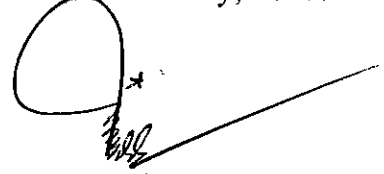


15.07.2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Waseem Ullah, Superintendent for the respondents present.

02. Respondent department submitted Notification bearing No. SOE/C&WD/8-16/2017 dated 19.04.2022 where by the petitioner has been reinstatedⁱⁿ service w.e.f. 03.12.2018 as per judgement of Service Tribunal delivered in Service No. 590/2019 on 13.08.2021. Another Notification bearing No. SOE/C&WD/4-7/2022 has also been issued whereby the petitioner stands posted accordingly. Copy of the said Notifications referred to above, handed over to the petitioner who stated at the bar that he felt satisfied with the implementation. As such the execution petition stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 15th of July, 2022.



(MIAN MUHAMMAD)
MEMBER (E)

31.01.2022

Petitioner in person present. Mr. Muhammad Adeel Butt
Addl: AG for respondents present.

The respondent-department submitted explanatory parawise comments which are placed on file and a copy thereof is handed over to the petitioner. The respondent-department has the right to challenge the Service Tribunal judgement dated 13.08.2021 and get it suspended from the august Supreme Court of Pakistan. However, in case no relief is granted to the respondent-department by the august Supreme Court of Pakistan then it is under obligation to implement judgement of the Service Tribunal conditionally and subject to the outcome of their CPLA filed in the august Supreme Court of Pakistan. The respondent-department is therefore, directed to submit implementation report on the next date. To come up for implementation report before or on 11.03.2022 before S.B.

(Mian Muhammad)
Member(E)

*Due to retirement of worthy Chairman,
the Tribunal is defunct, therefore, the
case is adjourned to 9/06/2022 for the
same as before.*

Reader

09.06.2022

None for petitioner present. Lawyers are on strike. Mr. Muhammad Riaz Paindahkhel, Assistant Advocate General for official respondent present.

Previous date was changed on Reader note. Therefore, notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 15.07.2022 before S.B.

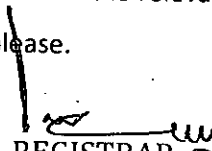


(Fareeha Paul)
Member(E)

Form- A

FORM OF ORDER SHEET

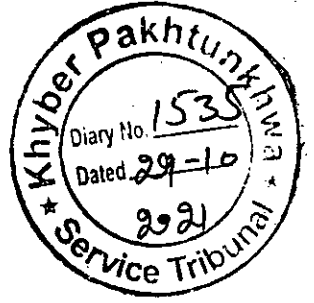
Court of _____

Execution Petition No. _____ 270 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.10.2021	<p>The execution petition of Mr. Shabir Khan submitted today by Mr. Taimur Ali Khan 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> <p>This execution petition be put up before S. Bench on <u>26/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>26.11.2021</p> <p>Counsel for the petitioner present, Mr. Muhammad Adeel Butt, Addl: AG for respondents present.</p> <p>Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 31.01.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

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

Execution Petition No. 270 /2021.
In Service Appeal No.590/2019



Mr. Shabir Khan, Ex-Sub Engineer,
C&W Division, Hangu.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary (C&W) Department, Khyber Pakhtunkhwa, Peshawar.
4. The Chief engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

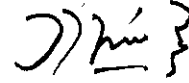
.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 13.08.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 590/2019 against the order dated 03.12.2018, whereby major penalty of removal from service has been imposed upon the petitioner and against the appellate order dated 08.04.2019 whereby the departmental appeal of the petitioner has been rejected on no grounds.

2. The said appeal was finally heard by this Honourable Service Tribunal on 13.08.2021. The Honourable Service Tribunal accepted the appeal and disciplinary proceedings and the impugned order of imposing major penalty of removal from service upon the appellant in result of said proceedings are set aside. The appellant is entitled for reinstatement from the date of removal from service by impugned order with back benefits having accrued or accruable, had he not been removed from service. The judgment shall not create a bar against the competent authority, if it decides to proceed against all the officers/officials in light of their respective incumbency in the C&W Division Hangu, since the disputed scheme was contracted out for execution and till its completion, having regard to proportional responsibility of all the said incumbents. **(Copy of judgment dated 13.08.2021 is attached as Annexure-A)**
3. That the petitioner has been reinstated into service with all back benefits by this Honourable Tribunal in its judgment dated 13.08.2021, however, the respondents did not reinstated the petitioner into his service till date despite the clear direction of this Honourable Tribunal in its judgment dated 13.08.2021 that the appellant is entitled for reinstatement from the date of his removal from service by the impugned order with back benefits having accrued or accruable, had he not been removed from service.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 13.08.2021 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 13.08.2021 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 13.08.2021 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.



PETITIONER
Shabir Khan

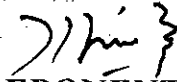
THROUGH:



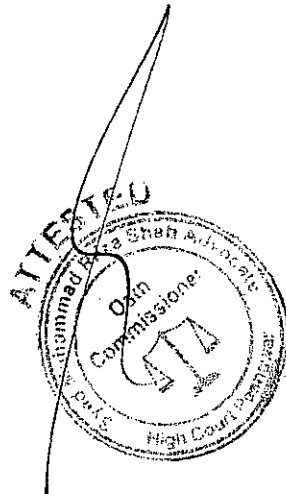
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 590 /2019

Diary No. 722

Dated 07-5-2019

Mr. Shabir Khan, Ex-Sub Engineer,
C&W Division, Hangu.....



APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary (C&W) Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 03.12.2018 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 08.04.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this service appeal the impugned orders dated 03.12.2018 and 08.04.2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Filed to-day

Registrar

7/5/2019

Brief facts giving rise to the present appeal are as

under:-

1- That appellant was the employee of the respondent Department and had served the Department as Sub Engineer for considerable period quite efficiently and up to the entire satisfaction of his superiors.

2- That appellant while serving as Sub Engineer at C&W Division at Hangu a charge sheet along with statement of allegation were issued to the appellant in which it were alleged that,

(i)- You failed to supervise and manage the completion of scheme within the stipulated period; resultantly the scheme is dropped from current ADP.

THE KHYBER PAKHTUN KWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 590/2019

Date of Institution ... 07.05.2019

Date of Decision ... 13.08.2021



Mr. Shabir Khan, Ex-Sub Engineer, C&W Division, Hangu.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar and three others.

... (Respondents)

Present:

SHABIR KAHN,
KABIRULLAH KHATTAK,
Additional Advocate General

--- Pro Se.

--- For respondents.

AHMAD SULTAN TAREEN
ROZINA REHMAN

--- CHAIRMAN
--- MEMBER(Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN:- Appellant has filed the instant service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 03.12.2018, whereby, he was removed from service.

2. According to the facts gathered from the memorandum of appeal and accompanying record, the appellant while serving as Sub-Engineer at C&W Division, Hangu, he was served with charge sheet and statement of allegations including the charges as copied below:

- I. You failed to supervise and manage the completion of scheme within the stipulated period, resultantly the scheme is dropped from current ADP.
- II. The executed works found substandard and poor quality.
- III. You made payment to the contractors in advance without execution of work, besides misuse of public funds.

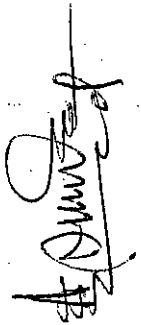
3. The charge sheet and statement of allegations were issued by the Chief Minister, Khyber Pakhtunkhwa because the co-accused include Mr. Kifayat Ullah the

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TESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

then XEN, C&W Division, Hangu whose competent authority was the Chief Minister. An inquiry committee comprising Mr. Jannat Gul (PCS-SG-BS-19), Additional Secretary, Zakat & Usher Department and Engineer Fazle Wahab (BS-19) Provincial Design Engineer, was constituted. The appellant was directed vide para-3 of the charge sheet to submit his written defense to the enquiry committee within 07 days of the receipt of the charge sheet. It is there in the memo of appeal that in response, the appellant submitted his detail reply alongwith documentary proof and denied the allegations leveled against him. The afore-mentioned enquiry committee submitted its report, copy whereof has been annexed with memorandum of appeal. According to the findings of the committee in the said report charges against the accused officer Engineer Kifayatullah, and accused official Mr. Saeedullah were not proved; and charges No. 1, 2 were proved and charges No.3 was not proved against the appellant. The competent authority vide order dated 03.12.2018 bearing No. SOE/C&WD/8-16/2017 of even date imposed the major penalty of removal from service upon the appellant in pursuance to the enquiry report. According to the appellant, he was made scapegoat by awarding major penalty of removal from service vide impugned order while co-accused were exonerated from the charges. He stated in this appeal that he was not involved in the irregularities because his attachment with the scheme in question occurs in the year 2013 while scheme had started in the year 2008 and ended in the year 2015. According to him, the scheme was initially started under supervision of his two colleagues who being co-accused were exonerated. Feeling aggrieved from the impugned order, the appellant filed departmental appeal/review petition but the same was rejected vide appellate order dated 08.04.2019. In pursuit of the next remedy, he has approached this Tribunal through service appeal at hand. The respondents were put with notice after admission of the appeal for regular hearing. They attended and contested the appeal by



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EXAMINER
Khan Pathukhwa
Service Tribunal
Peshawar

submission of their para-wise comments whereby they refuted the submissions of appellant made vide his appeal.

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

5. It was argued by the appellant that the impugned order of his removal from service and the order of the appellate authority rejecting his appeal are against the facts, law and norms of natural justice. He was not treated in accordance with law and rules and was condemned unheard. No show-cause notice was served on him before issuance of the impugned order dated 03.12.2018 and he was also not afforded any opportunity of personal hearing. The enquiry conducted against him suffers illegalities and irregularities and the law on the subject was not followed by the committee as well as by the competent authority. The impugned order suffers from malafide and was passed without having regard to the vicarious responsibility of the appellant in relation to the project. The project started in 2008 but the other officers/official who remind at helms of affairs during execution of the projects since its commencement were given clean chit. It was also argued that the scheme was located in the area where militancy was at peak stage since 2011 to 2015 and the building remained occupied by the Army till December 2013 resulting damages to it during the said period. After vacation from the Army, the building was renovated and was handed over to the concerned department in 2018. It was argued that the work was executed having regard to the technical specification and quality which got damage while in use of Armed Forces. Despite showing sufficient cause of his innocence with all the documentary proof, he was punished by singling him out from the other officers/officials having their respective responsibilities/liabilities in relation to the project. While concluding his arguments, appellant submitted that the entire process of disciplinary proceedings against him is a sham exercise meant to make him scapegoat and save the skin of blue eyed. He submitted that the impugned order being result of illegal and irregular disciplinary proceedings is not tenable

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EXAMINER
Peshawar
Service Tribunal
Peshawar

under the facts and law and is liable to be set aside and he is entitled for reinstatement and with all back benefits.

6. It was argued on behalf of the respondents that the appellant has got no cause of action, his appeal is time barred, and he has not come to the court with clean hands. The disciplinary proceedings were conducted against the appellant with due regard to the law on the subject by serving the appellant with charge sheet, statements of allegations followed by formal enquiry wherefore the appellant failed to prove innocence. He was rightly penalized with imposition of major penalty and exoneration of the co-accused does not absolve the appellant from the charges which were proved against him. The co-accused was exonerated on the basis of findings of the enquiry report by the competent authority which made out their case for exoneration. The plea of the appellant about his having been made scapegoat is an afterthought. He was given ample opportunity to prove his innocence and on his failing, it was inevitable to penalize him under the requirements of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The learned AAG while concluding his arguments submitted that appeal may be dismissed with cost.

7. As far as the hierarchy of Communication & Works Department is concerned, it is an undeniable fact in light of its hierarchical organogram that it includes the offices of Executive Engineer, Assistant Engineer/Sub-Divisional Officer and Sub-Engineer besides their zonal and provincial Engineers/officers. The XEN C&W Department is the immediate higher authority in a C&W Division to get the assigned civil works executed in due compliance of the codal formalities and standards. SDO and Sub Engineer in direct subordination of the XEN are responsible for physical execution of works. So, the XEN, SDO and Sub Engineer are collectively responsible for the management and execution of works in their respective domains.

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

However, Sub-Engineer in the said hierarchy of the Engineers in a C&W Division stands at the lowest rung of the ladder obviously with greater responsibility being a site overseer of a scheme but not with sole responsibility to bear the burden of consequences without proof of his substantial role in the actionable events. What made the background for disciplinary action against the appellant and others, the same has been reflected in Inquiry Report by the Committee with full details of analytic points followed by recommendations as copied herein below:-

1. *The Executing Department should direct the contractor to expedite the pace of work on the remaining items and hand over the hospital at the earliest for the best interest of public.*
2. *Strict Disciplinary action is recommended against the officials/officers mentioned in Para-2 who was found responsible for execution of poor quality work, advance payments, misuse of public funds and delaying such important project.*
3. *The items that were paid in advance should be executed without further delay with proper design and standard quality.*
4. *The contractors may also be penalized for delaying the execution of project, misuse of public funds, executing poor quality work and the items that were executed against the approved Technical Sanction should be recovered.*

8. The recommendations noted above except one at Sr. No. 2 do not attract the action against the appellant. Therefore, charge Sheet with the allegations enumerated therein appears to have been derived from the recommendation at Sr.No.2 among the above mentioned recommendations. Out of three charges as inquired against the appellant, the third charge was that he made payment to the contractors in advance without execution of work besides misuse of public funds, which was not proved as per inquiry report. According to first head of the charge, he failed to supervise and manage the completion of scheme within the stipulated period, resultantly the scheme was dropped from current ADP. It is an admitted fact

ATTESTED

EXAMINER
Member Pakhtunkhwa
Service Tribunal
Peshawar

on behalf of appellant that he took over the charge of scheme in 2013 and not expressly refuted by the respondents. Accordingly, the liability of appellant relates to his period of posting onward from 2013. It is evident from copies of different official correspondence annexed with the appeal that work on the scheme started few years before 2013. Among the copies of record making part of annexure 'F' on the appeal file; vide letter dated 29-05-2013 of the XEN C&W Division, Hangu addressed to the Secretary Health Department, Peshawar on the subject of Civil Hospital Doaba, it was stated that subject developmental scheme was due for completion for the then current financial year 2013 but citing the ground realities obviously including the security problem and occupation of site by Pak Army, revision of estimates for completion of scheme for remaining construction work was sought with the request to carry over/throw forward the completion date to the year 2013/14. In another letter dated 01-10-2013 making part of the same annexure, which was addressed by the Commissioner, Kohat Division to the Secretary Health, and wherein completion of partial work on the scheme in the year 2009 was mentioned and occupation of site by the completed blocks by the Pak Army since 2009 was confirmed. This position as evident from official record was rubbed under the carpet by the Inquiry Committee by not touching the delay having occurred before coming of scheme in hands of the appellant in 2013. So, it was not just and fair to hold the appellant responsible for delay in completion of scheme when his higher authorities were cognizant of the ground realities on causes of delay. Moreover, the stance of co-accused Mr. Kifayatullah, as accepted by the Inquiry Committee and endorsed by the competent authority is equally workable in favor of the appellant at least for a period of one year. The second head of the charge was that the executed works found substandard and poor quality. Needless to say that responsibility of the appellant may be much more than the SDO and XEN but it was their proportional responsibility to visit the site and check the deficiencies in the work for their rectification well in time. If the

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TESTED

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 MEMBER
 Peshawar Service Tribunal
 Peshawar

work has been found substandard after the completion of scheme, the XEN and the SDO by then at the helms of affairs were proportionally responsible to share the consequence. However, the appellant has been singled out to face the consequences, which is highly unjust and against the norms of justice. May be right or wrong, we were told by the appellant that the ratio of the responsibility in relation to the works in the C&W Division remains 25% each with the XEN and SDO while 50% remains with the Sub-Engineer. The learned AAG was not assisted by the department for rebuttal of said statement of the appellant. If this is the case and obviously this ratio of responsibility seems logical, we are unable to understand as to how the role of the XEN was excluded. As per details of the co-accused given in the enquiry report, the following four persons were proceeded against under E&D Rules 2011 including the appellant:-

1. Engr: Kifayatullah XEN (BS-18) the then Xen C&W Division Hangu, Now working as PD PRRSA/USAID Directorate.
2. Mr. Shabir Khan Sub Engineer C&W Division Hangu.
3. Mr. Saeedullah Sub-Engineer C&W Division Hangu.
4. Mr. Ejaz Rasool the then Sub-Engineer C&W Division Hangu and died during service while posted as SDO (E&M) O/O CE (North) C&W Department Peshawar.

9. We deem it appropriate not to touch the enquiry report on its merit but as far as the enquiry proceedings are concerned, they do not disclose the compliance of the procedure under Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. Neither the statements mentioned in the enquiry report are shown to have been recorded in presence of the appellant nor had he been given the opportunity of cross examination. The appellant straightaway denied in the ground of his appeal that no show cause notice was served on him

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

before issuance of the impugned order dated 0312.2018 and nor was he provided the chance of personal hearing before the issuance of the said order. In view of the said denial of the appellant in his memorandum of appeal, respondents were required to furnish the copy of the show cause notice from the official record and should have annexed the same with their para-wise reply but they omitted. So, they failed to rebut the ground of non-service of show cause notice upon the appellant which was a legal requirement within the meaning of Sub-Rule-4 of Rules-14 of the ibid Rules including to provide a copy of the enquiry to the accused with direction for appearance of the departmental representative with all record, on the date of hearing. The impugned order does not disclose as to affording the appellant with opportunity of hearing as referred under Sub-Rule-4 of Rules-14. So, we in view of the forgoing discussion have no hesitation to hold with the disciplinary proceedings having worked in imposition of major penalty against the appellant were not conducted in accordance with law on the subject. Moreover, selective treatment meted out to the appellant for imposing the penalty excluding others having proportional liability with him as per respective ratio of their responsibility, is unwarranted in the realm of the Constitution of the Pakistan.

10. For what has gone above, the appeal at hand is accepted. Disciplinary proceedings and the impugned order of imposing major penalty of removal from service upon the Appellant in result of said proceedings are set aside. The Appellant is held entitled for reinstatement from the date of his removal from service by the impugned order with back benefits having accrued or accruable, had he not been removed from service. This judgment shall not create a bar against the competent authority, if it decides to proceed against all the officers/officials in light of their respective incumbency in the C&W Division Hangu, since the disputed scheme was contracted out for execution and till its completion, having regard to proportional

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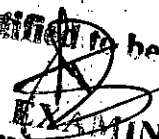
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 JAMNAR
 Her Pakhtunkhwa
 Service Tribunal
 Peshawar

responsibility of all the said incumbents. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.08.2021


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ROZINA REHMAN)
MEMBER(J)

~~Certified to be true copy~~

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 21-09-2021
Number of Words 4000
Copying Fee 42.00
Hrgent 4.00
Total 46.00
Name of Copyist _____
Date of Completion of Copy 21-09-2021
Date of Delivery of Copy 21-09-2021

بعدالت

سروس ٹریڈ میوٹل لیسٹ اور

مشیر قان 2 پنجاب
شعبہ قان پیام محمد علی احمد ڈیڑھ ملہو

موردہ
مقدمہ
دعویٰ
جرم

باعث تحریر آتکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لیسٹ اور
کیلئے سروس ٹریڈ میوٹل لیسٹ اور

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 اقرار ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا طرفہ یا ایبل کی بیزادگی
اور وصولی نیز دائر کرنے ایبل نگرانی و فکر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
اقرار کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو فریج ہر جائے التوائے مقدمہ کے
سب سے وہ ہوگا۔ کوئی تاریخ نشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھو یا کہ سند ہے۔

Accepted
&
Attested
[Signature]

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المرقوم

الم د گ و الہ

کے لئے منظور ہے۔

[Signature]

مقام



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the April 19, 2022

ORDER:

No.SOE/C&WD/8-16/2017: In compliance of the Khyber Pakhtunkhwa Service Tribunal judgment dated 13.08.2021 in Service Appeal No.590/2019 and order sheet dated 31.01.2022, the Competent Authority (Chief Minister Khyber Pakhtunkhwa) is pleased to reinstate Mr. Shabir Khan Sub Engineer into service w.e.f. 03.12.2018 with all service back benefits, subject to the outcome of CPLA filed by the Department in the august Supreme Court of Pakistan.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (South-I) C&W Peshawar
4. Superintending Engineer C&W Circle, Koha/Hangu
5. Executive Engineer C&W Division Hangu
6. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
7. District Accounts Officer Hangu
8. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
9. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar
10. PS to Advisor to Chief Minister Khyber Pakhtunkhwa for C&W Department
11. PS to Secretary, C&W Department Peshawar
12. PA to Additional Secretary, C&W Department Peshawar
13. PA to Deputy Secretary (Admn), C&W Department Peshawar
14. Official concerned

Office order File/Personal File

106
21/4/2022

04
19.04.2022
(ZAHOR SHAH)
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the July 07, 2022

NOTIFICATION:

No.SOE/C&WD/4-7/2022:

The Competent Authority is pleased to order the following posting/transfer amongst the officers of C&W Department, with immediate effect, in the best public interest.

Sr. No.	Name & Designation	From	To	Remarks
1.	Mr. Shabir Khan Sub Engineer (BS-16)	Sub Engineer O/O XEN C&W Division Hangu	SDO (OPS) O/O XEN C&W Division Hangu	Vice No.2
2	Mr. Mudassir Shah Sub Engineer (BS-16)	SDO (OPS) O/O XEN C&W Division Hangu	SDO (OPS) O/O XEN Building Division No.I, Peshawar	Vice No.3
3	Mr. Zubairullah Babar AE (BS-17)	SDO O/O XEN Building Division No.I, Peshawar	Junior Engineer O/O CE (CDO) C&W Peshawar	Against vacant post

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre/CDO) C&W Peshawar
3. Chief Engineer (South-I) C&W Peshawar
4. Superintending Engineer C&W Circle Peshawar/Hangu
5. Executive Engineer Building Division No.I, Peshawar
6. Executive Engineer C&W Division Hangu
7. District Accounts Officer Hangu
8. PS to Special Assistant to Chief Minister Khyber Pakhtunkhwa for C&W Department
9. PS to Secretary, C&W Department Peshawar
10. PA to Additional Secretary (Admn/Tech) C&W Department Peshawar
11. PA to Deputy Secretary (Admn/Tech), C&W Department Peshawar
12. Officers concerned
13. Office order File/Personal File

Zahoor Shah
07.07.2022
(ZAHOOR SHAH)
SECTION OFFICER (Estb)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.270 of 2021
In Service Appeal No.590/2019

Shabir Khan
Ex-Sub Engineer
C&W Division Hangu

Appellant

Versus

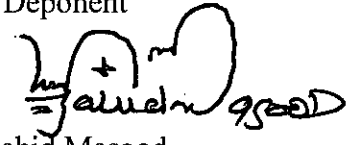
Govt of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and others

Respondents

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3	Law Department letter No.SOL/DG/Law/9-26(3)/C&W/2021/3411 dated 13-10-2021	I	4
4	Copy of CPLA No.640-P/2021	II	5-12

Deponent



Zahid Masood
Section Officer (Litigation)
C&W Department, Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
EXECUTION PETITION NO. 270 OF 2021
IN SERVICE APPEAL NO. 590 OF 2019

Mr. Shabir Khan
Ex-Sub Engineer
C&W Division Hangu

-- Appellant

VERSUS

1. Principal Secretary to
Chief Minister Khyber Pakhtunkhwa
2. Govt of Khyber Pakhtunkhwa through
Chief Secretary Civil Secretariat, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
4. Chief Engineer (Centre)
C&W Peshawar

-- Respondents

Replication on behalf of Respondents No. 1, 2, 3 & 4

Respectfully Sheweth

1. The appellant while posted as Sub Engineer C&W Division Hangu was found involved in an inquiry case titled i.e. "**Establishment of Civil Hospital DOABA District Hangu**". Charge sheet and statement of allegations were served upon responsible officers/officials, including the appellant with approval of competent authority and formal inquiry conducted under E&D Rules, 2011 vide which the charges were found proved against him. After fulfillment of all codal formalities a major penalty of "**Removal from Service**" has been imposed upon him.
2. The aggrieved Sub Engineer filed service appeal before Khyber Pakhtunkhwa Service Tribunal against the major penalty of "**Removal from Service**" imposed upon him on 03.12.2018. The Tribunal accepted his appeal vide its judgment dated **13.08.2021** with the verdicts **disciplinary proceedings and the impugned order of imposing major penalty of removal from service upon the appellant in result of said proceedings are set aside. The appellant is held entitled for reinstatement from the date of his removal from service by the impugned order with back benefits having accrued or accruable, had he not been removed from service. This judgment shall not create a bar against the competent authority, if it decides to proceed against all the officers/officials in light of their respective incumbency in the C&W Division Hangu, since the disputed scheme was contracted out for execution and till its completion, having regard to proportional responsibility of all the said incumbents.**
3. Incorrect, as per procedure the judgment of Service Tribunal dated 13.08.2021 forwarded to Law Department with the request to place the same before Scrutiny Committee that as to whether the case is fit for filing of CPLA in the Supreme Court of Pakistan against the said judgment dated **13.08.2021**. After threadbare discussion, particularly the stance of Administrative Department, it was decided with consensus that it is a fit case for filing CPLA/Appeal before Supreme Court of Pakistan (**Annex-I**). Accordingly, the department filed CPLA/Appeal before the Supreme Court of Pakistan (**Annex-II**).

2

4. Incorrect, there is no mala-fide, no discrimination and violation of rights of the appellant has been made. In fact, the Department followed rules/ regulation/policy strictly in such like cases.
5. Incorrect, as explained in para-3 above
6. The respondents seek permissions of this Hon'able Tribunal to rely additional grounds at the time of arguments.

In view of the above, it is humbly prayed that the instant execution petition is not based on facts, may kindly be dismissed with cost.

CHIEF ENGINEER (CENTRE)
C&W Department
(RESPONDENTS No. 4)

SECRETARY TO
Govt of Khyber Pakhtunkhwa
C&W Department
(RESPONDENTS No. 1, 2 & 3)

(3)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.270 of 2021
In Service Appeal No.590/2019

Shabir Khan
Ex-Sub Engineer
C&W Division Hangu

Appellant

Versus

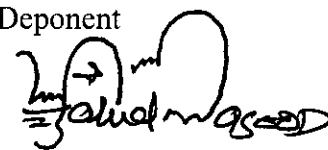
Govt of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and others

Respondents

AFFIDAVIT

I, Zahid Masood, Section Officer (Litigation), C&W Department, Peshawar hereby affirm and declare that all the contents of the Reply to Execution Petition No.270/2021 in Service Appeal No.590/2019 is correct to the best of my knowledge and belief and nothing has been concealed.

Deponent



Zahid Masood
Section Officer (Litigation)
C&W Department, Peshawar



Annex-I

(9)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT**

(Agenda Item No.09)

No.SOL/DG/Law/9-26(3)/C&W/2021/3411
Dated Peshawar the 13-10-2021

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Communication & Works Department, Peshawar.


SUBJECT SERVICE APPEAL NO. 590/2019 SHABIR KHAN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH PRINCIPAL SECRETARY TO CHIEF MINISTER, KHYBER PAKHTUNKHWA AND OTHERS

I am directed to refer to your letter No.SO(LIT.)/C&W/3-447/2019, dated 01.10.2021 on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 13-10-2021 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of Appeal/CPLA in the upper forum.

After threadbare discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of Appeal/CPLA before the Supreme Court of Pakistan.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please. **(Power of Attorney for signature of petitioners attached).**

Yours faithfully,


(TAHIR IQBAL KHATTAK)
SOLICITOR
LAW DEPARTMENT

Endst: No. & Date Even.

Copy forwarded to the.

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.

SOLICITOR

Annet-II

(S)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

Government of Khyber Pakhtunkhwa through Principal Secretary to Chief
Minister, Khyber Pakhtunkhwa, Peshawar & Others

-----**PETITIONERS**

VERSUS

Mr. Shabir Khan

-----**RESPONDENT**

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

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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

(A) 7

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

Government of Khyber Pakhtunkhwa through Principal Secretary to Chief
Minister, Khyber Pakhtunkhwa, Peshawar & Others

-----**PETITIONERS**

VERSUS

Mr. Shabir Khan

-----**RESPONDENT**

CONCISE STATEMENT

- 1- Subject matter and the law Service/Reinstatement in Service

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
Khyber Pakhtunkhwa Service Tribunal Peshawar	a) 07/05/2019 b) 13/08/2021	Respondent filed service appeal which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
It was argued by the respondent that no show cause notice was served on him before issuance of the impugned order dated 03/12/2018 and he was also not afforded any opportunity of personal hearing. The enquiry conducted against him suffers illegalities and irregularities and the law on the subject was not followed by the committee as well as by the Competent Authority. The impugned order suffers from malafide and was passed without having regard to the vicarious responsibility of the respondent in relation to the project. The project started in 2008 but the other officers/ official who remained at helms of affairs during execution of the projects since its commencement were given clean chit. It was also argued that the scheme was located in the area where militancy was at peak stage since 2011 to 2015 and the building remained occupied by the Army till December 2013 resulting damages to it during the said period. After vacation from the Army, the building was renovated and was handed over to the concerned department in 2018. It was argued that the work was executed having regard to the technical specification and quality which got damage while in use of Armed forces. Despite showing sufficient cause of his innocence with all the documentary proof, he	We deem it appropriate not to touch the enquiry report on its merit but as far as the enquiry proceedings are concerned they do not disclose the compliance of the procedure under Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. Neither the statements mentioned in the enquiry report are shown to have been recorded in presence of the respondent nor had he been given the opportunity of cross examination. The respondent straightaway denied in the ground of his appeal that no show cause notice was served on him before issuance of the impugned order dated 03/12/2018 and nor was he provided the chance of personal hearing before the issuance of the said order. In view of the said denial of the respondent in his memorandum of appeal, petitioners were required to furnish the copy of the show cause notice from the official record and should have annexed the same with their Para-wise reply but they omitted. So, they failed to rebut the ground of non-service of show cause notice upon the respondent which was a legal requirement within the meaning of Sub-Rule 4 of Rules-14 of the ibid Rules including to provide a copy of the enquiry to the accused with	

was punished by singling him out from the other officers/ officials having their respective responsibilities/ liabilities in relation to the project. While concluding his arguments, respondent submitted that the entire process of disciplinary proceedings against him is a sham exercise meant to make him scapegoat and save the skin of blue eyed. He submitted that the impugned order being result of illegal and irregular disciplinary proceedings is not tenable under the facts and law and is liable to be set aside and he is entitled for reinstatement and all with back benefits.

It was argued on behalf of the petitioners that the respondent got no cause of action, his appeal is time barred, and he has not come to the Court with clean hands. The disciplinary proceedings were conducted against the respondent with due regard to the law on the subject by serving the respondent with charge sheet, statements of allegations followed by formal enquiry wherefore the respondent failed to prove innocence. He was rightly penalized with imposition of major penalty and exoneration of the co-accused does not absolve the respondent from the charges which were proved against him. The co-accused was exonerated on the basis of findings of the enquiry report by the competent authority which made out their case for exoneration.

The plea of the respondent about his having been made scapegoat is an afterthought. He was given ample opportunity to prove his innocence and on his failing, it was inevitable to penalize him under the requirements of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Learned AAG argued that appeal may be dismissed with cost.

direction for appearance of the departmental representative with all record, on the date of hearing. The impugned order does not disclose as to affording the respondent with opportunity of hearing as referred under Sub-Rule 4 of Rules-14. So, we in view of the forgoing discussion have no hesitation to hold with the disciplinary proceedings having worked in imposition of major penalty against the respondent were not conducted in accordance with law on the subject. Moreover selective treatment meted out to the respondent for imposing the penalty excluding others having proportional liability with him as per respective ratio of their responsibility, is unwarranted in the realm of the Constitution of Pakistan.

The appeal at hand is accepted. Disciplinary proceedings and the impugned order of imposing major penalty of removal from service upon the respondent in result of said proceedings are set aside. The respondent is held entitled for reinstatement from the date of his removal from service by the impugned order with back benefits having accrued or accruable, had he not been removed from service. This judgment shall not create a bar against the competent authority, if it decides to proceed against all the officers/ officials in light of their respective incumbency in the C&W Division Hangu, since the disputed scheme was contracted out for execution and till its completion, having regard to proportional responsibility of all the said incumbents.

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

⑨

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

1. Government of Khyber Pakhtunkhwa through Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar
3. Secretary Communication & Works Department, Govt. of Khyber Pakhtunkhwa, Peshawar
4. Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar

PETITIONERS

VERSUS

Mr. Shabir Khan, Ex-Sub Engineer, C&W Division, Hangu

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 13/08/2021 PASSED IN SERVICE
APPEAL NO.590/2019**

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 Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar was not required to direct fresh denovo inquiry when the Hon'ble Tribunal came to the conclusion that the inquiry is defective?
4. Whether the respondent and other officers/ officials were not served with charge sheet and statement of allegations?
5. Whether formal inquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 was not conducted against the officers/ officials including respondent who was associated with the project?
6. Whether proper opportunity of defense was not given to the respondent for proving himself innocent?
7. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has advanced any legal, solid and valid reason for setting aside the punishment of the respondent?
8. Whether the respondent was not associated with the project since, 2003 till the completion of the scheme?
9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
10. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly followed, applied and interpreted the law in the subject case?

FACTS

- II- Facts relevant to the above points of law, inter alia, are as under:-
1. That respondent was serving as Sub-Engineer in Communication and Works Department at Hangu.
 2. That respondent while posted as Sub-Engineer in the Office of XEN was proceeded against the following charges
 - (I). you failed to supervise and manage the completion of scheme within the stipulated period; resultantly the scheme is dropped from current ADP.
 - (II). The executed works found substandard and poor quality.
 - (III). You made payment to the contractors in advance without execution of work, besides misuse of public funds.
 3. That charge sheet/ statement of allegations were issued and served upon responsible officers/officials, including the respondent and an inquiry committee was constituted by the Competent Authority?
 4. That formal inquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 was conducted against respondent.
 5. That the inquiry committee submitted its findings.
 6. That on receipt of findings of the inquiry committee, the Competent Authority after fulfillment of all codal formalities a major penalty of removal from service has been imposed on respondent vide order dated 03-12-2018.
 7. That the respondent filed departmental appeal which was not on plausible ground, therefore, was rejected by appellate authority vide order dated 08-04-2019.

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8. That the respondent feeling aggrieved filed Service Appeal No.590/2019 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein comments from petitioners were called which were filed by denying the stance of respondent.
9. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted and allowed the Appeal of respondent vide judgment & order dated 13-08-2021 in Service Appeal No. 590/2019.
10. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 13/08/2021 in Service Appeal No.590/2019, prefer this CPLA before this august Court.
11. That the petitioners seek leave to appeal against the impugned judgment / order dated 13/08/2021 in Service Appeal No.590/2019.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 13/08/2021 in service appeal No.590/2019 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