduct under Rule 3 (b) (d) and liable for punishment under Rule 4 (b) (ii) of the ibid rules, the following recommendations are submitted:

1. Compulsory retirement of Muhammad Sajjad, Cane worker, GIB Abbottabad, from service may be imposed on him to help in creating enabling environment in the center after a long time for workforce to work with sense of security and solace.
2. the present executive board/body of Pakistan Association for the Blind Abbottabad Chapter may be dissolved and new, fair and fresh election may be conducted under the three members committee comprising of the Officers of Social Welfare Department District Abbottabad as per its approved constitution, however Mr. Ayaz may be declared unfit/ disqualified for at least Six years and may be not allowed to contest election for any post of office bearer in the executive body of Pakistan Association for the Blind Abbottabad Chapter.
3. Every member of Pakistan Association for the Blind (being Government Servant) be directed to obtain NOC from their Competent Authorities for becoming member or /contesting election in any Chapter of Pakistan Association for the Blind in the whole of Khyber Pakhtunkhwa as per Rule 16 (1) and (2) of Khyber Pakhtunkhwa Government Servant (Conduct) Rules 1987 .

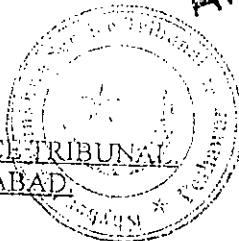

(SHOAIB KHAN)

Inquiry Officer/District Officer SWD
Charsadda

Amex C

15

Amex C



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Appeal No. 219/2017

Date of Institution ... 08.02.2017

Date of Decision ... 23.01.2020

Muhammad Sajjad S/O Muhammad Riaz, Cast Awan Resident of Mohallah
Awanabad Jhangi Syedian, Abbottabad, Tehsil and District Abbottabad.

... (Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary, Social Welfare Special Education
and Women Empowerment, Peshawar and three others.

... (Respondents)

Present:

MR. MUHAMMAD SAJJAD,
Appellant

--- In person.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)

--- MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ATTESTED

ARGUMENTS:

Appellant while arguing his case stated that he was appointed as, Cane
Worker (BPS-03) at Government Institute for the Blind Abbottabad on 16.05.2008.

On certain allegations, disciplinary proceedings were initiated against the appellant
and upon conclusion major penalty of removal from service was imposed on him
vide impugned order dated 23.09.2016. Feeling aggrieved, he filed departmental.

ERASIMY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

appeal on 08.10.2016 which remained unanswered, hence, the present service appeal. Enquiry was not conducted in accordance with the procedure laid down in the E&D Rules 2011. Neither the statements of witnesses were recorded in the presence of the appellant nor opportunity of personal hearing was afforded to him. The show cause notice was served under the signatures of incompetent authority, which was a grave illegality and made the entire process defective/disputed. Opportunity of personal hearing was also denied to the appellant. He has been acquitted of the criminal charge by the court of Addl: Sessions Judge-1, Abbottabad. The main ground which led to the initiation of disciplinary proceedings is no more in the field.

03. Learned Deputy District Attorney argued that the appellant had become a pain in the neck for respondents. He was charged of mixing poison in water cooler lying in the Institute. The report of FSL confirmed this fact. He was arrested and sent to jail. He remained absent from duty for eight months. Disciplinary proceedings were conducted against the appellant and thereafter major penalty of removal from service was awarded to him vide impugned order dated 23.09.2016.

ATTESTED

CONCLUSION:

EXAMINER,
Cyber Pak F-04,
Service Tribunal,
Peshawar

It is brought on record that FIR no. 1044 under Section-337-J/511 PPC dated 16.11.2014 Police Station Cantt: Abbottabad was lodged against the appellant for mixing poison in water cooler lying in the Government Institute for the Blind Abbottabad. After registration of FIR, the appellant was arrested by the local police. Disciplinary proceedings were initiated against the appellant by serving charge sheet and statement of allegations. Perusal of enquiry report revealed that the same was not conducted in the mode and manner prescribed in E&D Rules-2011. The

(17)

Enquiry Officer though recorded statements of some of the staff members but these were not annexed with the enquiry report placed on the case file. As the record is not available/silent, we believe that these statements were not recorded in the presence of the appellant nor opportunity of cross examination was afforded to him. We quizzed the learned Deputy District Attorney to make available the above statements but he informed that the same were not available with him. Even otherwise, enquiry was conducted in a slipshod manner. Except for FSL report which confirmed mixing of poison in the water cooler, no shred of evidence was collected by the Enquiry Officer. As regards his absence for eight months, the Enquiry Officer failed to properly dig out the matter with the help of documentary evidence. In the absence of any incriminating evidence the charge of absence from duty against the appellant remained un-substantiated. In these circumstances, we hold that charges leveled against the appellant in the charge sheet and statement of allegations could not be established by the Enquiry Officer during the enquiry proceedings.

05. Moreover, show cause notice was required to be served on the appellant by the Director Social Welfare but the same was signed by Mr. Muhammad Rauf, Assistant Director Establishment, who was not the competent authority. It was a serious illegality on the part of the respondents that may the entire process illegal and bereft of law/rules. The impugned order further revealed that opportunity of personal hearing was not afforded to the appellant. We are of the considered view that in order to provide opportunity of fair trial by following due process of law there is strong justification to hold de-novo enquiry in the present case and to ensure upholding the cause of justice, fair play, transparency and equity.

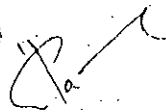
ATTN

ENQUIRY OFFICER
ESTABLISHMENT
SERVICE

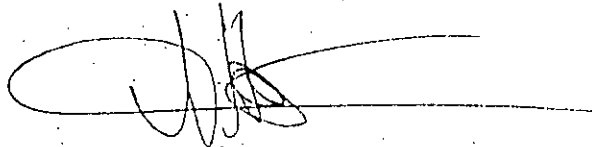
06. Now coming to the criminal proceedings instituted against the appellant, he was acquitted by the Addl Sessions Judge-I, Abbottabad vide judgment dated 05.08.2019. The prosecution failed to establish the charge leveled against the appellant and by giving him benefit of doubt, he was acquitted by the Court. Having been acquitted of the criminal proceedings, the main ground which led initiation of departmental proceedings has lost its efficacy. We are cognizant of the fact that departmental and criminal proceedings can run parallel.

07. As a sequel to the above, the appeal is accepted, impugned order dated 23.09.2016 is set aside the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Copy of the order copy
 Khayber Pakhtunkhwa
 Service Tribunal
 Peshawar



(MUHAMMAD HAMID MUGHAL)
 MEMBER




(AHMAD HASSAN)
 MEMBER
 Camp Court Abbottabad

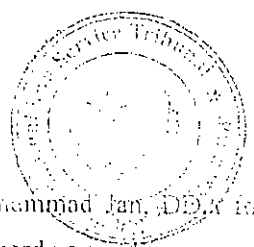
ANNOUNCED
 23.01.2020

Additional/Dissenting Note by Mr. Muhammad Hamid Mughal Member (J):

I have perused the judgment authored by learned Member (Executive). I am in respectful agreement with the conclusion drawn therein for conducting de-novo inquiry against the appellant. I, very humbly disagree with the proposition drawn by the learned Member (Executive) in Para-06 of the judgment. It is well settled that acquittal of accused official from criminal case would have absolutely no bearing on the merits of the case in the departmental proceedings (2006 SCMR 554).



Muhammad Hamid Mughal
 Member (J)



ORDER

23.01.2020

Petitioner in person present. Mr. Muhammad Jan, DDA for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 23.09.2016 is set aside, the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
23.01.2020

(Ahmad Hassan)
Member
Camp Court Abbottabad

(Muhammad Hamid Mughal)
Member

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
AND WOMEN EMPOWERMENT OPP: ISLAMIA COLLAGE
JUMROOD ROAD PESHAWAR

Annex D

Date Peshawar the 10/09/2021

ORDER:

NO.E-16/378/Vol-II/ 857-60 Whereas Mr. Muhammad Sajjad Cane Worker (BS-07), Government Institute for the Blind, Abbottabad (hereinafter referred to as accused) was served with charge sheet under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the acts / omissions as given in the statement of allegations.

And whereas, an Inquiry Officer namely, Mr. Shoaib Khan, District Officer Social Welfare Charsadda was appointed to investigate into the charges.

And whereas the Inquiry Officer submitted its report stating therein that accused is guilty of mis-conduct.

And whereas the competent authority (Director, Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa) while exercising powers conferred under Rule-14 (4) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 served the accused with a show cause notice bearing No. E-16/378/DSW/Vol-II/1522-25 dated 31.03.2021, convening therein award of tentative penalty of Dismissal from Service as provided in Rule-4 (1) (b) (iv) of Khyber Pakhtunkhwa (Efficiency & Discipline) Rule, 2011.

And whereas, the accused submitted reply in writing to the show cause notice on 17.04.2021 whereas the accused did not desired to be heard in person.

And whereas to ensure justice and give opportunity of personal hearing, he was called to attend office of the competent authority vide letter dated 29.06.2021 but the accused did not bother to do so.

Therefore the Director Social Welfare Khyber Pakhtunkhwa (competent authority) in exercise of powers conferred upon him under Rule-14 (5) (ii) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 is pleased to award major penalty of dismissal from service as provide in Rule-4 (b) (iv) of Rules ibid with immediate effect



Director
Social Welfare, Special Education and
Women Empowerment Khyber Pakhtunkhwa

Endst: No. & date even

Copy to:

1. The District Accounts Officer Abbottabad
2. The District Officer Social Welfare Abbottabad
3. The Superintendent Govt. Institute for the Blind, Abbottabad
4. Mr. Muhammad Sajjad, Ex-Cane Worker, Government Institute for the Blind, Abbottabad (Resident of Mohallah Awan Abad Jhangi Syedan Abbottabad).



Director
Social Welfare, Special Education and
Women Empowerment Khyber Pakhtunkhwa

19th Sept 2022 1. None for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Miss. Sahira Mushtaq, Dy: Director, Special Education, Social Welfare Abbottabad for respondents present

Waqar Saeed
Judicial Magistrate-I,
Abbottabad

2. Representative of the respondents submitted a reply annexing there with copy of the order dated 13.07.2020, whereby in compliance of the judgment of this Tribunal, the petitioner was reinstated into service on 13.07.2020. It is stated that after the removal enquiry conducted against him, he was again reinstated into service on 13.07.2020. Through this petition the petitioner has sought his reinstatement into service, which, according to the paper submitted by the representative of the respondents, compliance has been made rendering this petition as fruitless. The petitioner has again been dismissed vide order dated 10.02.2021, therefore, there is no need to keep this petition pending further is disposed of accordingly. Consign.

3. *Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal on this 19th day of September, 2022.*

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Draft

19th Sept 2022

1. None for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Miss. Sahira Mushtaq, Dy: Director, Special Education, Social Welfare Abbottabad for respondents present

2. Representative of the respondents submitted a reply annexing there with copy of the order dated 13.07.2020, whereby, in compliance of the judgment of this Tribunal, the petitioner was reinstated into service w.e.f 24.09.2016 but after the de-novo enquiry conducted against him, he was again dismiss^{ed} from service on 10.09.2021. Through this petition the petitioner has sought his reinstatement into service, which, according to the paper^s ~~submitted~~ submitted by the representative of the respondents, ~~compliance~~ ^{compliance} had been made rendering this petition as fruitless. The petitioner has again been dismissed vide order dated 10.02.2021, therefore, there is no need to keep this petition pending further ^{and is thus} disposed of accordingly. Consign.

3. *Pronounced in open court in Camp Court Abbottabad and given under my hand and seal of the Tribunal on this 19th day of September, 2022.*

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

(4)

Annex - "G" (24)

Annex 'A'

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education & Women
Empowerment, Opposite Islamia College Jamrud Road, Peshawar.

ORDER:

No. E-16/378/DSW/Vol-II/_____ . Whereas you Mr. Muhammad Sajjad Cane Worker (BPS-7), Office of the Superintendent, Govt. Institute for the Blind, Abbottabad, were proceeded under the Government Servant E&D Rules 2011 of Government of Khyber Pakhtunkhwa through formal inquiry conducted by Mr. Riaz-ul-Haq Sani, as Inquiry Officer.

2. And whereas after examination of the recommendations and report of the inquiry officer, it has been proved that you, Muhammad Sajjad criminally mixed poison in the drinking water of G.I.B Abbottabad.
3. And whereas it has also been proved that you remained willfully absent from duty for 08 months without prior approval of the Competent Authority.
4. And whereas it has also been proved and established that you submitted baseless letters/appeals and complaints to the higher authorities/dignitaries for nothing and defamed the department and its services.
5. And whereas you were served with show cause notice vide this Directorate letter No. E-16/378/Vol-II/ DSW/3467-70, dated 23.08.2016 but you failed to submit your written statement / additional information in your defence and also not bothered for personal hearing within the stipulated period.

Now, therefore, in exercise of the powers conferred upon me under the rules ibid, I Muhammad Naeem, Director Social Welfare, Special Education and Women Empowerment hereby impose major penalty upon Muhammad Sajjad Cane Worker BPS-7 Govt. Institute for the Blind Abbottabad to the extent of removal from service with effect from 20-09-2016 and your absence period from 12.12.2014 to 20.08.2015 is treated as leave without pay.

(Muhammad Naeem)
Director,

Social Welfare, Special Education and
Women Empowerment Khyber Pakhtunkhwa.

Dated Peshawar the 23rd 2016

Copy forwarded to:

1. The District Accounts Officer, Abbottabad.
2. PS to Secretary, Social Welfare, SE & WE, BF Building Peshawar Cantt.
3. Deputy Director (Admn) Directorate of Social Welfare.
4. District Officer, Social Welfare, SE & WE Abbottabad.
5. Superintendent Govt. Institute for the Blind Abbottabad.
6. Mr. Muhammad Sajjad S/O Muhammad Riaz VNI & PO Jangi Syedan Teh and Dist. Abbottabad. (Contact No.0313-5925351)

Recd on dated
09/2016 at the
of Superintendent
-B-Abbottabad

7

09/2016

4113-ALD

Director,
Social Welfare, Special Education and
Women Empowerment Khyber Pakhtunkhwa.

Attested

Rizwan Ali
Advocate High Court
Abbottabad

خدمت جناب سیکرٹری صاحب محکمہ سماجی بہبود و خصوصی تعلیم خیبر پختونخوا، پشاور۔

عنوان :- حکمانہ اپیل برخلاف آرڈر نمبر 48-5143 مورخہ 23-09-2016

جناب عالی! مضمون اپیل ذیل عرض ہے۔


- ۱۔ یہ کہ ایپلائٹ سال 2008ء میں بطور کین ورکر (BPS-6) میں گورنمنٹ انسٹیٹیوٹ برائے ناپینا ایٹ آباد بر میرٹ بھرتی ہوا۔
- ۲۔ یہ کہ ایپلائٹ جو کہ ناپینا ہے اور تعلیمی قابلیت مندرجہ ذیل ہے۔
 - (1) پرائمری از گورنمنٹ انسٹیٹیوٹ فار دی بلائیڈ ایٹ آباد سال 1999ء۔
 - (2) میٹرک از اہمیتار سرگز ناپینا برائے بالغاں اور ڈ آف انٹرمیڈیٹ ایٹ آباد سال 2007ء۔
 - (3) ٹیلی فون + بعض کمپیوٹر کورسز از فیصل آباد
 - (4) انٹرمیڈیٹ از بورڈ آف انٹرمیڈیٹ فیصل آباد سال 2009ء۔
 - (5) گریجویٹن از پنجاب یونیورسٹی لاہور سال 2011ء۔
 - (6) MA, MA Appear اردو از پنجاب یونیورسٹی لاہور و فیصل آباد۔
 - (7) لیڈرشپ ٹریننگ از A سٹار ایسوسی ایشن / جاپان / پاکستان / جاپان۔

علاوہ ازیں ایپلائٹ نے اردو / ادیب فاضل از ایٹ آباد بورڈ کا امتحان پاس کیا ہوا ہے اور کچھ اور کورسز بھی کرنا چاہتا تھا جو باوجود نہ ہو سکے لیکن مستقبل میں ایپلائٹ ادیب / ادیب عالم ، فارسی / فارسی عالم ، فارسی فاضل ، عربی / مولوی ، عربی / مولوی فاضل وغیرہ اور مکہ حد تک ہر مضمون میں ماسٹرز ، ایم فل اور پی ایچ ڈی کے علاوہ کم از کم تمام بین الاقوامی زبانوں پر دسترس کا ارادہ رکھتا ہے۔ علاوہ ازیں سائل ایک سماجی کارکن کی حیثیت سے یہ ریکارڈ بھی رکھتا ہے کہ اگر Google پر "SHG جذبہ" لکھ کر سرچ کیا جائے تو ایپلائٹ کی تصویر ان لوگوں کیساتھ نظر آئے گی جو جذبہ ویلفیئر سوسائٹی کے سرکردہ رکن کی حیثیت سے ان لوگوں کیساتھ شامل ہے جو جسمانی معذوروں کو خصوصاً ایسے افراد کو ویل چیزز گھروں میں جا کر تقسیم کرتا ہے جو آنے کے قابل نہیں تھے اور اس کے علاوہ حافظ قرآن اور CT کا کورس کیا ہوا ہے نیز درس نظامی جاری ہے اور عامہ کا امتحان دے چکا ہے نیز ایپلائٹ درس نظامی مکمل کرنے کے بعد اس میں شامل تمام مضامین اور شعبہ جات مثلاً حدیث ، فقہ ، تفسیر وغیرہ میں تخصص اور مفتی و قاری جیسے کورسز کا بھی ارادہ رکھتا ہے۔

۳۔ یہ کہ ایپلائٹ پڑھا لکھا آدمی ہے جو کہ میرے تعلیمی عہدیداران و آفیسرز نے میرے ساتھی ذاتی انا کی بنیاد

سٹیٹمنٹ

Attested


Rizwan Ali
Advocate High Court
Abbottabad

پر میرے خلاف نام نہاد انکوائریاں کروائیں اور میرے موقف کو یکسر نظر انداز کرتے رہے اور اپنی مرضی کی رپورٹس حاصل کرتے رہے۔

۴۔ یہ کہ ایپلنٹ کو ایک نام نہاد FIR میں بدینتی سے ملوث کیا گیا جس سے ایپلنٹ کو 27-11-2014 کو جیل جانا پڑا اور بعد از ضمانت مورخہ 12-12-2014 کو رہا ہوا۔

۵۔ یہ کہ ایپلنٹ کو محکمہ نے 07-01-2015 سے معطل کیا جو کہ بمطابق رول 6 (E&D Rules) 2011ء دن کے بعد معطلی میں توسیع نہ کی جائے 30 دن کے اندر تو سرکاری ملازم خود بخود بحال ہو جائے گا لہذا ایپلنٹ رول 6 کے تحت نوکری میں بحالی کا قانونی حقدار ہے۔

۶۔ یہ کہ ایپلنٹ کو معطلی کے دوران سوسائٹیل الاؤنس نہ دیئے گئے جو کہ قانون کی صریحاً خلاف ورزی ہے۔

۷۔ یہ کہ سائل عرصہ 12-12-2014 تا 20-08-2015 تک معطل رہا بلکہ غیر حاضر نہ رہا ایپلنٹ ہمراہ اپنے والد نوکری پر جاتا رہا مگر گیٹ پر یہ کہہ کر واپس کر دیا جاتا کہ آپ معطل ہیں اور آپ ویسے بھی کام نہیں کر سکتے، حاضری ہی لگانی ہے تو وہ اکھٹی لگا دیں گے۔ یہاں پر یہ بات قابل غور ہے کہ ایپلنٹ نابینا ہونے کی وجہ سے اپنی حاضری نہیں لگا سکتا اور تمام نابینا افراد کی حاضری کلرک صاحبان لگاتے ہیں صرف (Present) اور (Absent) لکھا جاتا ہے کوئی دستخط نہیں لیا جاتا۔ نیز حکومت خیر بخوشخواہ کی طرف سے دوران بچت 2015-16ء خصوصاً اس سالانہ بچت میں اعلان کے باوجود ادارہ و محکمہ میں حاضریوں کے بائیومیٹرک نظام کے نہ ہونے، CCTV کیمروں اور چوکیداران کی طرف سے آمدورفت کے اندراج اور ریکارڈ یا انٹریاں نہ کیئے جانے اور اس اہم فریضہ کے فقدان کے باعث کلرکس اور افسران کے ہاتھوں میں حاضری کا نظام اور اس میں خرد برد کے حوالے سے ایپلنٹ قبل ازیں بھی اپنی تجاویز میں اسے زیر بحث لا چکا ہے۔ نیز ایپلنٹ اس بابت سید شاہد حسین شاہ ولد داؤد حسین شاہ و سید غار حسین شاہ ولد داؤد حسین شاہ کے بیانات کی نقول لف ہذا اپیل کرتا ہے۔


۸۔ یہ کہ ایپلنٹ کو محکمہ کی طرف سے دباؤ ڈالا گیا کہ وہ سکول نہ آئے کیونکہ ایپلنٹ کے خلاف نام نہاد FIR کروائی ہوئی تھی کیونکہ ناخوشگوار حادثہ پیش آسکتا ہے۔ ایپلنٹ اس بابت ریکارڈنگ (آڈیو) جناب کے سامنے پیش کر سکتا ہے جس کو سننے کے بعد سارا موقف جناب کے سامنے آجائے گا۔

۹۔ یہ کہ سائل کے خلاف جو نام نہاد انکوائری ہوئی وہ بمطابق 2011 E&D Rules کے تحت نہ ہوئی جو اس بناء پر ہی آرڈر برخواستگی ملازمت مورخہ 23-09-2016 وصول کردہ 27-09-2016 تا قابل بحالی ہے کیونکہ انکوائری آفیسر کو چاہیے تھا کہ وہ ایپلنٹ کے خلاف شواہد اکٹھے کرے اور اس کے بعد اس کی نقول حسب ضابطہ

سورنمبر 5t

Attested

Attested


Rizwan Ali
Advocate High Court
Abbottabad

ل 13، (E&D Rules) 2011ء کے مطابق گواہان پر جرح کرنا۔

نٹ کو اس بناء پر مجرم ٹھہرایا کہ ایپلانٹ نے پولیس کے سامنے اقبال جرم کیا ، حالانکہ اقبال جرم (Confession) بمطابق سیکشن 164 ضابطہ نوحداری ، قلم بند کیا جاتا ہے نہ کہ پولیس کے سامنے ، نیز پولیس کے سامنے اقبال جرم ، دستخط نہیں لیے جاتے اور پولیس خود بیان نامبند کرتی ہے اور جو بیان پولیس نوحداری کے تحت کرتی ہے جس کی قانون میں کوئی حیثیت نہ ہے۔

ت غلط طور پر لکھی گئی ہے کہ ایپلانٹ نے شوکار نوٹس کا جواب نہیں دیا حالانکہ 31-08-2016 کو تحریری طور پر دیا جو کہ بذریعہ رجسٹرڈ پوسٹ مورخہ 23-09-2016 کو برائے راست اور ڈائریکٹر جناب کو بھی سپرنٹینڈنٹ کی وساطت سے شوکار نوٹس و پوسٹ رسیدات لف ہیں۔ چونکہ ایپلانٹ کو اظہار وجہ نوٹس ریٹ سے جاری کردہ 23-09-2016 و سپرنٹینڈنٹ کی طرف سے ارسال کی وساطت سے ملا تھا بدیں وجہ ایپلانٹ نے جواب بھی مذکورہ کی وساطت سمجھا لیکن ان شراوتوں سے جناب کو آگاہ کرنے کیلئے ایک نقل سیٹ کی شکل کر دی تاکہ اگر یہ لوگ ایپلانٹ کے موقوف کو دبا دیں یا غیر موثر کر دیں تو در جناب کی جانب سے بھی جو درخواست اجواب مارک ہو کر ڈائریکٹر کو آیا ہو یہ تھا لیکن ممکن ہے کہ سپرنٹینڈنٹ نے جو میرے موقوف کا سیٹ یا اس کی نقل میں جناب کے نام ایک پرانی خود وضاحتی درخواست تھی جو بوجہ بندش تنخواہ ری ڈاک نہ کر پایا مگر دفتر کی اجازت سے سیکرٹری صاحب و PS صاحب کو بہال کی۔ اس درخواست کو جواب باضابطہ طور پر جناب کو ارسال کی گئی اس وہ نوٹس و جواب موجود تھا ممکن ہے کہ سپرنٹینڈنٹ نے اپنے اور انکواری افسر وت تھا یا کہ بعض کاغذات غائب کر دیئے ہوں جیسا کہ نقل ازیں یہ دھوکہ دہی نہ بھی کر چکے ہیں تاہم اگر انہوں نے کاغذات غائب کیئے ہوئے تو رسیدات

فون کال پر درخواست کی تھی کہ جناب جو خط بھی میرے کاغذات کیساتھ ارسال فرمائیں وہ ہمہ رسید مجھے فراہم کریں لیکن رسید تو نہ دی گئی لیکن خط بھی ایپلائنٹ کے پاس بطور ثبوت موجود ہے کہ اس نے اظہار وجہ نوٹس ہمہ تاخیری کاغذات ارسال کیا تھا۔

۱۲۔ یہ کہ ایپلائنٹ کے خلاف پولیس کے بیان جسکی قانونی حیثیت اوپر بیان کی جا چکی ہے اس کے علاوہ کوئی بھی شہوس شہادت اگواہ برٹشل موجود نہ ہے کیونکہ اگر کوئی شہادت یا کوئی بیان لیا جاتا تو ایپلائنٹ کو حسب ضابطہ اس کی کاپی فراہم کی جاتی۔ اب یہ ان نام نہاد، قابل اعتراض شہادتوں کا سہارا لے رہے ہیں جن کے حوالے سے ایپلائنٹ گاہے بگاہے اور لوئر کورٹ میں بھی کامیابی کیساتھ اپنا موقف پیش کر چکا ہے نیز انکوآری آفس نے اس ابتدائی بیان جو میری طرف سے انہیں دیا گیا میں اگرچہ کافی شواہد موجود تھے مگر اس نے اس ابتدائی بیان کو پڑھ کر یہ قرار دیا کہ میرے پاس کوئی ثبوت نہیں اور بعد از بیان ثبوتوں کا موقع نہیں دیا گیا اور اسرار کے باوجود جواب بھی آتا کہ ابھی تو آپ کے خلاف انکوآری ہو رہی ہے نہ کہ ان کے خلاف۔ ایپلائنٹ نے بزور اپنا موقف پیش کیا کہ آخر محکمہ کب تک صرف اسی کے خلاف بے بنیاد، بدینتی پرستی، انتقامی و یکطرفہ کاروائیاں کرتا رہے گا؟ لیکن ثبوت پیش کرنے کا موقع نہ دئے کر جو مندرجات میں نے پیش کیئے تھے اب قرار دیا گیا ہے کہ میں نے بے بنیاد اور بغیر ثبوتوں کے الزامات لگائے۔ انکوآری آفس کا موقف اس لیے بھی ناقابل قبول تھا کہ اگر میری یکطرفہ انکوآری بھی ہوتی تو بھی جو الزامات میں نے لگائے جس کے جواب میں مجھ پر بے بنیاد الزامات کا چارج تھا اس کے خلاف مجھے ثبوت پیش کرنے کا موقع دیا جاتا۔

۱۳۔ یہ کہ ایپلائنٹ غریب خاندان سے تعلق رکھتا ہے اور ایپلائنٹ کے علاوہ 3 بہن بھائی مزید معذور ہیں جن کی کفالت بھی ایپلائنٹ کرتا ہے مگر ایپلائنٹ کو بدینتی و ذاتی انا کی وجہ سے نوکری سے برخواست کیا گیا جو کہ نہ صرف ایپلائنٹ کیلئے باعث ذلت و رسوائی اور شکست ہے بلکہ اس مانیا کیلئے بھی خوشی کا ایک اور موقع نیز محبت وطن اور دیانتدار لوگوں کیلئے پیام بد ہے جس کے رد عمل میں ایپلائنٹ خصوصاً سیکرٹریٹ کے سامنے انفرادی یا اجتماعی خود کشی جیسا انتہائی قدم تو اٹھا سکتا ہے لیکن ایسا ناقابل قبول اور ناقابل برداشت اقدام ہرگز برداشت نہیں کر سکتا۔

۱۴۔ یہ کہ جہاں تک پانی میں زہر ملانے کا تعلق ہے وہ مقدمہ ایڈیشنل سیشن جج صاحب III کی عدالت میں زیر سماعت ہے جس کا فیصلہ عدالت نے ابھی کرنا ہے تو محکمہ نے بغیر عدالتی فیصلہ کے انتظار کیئے کیسے ثابت کیا کہ پانی میں زہر ایپلائنٹ نے ہی ملائی ہے۔

۱۵۔ یہ کہ ایپل ہذا اندرون میعاد ہے۔

۱۶۔ یہ کہ ڈائریکٹر صاحب نے انکوآری آفسر کی سفارشات کو بھی یکسر نظر انداز کیا ہے جو اس بناء پر بھی آرڈر

سٹمبر 4

Attested

Rizwan Ali
Rizwan Ali
Advocate High Court
Abbottabad

BEFORE THE SERVICE TRIBUNAL OF KHYBER

PAKHTUNKHWA, PESHAWAR

Appeal No. 219/2017

Muhammad Sajjad S/O Muhammad ^{Amir} Cast Awan Resident of Mohallah Awan Abad Jhangi Syedian Abbottabad Tehsil & District Abbottabad.

↓ corrected vide order 22/6/17

.....APPELLANT

Versus

Diary No. 164

Dated 8-2-2017

1. Government of Khyber Pakhtunkhwa through Secretary, Social Welfare, Special Education and Women Empowerment Peshawar.
2. Director, Social Welfare, Special Education and Women Empowerment Peshawar.
3. District Officer, Social Welfare, Special Education and Women Empowerment Peshawar. *Amir = corrected vide order 22/6/17*
4. Superintendent, Government Institute for the Blind Abbottabad. *17*

.....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, FOR DECLARATION TO FACT THAT THE IMPUGNED NOTIFICATION NO. 5143-48 DATED 23-09-2016 ISSUED BY RESPONDENT NO. 2, WHEREBY, THE SERVICES OF APPELLANT AS CANE WORKER (BPS-7) AT GOVERNMENT INSTITUTE FOR BLIND ABBOTTABAD HAS BEEN TERMINATED W.E.F 20-09-2016 IS ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, MALAFIDE AND CONSEQUENTLY OF NO LEGAL EFFECT UPON THE RIGHT OF APPELLANT.

Filed to-day

[Signature]
Registrar
8/2/17

PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL, THE IMPUGNED NOTIFICATION DATED 23-09-2016 MAY GRACIOUSLY BE SET-ASIDE AND SERVICES OF APPELLANT MAY KINDLY BE REINSTATED WITH ALL BACK BENEFITS.

Re-submitted to -day and filed.

[Signature]
Registrar
21/3/17

Respectfully Sheweth:-

Following are the facts, giving rise to the instant appeal:-

1. That the appellant after qualifying the prescribed examination and appointed as Cane Worker (BPS-6) at Government

Attested

[Signature]
Rizwan Ali
Advocate High Court
Abbottabad


Institute for the Blind Abbottabad, on 16-05-2008 purely on merit and kept on performing his duties as such with honesty and diligently. (Copy of the Service Book is annexed as annexure "A")

2. That so called inquiry was constituted vide Notification No. 16/378/Vol-II/DSW/1173-74. dated 01-06-2016 against the appellant and subsequently a charge sheet alongwith statement of allegation was issued to the appellant by the respondent No. 2. (Copy of charge sheet and statement of allegation. are annexed as annexure "B" and "C" respectively)
3. That the appellant submitted his detailed reply to the charge sheet alongwith relying documents.
4. That on behalf of respondent No. 2 a show cause notice No. 3467-70 dated 23-08-2016 were served upon the appellant. (Copy of the show cause notice is annexed as annexure "D")
5. That the appellant submitted his reply to show cause notice on 31-08-2015. (Copy of reply to show cause notice is annexed as annexure "E")
6. That on 17-07-2016 inquiry officer submitted his inquiry report wherein, he recommended that appellant be sent on compulsory retirement. (Copy of the Inquiry Report is annexed as annexure "F")
7. That on 23-09-2016 respondent No. 2 issued an order under Endst. No. 5143-48 wherein, major penalty of removal from service was imposed upon appellant w.e.f 20-09-2016. (Copy of impugned order is annexed as annexure "G")
8. That being aggrieved from the impugned order dated 23-09-2016, appellant filed departmental appeal before respondent No. 1 on 08-10-2016. (Copy of departmental appeal is annexed as annexure "H")
9. That respondent No. 1 failed to decide the fate of the appeal even after expiry of 90 days hence, appellant has no other remedy except to file appeal before this Honorable Tribunal inter-alia on the following grounds:

Attested
Rizwan Ali
Rizwan Ali
Advocate High Court
Abbottabad

Grounds:-

- a. That the appellant was removed from service without conducting a proper inquiry under the E&D Rules, 2011.
- b. That respondent No. 2 without considering reasonable reply to the charge sheet and in the absence of any documentary evidence on record against the appellant removed him from service arbitrarily without use of independent mind.
- c. That neither the statements of independent witnesses were recorded nor the opportunity of cross examination was afforded by the inquiry officer to appellant under the Rule 13 of E&D Rules, 2011.
- d. That the major penalty of removal from service has been imposed upon the appellant without affording opportunity of personal hearing with a predetermined mind in violation of all norms of justice and equity and principles of natural justice. Thus the impugned order is against the law and having no legal effect.
- e. That show cause notice was not issued by the competent authority as the same was issued by the incompetent authority.
- f. That the inquiry officer misappropriated the facts and concealed the material facts as no confessional statement was recorded by the Judicial Magistrate. Furthermore, statement recorded during the police custody has no legal sanctity.
- g. That the so called FIR was lodged against the appellant and the trial of the same has not been concluded as the criminal case is pending adjudication before Honorable Court of Session Judge-III, Abbottabad.
- h. That the impugned order was passed against the appellant with discriminatory treatment which is against the Article 25 of the constitution of Islamic Republic of Pakistan.

Attested

Rizwan Ali
 Advocate High Court
 Abbottabad


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- i. That the appellant was suspended on 07-01-2015 for till further order as no extension was made after the expiry of 90 days. It is pertinent to mention here that as per Rule 6 of E&D Rules 2011 after expiry of 90 days a civil servant automatically deem to be reinstated in service.
- j. That the others grounds would be urged at the time of arguments.

It is, therefore, humbly prayed that the appeal of the appellant my graciously be accepted and the appellant be reinstated in service with all back benefits. Any other relief which this Honorable Tribunal deems appropriate in the circumstances may also be allowed / awarded to the appellant.

Dated: 06-02-2017


(MUHAMMAD SAJJAD)
(APPELLANT IN PERSON)

Attested

Rizwan Ali
Advocate High Court
Abbottabad

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BEFORE THE SERVICE TRIBUNAL OF KHYBER
PAKHTUNKHWA, PESHAWAR

Muhammad Sajjad S/O Muhammad Ayyaz Cast Awan Resident of Mohallah
Awan Abad Jhangi Syedian Abbottabad Tehsil & District Abbottabad.

.....APPELLANT

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Social Welfare,
Special Education and Women Empowerment Peshawar & others.

.....RESPONDENTS

SERVICE APPEAL

AFFIDAVIT:

I Mr. Muhammad Sajjad, Ex Blind Cane Worker (BPS-7) Cast Awan Resident
of Mohallah Awan Abad Jhangi Syedian Abbottabad Tehsil & District
Abbottabad, do hereby solemnly affirm and declare on oath, that all the
contents of Instant Service Appeal are true and correct to the best of my
knowledge and belief and that nothing has been suppressed from this
Honorable Tribunal.



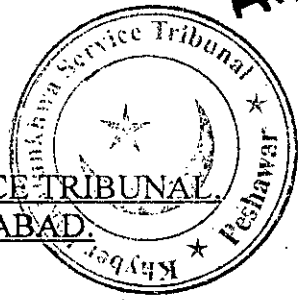
MUHAMMAD SAJJAD

.....DEPONENT

Dated: 06-02-2017

Attested

Rizwan Ali
Advocate High Court
Abbottabad



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

Appeal No. 219/2017

Date of Institution ... 08.02.2017
Date of Decision ... 23.01.2020

Muhammad Sajjad S/O Muhammad Riaz, Cast Awan Resident of Mohallah Awanabad Jhangi Syedian, Abbottabad, Tehsil and District Abbottabad.
... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary, Social Welfare Special Education and Women Empowerment, Peshawar and three others.
... (Respondents)

Present:

MR. MUHAMMAD SAJJAD,
Appellant --- In person.
MR. MUHAMMAD JAN,
Deputy District Attorney --- For respondents.
MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL --- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT.

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

TESTED

ARGUMENTS:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

Appellant while arguing his case stated that he was appointed as Cane Worker (BPS-03) at Government Institute for the Blind Abbottabad on 16.05.2008. On certain allegations, disciplinary proceedings were initiated against the appellant and upon conclusion major penalty of removal from service was imposed on him vide impugned order dated 23.09.2016. Feeling aggrieved, he filed departmental

appeal on 08.10.2016 which remained unanswered, hence, the present service appeal. Enquiry was not conducted in accordance with the procedure laid down in the E&D Rules 2011. Neither the statements of witnesses were recorded in the presence of the appellant nor opportunity of personal hearing was afforded to him. The show cause notice was served under the signatures of incompetent authority, which was a grave illegality and made the entire process defective/disputed. Opportunity of personal hearing was also denied to the appellant. He has been acquitted of the criminal charge by the court of Addl: Sessions Judge-I, Abbottabad. The main ground which led to the initiation of disciplinary proceedings is no more in the field.

03. Learned Deputy District Attorney argued that the appellant had become a pain in the neck for respondents. He was charged of mixing poison in water cooler lying in the Institute. The report of FSL confirmed this fact. He was arrested and sent to jail. He remained absent from duty for eight months. Disciplinary proceedings were conducted against the appellant and thereafter major penalty of removal from service was awarded to him vide impugned order dated 23.09.2016.

ATTESTED

CONCLUSION:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

It is brought on record that FIR no. 1044 under Section-337-J/511 PPC dated 16.11.2014 Police Station Cantt: Abbottabad was lodged against the appellant for mixing poison in water cooler lying in the Government Institute for the Blind Abbottabad. After registration of FIR, the appellant was arrested by the local police. Disciplinary proceedings were initiated against the appellant by serving charge sheet and statement of allegations. Perusal of enquiry report revealed that the same was not conducted in the mode and manner prescribed in E&D Rules-2011. The

Enquiry Officer though recorded statements of some of the staff members but those were not annexed with the enquiry report placed on the case file. As the record is not available/silent, we believe that these statements were not recorded in the presence of the appellant nor opportunity of cross examination was afforded to him. We quizzed the learned Deputy District Attorney to make available the above statements but he informed that the same were not available with him. Even otherwise, enquiry was conducted in a slipshod manner. Except for FSL report which confirmed mixing of poison in the water cooler, no shred of evidence was collected by the Enquiry Officer. As regards his absence for eight months, the Enquiry Officer failed to properly dig out the matter with the help of documentary evidence. In the absence of any incriminating evidence the charge of absence from duty against the appellant remained un-substantiated. In these circumstances, we hold that charges leveled against the appellant in the charge sheet and statement of allegations could not be established by the Enquiry Officer during the enquiry proceedings.

05. Moreover, show cause notice was required to be served on the appellant by the Director Social Welfare but the same was signed by Mr. Muhammad Rauf, Assistant Director Establishment, who was not the competent authority. It was a serious illegality on the part of the respondents that may the entire process illegal and bereft of law/rules. The impugned order further revealed that opportunity of personal hearing was not afforded to the appellant. We are of the considered view that in order to provide opportunity of fair trial by following due process of law there is strong justification to hold de-novo enquiry in the present case and to ensure upholding the cause of justice, fair play, transparency and equity.

ATTESTED**EXAMINER**
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

06. Now coming to the criminal proceedings instituted against the appellant, he was acquitted by the Addl: Sessions Judge-I, Abbottabad vide judgment dated 05.08.2019. The prosecution failed to establish the charge leveled against the appellant and by giving him benefit of doubt, he was acquitted by the Court. Having been acquitted of the criminal proceedings, the main ground which led initiation of departmental proceedings has lost its efficacy. We are cognizant of the fact that departmental and criminal proceedings can run parallel.

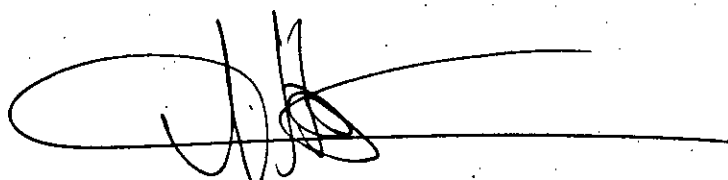
07. As a sequel to the above, the appeal is accepted, impugned order dated 23.09.2016 is set aside the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

Certified to be true copy

Executive
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(MUHAMMAD HAMID MUGHAL)
MEMBER

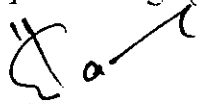
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23.01.2020



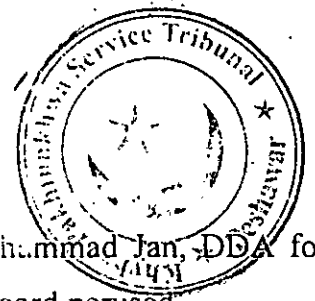
(AHMAD HASSAN)
MEMBER
Camp Court Abbottabad

Additional/Dissenting Note by Mr. Muhammad Hamid Mughal Member (J):

I have perused the judgment authored by learned Member (Executive). I am in respectful agreement with the conclusion drawn therein for conducting de-novo inquiry against the appellant. I, very humbly disagree with the proposition drawn by the learned Member (Executive) in Para-06 of the judgment. It is well settled that acquittal of accused official from criminal case would have absolutely no bearing on the merits of the case in the departmental proceedings (2006 SCMR 554).


Muhammad Hamid Mughal
Member (J)

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ORDER

23.01.2020

Petitioner in person present. Mr. Muhammad Jan, DDA for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 23.09.2016 is set aside, the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:

23.01.2020

(Ahmad Hassan)
Member
Camp Court Abbottabad

(Muhammad Hamid Mughal)
Member

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

انجمنت جناب سپرینٹنڈنٹ صاحبہ / صاحب گورنمنٹ انسٹیوٹ ٹارری

عنوان :- درخواست برائے اجازت نامہ

پلاٹینڈ ایٹ آباد
جناب عالی / عالیہ

موڈ بانہ گزارش ہے کہ من سائل کو دونوں عدالتوں یعنی عدالت جناب ایڈیشنل سیشن جج (I) ایٹ آباد نے صدفہ علت نمبر 2044 و صورت نمبر 26-11-2014 بمقام PS، کیٹ ایٹ آباد زیر دفعات PPC337J اور 14 سے بااجازت بری کر دیا نیز سروس ٹریبونل خیر کھٹو کھوایہ ایٹ ایٹ آباد نے بھی صدفہ شکریہ محمد ریلیف زیتے بیوٹے پری سروس ایپل جو کہ اپیل نمبر 29/17 بعنوان "سجاد بنام حکومت" کو تصرف قبولیت بخشنے بیوٹے سروس پر بااجازت بحال کر دیا ہے اور فیصلے خلاف بیوٹے والے تمام تر اسس کو غیر قانونی (اور مبنی پر بد نیتی) قرار دیا ہے۔

لہذا من سائل کے تمام تر ریکارڈ کو بھی درست کیا جائے، پیری تمام تنخواہ بمع بقایا جان مجموعہ دی جائے اور مجموعہ اپنے والوں منصبی ادا کرنے کیلئے ارادہ میں داخلہ اور ڈیولوی و حافری کی (حادثات فراہم کی جائے اور وہ تمام اقدانات نہ کیے جائیں جو اشتغال انٹرنیٹ انگری اور سرائیکی کا باعث بنتے رہے، مجموعہ اب ناچار طور پر تنگ بھی نہ کیا جائے اور فرا محفوظ بھی سربراہ ادارہ کی زبرداری ہے جس میں کسی بھی قسم کی غفلت و کوتاہی کی زبرداری پوری کی پوری انشاء اللہ آپ جناب ریلوے

لہذا فرمائی فرما کر من سائل کی درخواست کو منظور و مقبول فرما کر شکریہ کا موقع عنایت فرمائیں

عین لوازیشن ریلوے

نقول قبیلہ جان لف درخواست ہذا یہ

محمد سجاد رئاسا کین وکر
گورنمنٹ انسٹیوٹ ٹارری پلاٹینڈ
ایٹ آباد

BPS-07

صورت نمبر : 10-02-2020

دستخط

Attested

Rizwan Ali
Advocate High Court
Abbottabad

No. 961

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

Rs. Ps.

110

100

Received a registered* addressed to

Date-Stamp

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

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

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

لوٹ: فیصلہ و وصولی

No. 962

For Insurance Notices see reverse. Stamp RGL37575507 uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. Ps.

110

Received a registered* addressed to

Date-Stamp

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

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

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

No. 963

For Insurance Notices see reverse. Stamp RGL37575508 uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. Ps.

110

Received a registered* addressed to

Date-Stamp

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

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

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

No. 865

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

Rs. Ps.

80

Received a registered* addressed to

Date-Stamp

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

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

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

If insured.

وکالت نامہ

کورٹ فیس

بعدالت سروس ٹریبونل بساڈر کمپ کورٹ ایٹ آباد

عنوان: محمد بساڈر بیام گورنمنٹ آف KPK وغیرہ

منجانب: پٹیشنر

نوعیت مقدمہ: Application for implementation

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسے پیروی و جواب دہی کل کاروائی متعلقہ آن مقام پرویز عباسی / رضوان علی ایڈووکیٹس ہائی کورٹ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کے پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقام: ایٹ آباد

الرقوم: 13-07-2020

Accepted by USI

