

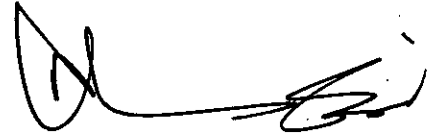
Execution Petition 43/2022

27th Oct 2022

1. Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Musarrat Hussain Baloach, DEO(M) D.I.Khan present.

2. Respondents submitted copy of office order bearing Endst No. 25331-35 dated 26.10.2022, whereby in compliance of the judgment of the Tribunal, the grievance of the petitioner has been redressed. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

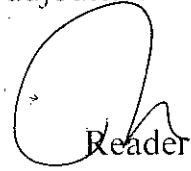
3. *Pronounced in open court in D.I.Khan and given under my hand and seal of the Tribunal on this 27th day of Oct, 2022.*



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

22.08.2022

Due to summer vacation, the case is adjourned for the same on 26.09.2022.


Reader

26th Sept 2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Adll: AG alongwith Mr. Musarrat Hussain Baloach, DEO(M) D.I.Khan for respondents present.

DEO(M)D.I.Khan present in the court assured that he will submit compliance report on the next date positively. Last chance is given to them. To come up for implementation report on 24.10.2022 before S.B at camp court D.I.Khan.



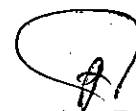
(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

24.10.2022

Nemo for parties. Lawyers are on strike.

Kabir Ullah Khattak, learned Additional Advocate General present.

Despite last chance, implementation report was not submitted. Learned AAG is directed to make sure the presence of representative of respondents on the next date positively alongwith proper implementation report. Adjourned. To come up for submission of implementation report on 26.10.2022 before S.B at Camp Court, D.I.Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan



**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**


OFFICE ORDER

Whereas, Mr. Naik Ali Shah was appointed as PST in the Education Department on 11/02/2006. Whereas, He was charged in case FIR No. 587 dated 08/11/2012, U/S 302,404,34 PPC Registered at Police Station Saddar Dera Ismail Khan.

Whereas, He filed service appeal No. 824/2018 before honourable Service Tribunal.

Whereas, Service Tribunal passed the judgment on 27/09/2021 which is reproduced as under, "The instant appeals are accepted and the appellant stand reinstated in service w.e.f his date of suspension i.e. 10/11/2012 with all back benefits, including restoration of his previous salary, GPS Funds, annual Increments as well as seniority. The appellant is also held entitled to promotion from the date, when his juniors were promoted."

Therefore, the competent authority i.e. District Education Officer (Male) DIKhan is pleased to reinstate him into service w.e.f 10/11/2012 with all other benefits as mentioned in above para as decided in the judgment of Honourable Service Tribunal subject to the outcome of CPLA from the Apex Court.

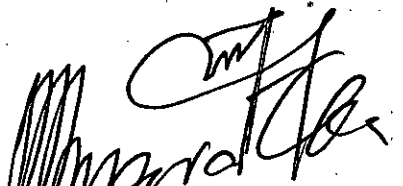

DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN

Endst No: 25331-35

Dated DIKhan the: 26/10 /2022

Copy forwarded to the:-

1. Registrar, Service Tribunal Khyber Pakhtunkhwa, Peshawar.
2. SDEO(M) DIKhan.
3. Mr. Naik Ali Shah PSHT GPS Marwat Colony.
4. Master File


DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN

OFFICE ORDER


Whereas, Mr. Naik Ali Shah was appointed as PST in the Education Department on 11/02/2006. Whereas, He was charged in case FIR No. 587 dated 08/11/2012, U/S 302,404,34 PPC Registered at Police Station Saddar Dera Ismail Khan.

Whereas, He filed service appeal No. 824/2018 before honourable Service Tribunal.

Whereas, Service Tribunal passed the judgment on 27/09/2021 which is reproduced as under,

“The instant appeals are accepted and the appellant stand reinstated in service w.e.f his date of suspension i.e. 10/11/2012 with all back benefits, including restoration of his previous salary, GPS Funds, annual Increments as well as seniority. The appellant is also held entitled to promotion from the date, when his juniors were promoted.”

Therefore, the competent authority i.e. District Education Officer (Male) DIKhan is pleased to reinstate him into service w.e.f 10/11/2012 with all other benefits as mentioned in above para as decided in the judgment of Honourable Service Tribunal subject to the outcome of CPLA from the Apex Court.



DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN

Endst No: 25331-35

Dated DIKhan the: 26/10 /2022

Copy forwarded to the:-

1. Registrar, Service Tribunal Khyber Pakhtunkhwa, Peshawar.
2. SDEO (M) DIKhan.
3. Mr. Naik Ali Shah PSHT GPS Marwat Colony.
4. Master File


DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN

24.05.2022

Counsel for the petitioner present.

Farhaj Sikandar, learned Deputy District Attorney alongwith Muhammad Kamran ADEO (Litigation) for respondents present.

Implementation report was not submitted. Representative of respondents requested for time to submit implementation report. Last opportunity is granted. To come up for submission of implementation report on 29.06.2022 before S.B at Camp Court, D.I.Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

29th June 2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Muhammad Kamran, ADEO for respondents present.

District Education Officer (M) D.I.Khan present in person and assured the Tribunal that compliance of the judgment of this Tribunal will be submitted on the next date positively. He requested for some time. Granted. To come up for implementation report on 22.08.2022 before S.B at camp court D.I.Khan.

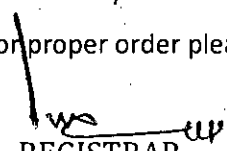





(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 43/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.01.2022	<p>The execution petition of Mr. Naik Ali Shah received by post today through Sheikh Ifitkhar Ul Haq 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-	28.03.2022	<p>This execution petition be put up before touring S. Bench at D.I.Khan on <u>28.03.2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsels are on strike. To come up for further proceedings tomorrow on 29.03.2022 before S.B at camp court, D.I.Khan.</p> <p style="text-align: right;"> CHAIRMAN, Camp Court, D.I.Khan</p>
	29.03.2022	<p>Counsel for the petitioner present.</p> <p>Notice be given to the respondents for the next date.</p> <p>To come up for implementation report on 24.05.2022 before S.B at camp court, D.I.Khan.</p> <p style="text-align: right;"> CHAIRMAN, Camp Court, D.I.Khan</p>

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. 43 of 2022

In Service Appeal No. 824 /2018

Decided on 27/09/2021

Naik Ali Shah

Versus

Govt. of KPK etc

INDEX

Sr. #	Particulars of Documents	Annexure	Page
1.	Grounds of implementation Petition along with affidavit	--	1-4
2.	Copy of the order dated 21/01/2015	A	-5-
3.	Copy of service appeal	B	6-11
4.	Copy of the judgment dated 27/09/2021	C	12-16
5.	Copy of application dated 06/01/2022	D	17-18
6.	Wakalat Nama	--	-19-


Date: 11 /01/2022

Yours Humble Petitioner



Naik Ali Shah

Through Counsel



Sheikh Iftikhar ul Haq

Advocate High Court

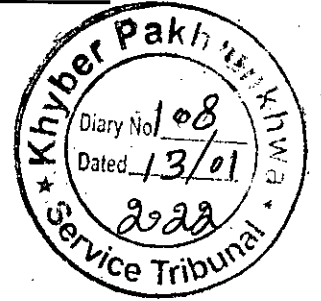
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1

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. 43 of 2022

In Service Appeal No. 824 /2018
Decided on 27/09/2021



Naik Ali Shah son of Najam Shah (that time SPST)
presently PSHT in GPS Marwat Colony, Dera Ismail Khan.

Cell#0345-6836477, Whatsapp#0343-0981629

..... **Petitioner**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Education Department Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Director (E&S) Education Department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) Dera Ismail Khan.
4. District Accounts Officer Dera Ismail Khan.

..... **Respondents**

**IMPLEMENTATION PETITION UNDER KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 READ WITH KPK SERVICE
TRIBUNAL SERVICE TRIBUNAL RULES 1974 AS AMENDED
FOR IMPLEMENTATION OF THE ORDER/JUDGMENT IN
SERVICE APPEAL NO. 824/2018 DECIDED ON 27/09/2021
BY THIS HONOURABLE TRIBUNAL.**

2

Respectfully Sheweth:-

The Petitioner most respectfully submits as under:-

1. That the petitioner was appointed as PST in the Education Department on 11/02/2006.
2. That during performance of duty the petitioner was malafidely charged in case FIR No. 587 dated 08/11/2012 u/s 302,404,34 PPC registered at P.S Saddar Dera Ismail Khan.
3. That the petitioner was suspended from service on 09/11/2012 and remained suspended till 21/01/2015.
4. That during suspension period the petitioner filed BBA petition on 18/07/2014 which was confirmed on 21/10/2014 in the aforementioned criminal case.
5. That thereafter the appellant was adjusted against the vacant post of PST vide order dated 22/01/2015. Copy of the order dated 22/01/2015 is annexed as **Annexure-A**.
6. That thereafter the appellant was Honourably acquitted from the criminal charges vide judgment dated 21/02/2018 by the learned Additional Sessions Judge-II Dera Ismail Khan.
7. That thereafter the appellant being aggrieved, submitted departmental appeal on 13/03/2018, which was not responded, hence, the petitioner preferred a service appeal on 26/06/2018 before this Honourable Tribunal. Copy of ground of service appeal is annexed as **Annexure-B**.
8. That this Honourable Tribunal was pleased to accept the service appeal of the petitioner on 27/09/2021 operative para is as follows, "In view of foregoing discussions, the instant appeals are accepted and the appellants stands reinstated in service w.e.f. date of his suspension i.e. 10/11/2012 with all back benefits, including restoration of his previous salary, GP Funds, Annual increments as well as seniority. The appellant is also held entitled to promotion from the date, when his juniors were promoted. Copy of the judgment dated 27/09/2021 is annexed as **Annexure-C**.

3

9. That the petitioner filed an application dated 06/01/2022 to the respondents for implementation of order dated 27/09/2021 but the respondents turned deaf ears towards the application of petitioner. Copy of application is annexed as **Annexure-D**.

10. That now the respondents are not implementing the order dated 27/09/2021, hence, the instant implementation petition is being filed before this Honourable Tribunal.

GROUND

A. That the acts and omissions of the respondents authorities to not obeyed/implement the order of this honourable tribunal in its true letter and spirit are clear cut violation of law, statutes and constitution.


B. That lame excuses on behalf of respondents/authorities are not maintainable and respondents are required to implement the judgment of this honourable Tribunal in its true letter and spirit.

C. That the Counsel for the Petitioner may kindly be allowed to raise further legal grounds during the course of arguments.

It is therefore, humbly requested that the respondents be directed to fully implement the judgment/order of this honourable tribunal dated 27/09/2021.

Date: 11 /01/2022

Yours Humble Petitioner



Naik Ali Shah

Through Counsel



Sheikh Iftikhar ul Haq
Advocate High Court

4

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL CAMP COURT DERA ISMAIL KHAN**

Implementation Petition No. _____ of 2022

In Service Appeal No. 824 /2018

Decided on 27/09/2021

Naik Ali Shah

Versus

Govt. of KPK etc

AFFIDAVIT

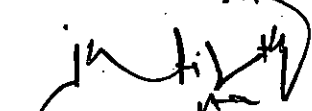
I, **Naik Ali Shah** son of Najam Shah (that time SPST) presently PSHT in GPS Marwat Colony, Dera Ismail Khan, do hereby solemnly affirm and declare on oath that contents of above Writ Petition are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: 11 /01/2022



DEPONENT

Identified by:



**Sheikh Iftikhar ul Haq
Advocate High Court**



11/1/22

5

Ann = A



OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
DERA ISMAIL KHAN

OFFICE ORDER

In the light of Honourable court of additional Session Judge V Dikhan date 21/10/2014 Mr. Naik Ali Shahi PST is hereby adjusted at GPS Haji Abad Dikhan against the vacant post of PST in the interest of public service with immediate effect.

Note:

The absent/ absconder period as EOL without pay w.e.f 09/11/2012 to 21/1/2015

Sd/-

DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

Endst: No. 6368-71 / ADEO.Estab (P)

Dated Dikhan the 22/01 /2015

Copy to:

1. Sub Divisional Education Officer (M) Dikhar., w/r to his No: 1307 dated 07/11/2014 along with original service book.
2. District Account Officer Dikhan.
3. Head Teacher Concerned
4. Official Concerned

[Signature]
DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

[Signature] *[Signature]*

Received
S/Book
23/1/2015

BEFORE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service appeal No 824 2018

Naik Ali Shah S/O Najam Shah
SPST GPS Wanda Balochan (CRBC) Dera Ismail Khan

6

Ann = "B"

VS

Govt of KPK Through Secretary Education civii secretariat
Peshawar. etc


INDEX

S.No	Particular No	Annexure	Pages
1.	Memo & Ground of Appeal along with affidavit	-	1-5
2.	Copy of appointment order and Service Book	A&B	6-24
3.	Copy of FIR and Complete Chalan	C & D	25-26
4.	Copy of Bail granted orders	E & E1	27-32
5.	Copy of impugned order No 6368-71 dated 22.01.2015	F	-33-
6.	Copy of acquittal Order	G	34-40
7.	Copy of Suspension Order Dated 04.04.2013	H	-41-
8.	Copy of departmental Appeal along with postal Receipt	I	42-45
9.	Wakalat Nama	-	-48-

Appellant



Naik Ali Shah

Through Counsel


Sheikh Iftekhar Ul Haq
Advocate High Court

Dated: 25.06.2018

ATTESTED


EXAMINER
Khayis Peshawar
Service Tribunal
Peshawar

7

1

BEFORE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service appeal No 824 2018

Naik Ali Shah S/O Najam Shah
SPST GPS Wanda Balochan (CRBC) Dera Ismail Khan

(Appellant)

Khyber Pakhtunkhwa
Service Tribunal

Date: 1082
21/6/2018

VS

1. Govt of Khyber Pakhtunkhwa Through Secretary Education civil secretariat Peshawar.
2. The Director Elementary & secondary education KPK Peshawar.
3. District Education Officer (M) Dera Ismail Khan.
4. District Account Officer Dera Ismail Khan.

(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE ACT 1974 FOR:-

- I. RELEASING SALARIES OF SUSPENSION PERIOD FROM 9.11.2012 TO 21.01.2015.
- II. OPENING OF PVIOUS GP FUND ACCOUNT
- III. RELEASING OF ANNUAL INCREMENT ON DUE DATE.
- IV. PREPARING SENIORITY LIST AND PLACING APPELLANT ON CORRECT NUMBER.
- V. SENIORITY/PROMOTION TO NEXT GRADE/ CADRE AS JUNIOR TO APPELLANT HAS BEEN PROMOTED BY MODIFYING THE ORDER NO 6368-71 DATED 22.01.2015 PASSED BY DEO (M) D.I.KHAN AND THE ADJUSTMENT ORDER MAY KINDLY CONVERTED INTO RE-INSTATEMENT WITH ALL BACK BENEFITS AS MENTIONED ABOVE.

Filed to-day

26/6/18

Respected Sir,

1. That the appellant was appointed as PST in the education Department with effect from 11.02.2006 and the appellant is performing the duty with full satisfaction of his superior.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

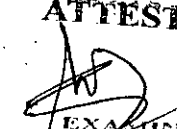
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Copies of appointment order & of service book are enclosed as Annexure "A & B".

2. That during course of duty the appellant was malafidly and falsely implicated in the case FIR No 587 dated 08.11.2012 under section 302-404/34 PPC in Police Station Sadar D.I.Khan. Copy of FIR & Complete Chalan are enclosed as Annexure "C & D".
3. That after falsely implication in the case appellant submitted Bail Before Arrest application in the court of session judge D.I.Khan On 18.07.2014, which was entrusted to additional session judge V D.I.Khan and ad- interim Bail was granted on 18.07.2014 and letter on Bail before arrest was confirmed on 21.10.2014 by the learned Additional session judge V D.I.Khan. Copies of Bail granting order are enclosed as a Annexure "E & E1".
4. That on 19.07.2017 the appellant surrender / contacted district account officer inail D.I.Khan, as the School was closed due to summer vacation and he was told that he will be re-instated in his service.
5. That after summer vacation the appellant was allowed to continue his service vide order No 6368-71 dated 22.01.2015 adjusting appellant and suspension period from 09.11.2012 to 21.01.2015 declared leave without pay. Copy of order is enclosed as Annexure "F".
6. That after trial the learned additional session judge II D.I.Khan honorably acquitted the appellant on 21.02.2018. Copy of judgment/order of enclosed as Annexure "G".
7. That appellant came to know that he has been suspended from his duties vide office No 813-15 dated 04.04.2015. Copy of suspension order is enclosed as Annexure "H".

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9

3

8. The appellant feeling aggrieved from the above Acts and omissions of respondents authority, he submitted departmental appeal for redressal of his grievances on 13.03.2018 after honorable acquittal by learned additional session judge II D.I.Khan on 21.02.2018 being well within time in attendant circumstances after honorable acquittal, but was not accepted redressal of his grievances, and no response of which has not yet been receive within stipulated period. Copy of departmental appeal is enclosed as Annexure "I".

9. The appellant feelings aggrieved now humbly approach this Honorable tribunal through instant service appeal interaila on the following ground.

GROUND:

1. That the appellant was innocent and was falsely implicated in the case who was letter on honorably acquitted from the charges leveled against him on 21.02.2018 by learned additional session judge II D.I.Khan.
2. That the appellant was suspended from 09.11.2012 to 21.01.2015 but the respondent authority illegally and unlawfully converted the suspension order into leave without pay violating the principal of Laws and Gross illegality and irregularity have been done by the respondents authority. Suspension period is always treated as duty with pay.
3. That due to anomalous, flaws, incorrect order the appellant caused irreparable loss in shape of Non- opening of old salary, account, non- opening old G.P Fund Account, Non- Counting Seniority, Non- Issuing of annual increment on due date. Adjustment order is totally illegal hence your honour can check pay roll register.

Handwritten signature
Aur

ATTESTED
Handwritten signature
EX. JINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

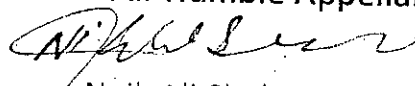
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4


- The appellant is suspended and suspension period is considered duty with pay. The respondent 4 raised objection that is the suspension order is still intact in appellant service book. Thus his above grievance cannot be settled/ resolved. They demanded removal of suspension order and adjustment order in the service record.

It is humbly prayed the instant service appeal may kindly be accepted as prayed for in the heading of appeal.

Your Humble Appellant



Naik Ali Shah

Through Counsel


Shiekh Iftekhhar Ul Haq

Advocate High Court

Dated: 25.06.2018

ATTESTED

ANADIL KHER
City Manager
Service Tribunal
Punjab

11

5

BEFORE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service appeal No _____ 2018

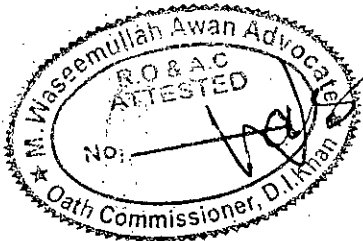
Naik Ali Shah

VS

1. Govt of Khyber Pakhtunkwah Through Secretary Education

AFFIDAVIT

I Naik Ali Shh S/O Najam Shah R/O Indus Colony D.I.Khan do hereby solemnly affirm on oath that contents of the appeal is true and correct and nothing has been concealed from this Tribunal.



25/6/18

[Signature]
DEPONENTS

Identified by
[Signature]

sworn before me with

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13/10/18
Number of Words 2000
Copying Fee 25/-
Urgent 5/-
Total 26/-
Name of Copy _____
Date of Copy 13/10/18
Date of Delivery of Copy 13/10/18

12

Annex C

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT D.I KHAN**

Service Appeal No. 824/2018

Date of Institution ... 26.06.2018

Date of Decision ... 27.09.2021



Naik Ali Shah S/O Najam Shah SPST GPS Wanda Balochan (CRBC) Dera Ismail Khan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Education Civil Secretariat Peshawar and three others. ... (Respondents)

SHEIKH IFTIKHAR UL HAQ
Advocate

... For Appellants

ASIF MASOOD ALI SHAH,
Deputy District Attorney

... For Respondents

SALAH-UD-DIN
ATIQU-UR-REHMAN WAZIR

... MEMBER (JUDICIAL)
... MEMBER (EXECUTIVE)

JUDGMENT


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

This single judgment shall

dispose of the instant service appeal as well as the connected service appeal bearing No.173/2019 "titled Naik Ali Shah Vs. Government of Khyber Pakhtunkhwa, Through Secretary Elementary & Secondary Education Peshawar and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant while serving as Primary School Teacher, was found involved in a criminal case FIR No. 587 dated 08-11-2012 U/S 302-404/34 PPC, hence he was suspended from service with effect from 10-11-2012 vide order dated 29-03-2013. The appellant was kept under suspension and no

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(13)

2

further action was initiated against the appellant. In the meanwhile, ad-interim bail was granted to the appellant by the court of Additional Session Judge on 18-07-2014 and later on bail before arrest was confirmed on 21-10-2014. After bail confirmation, the appellant requested for joining his duty, which was accepted and the appellant was adjusted against a vacant post of PST vide order dated 22-01-2015 but his suspension period with effect from 09-11-2012 to 21-01-2015 was treated as extraordinary leave without pay. The appellant was acquitted of the charges vide judgment dated 21-02-2018, thereafter he filed departmental appeal dated 13-03-2018, which was not responded, hence the instant service appeal with prayers that salary of the suspended period i.e. from 09-11-2012 to 21-01-2015 may be released, his GP Fund account may be re-opened, his annual increments may be released annually on due date, he may be placed in due place in the seniority list and he may be promoted to the next grade as juniors of the appellant has been promoted, as well as the order dated 22-01-2015 may be modified and the adjustment order may be converted into re-instatement with all back benefits.

03. Learned counsel for the appellant has contended that the appellant was falsely implicated in an FIR, who was later on honorably acquitted of the charges vide judgment dated 21-02-2018; that the appellant was suspended from service w.e.f 09-11-2012 to 21-01-2015, but the respondents illegally and unlawfully converted the suspension period into leave without pay in violation of CSR-194-A; that suspension is not a punishment and a temporary measure, wherein the employee is entitled to his full emoluments. Reliance was placed on 2014 PLC (C.S) 558, 2016 PLC (C.S) 424, 2016 PLC (C.S) 952 and PLD 1994 Supreme Court 72; that suspension of the appellant was due to registration of a criminal case against the appellant and that ground had subsequently vanished through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service. Reliance was placed on PLD 2010 Supreme Court 695; that as per FR-54, when a civil servant is honorably

ATTESTED


Rajesh Chakravarty
Member
Service Tribunal
Dehrawar


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acquitted of the charges, he is entitled to full pay, if he had not been dismissed or removed from service; that due to an anomalous adjustment order, the appellant caused irreparable loss in shape of non-opening of old salary account, non-opening of old GP Fund account, non-counting of seniority and non-issuance of annual increments on due date; that the adjustment order is illegal and is liable to be modified; that the appellant was suspended and suspension period is considered as on duty with pay; that the adjustment order needs to be modified, which ultimately would resolve all the allied issues. On the question of limitation the learned counsel added that it has been held in various judgments of the apex court that it would be futile to file departmental appeal before earning acquittal from the charges, upon which the appellant was suspended from service; that the appellant filed departmental appeal just after his acquittal, hence the departmental appeal is well within time.

04. Learned Deputy District Attorney for respondents has contended that the appellant was involved in a criminal case and an FIR to this effect was lodged against him U/S 302, 404/34 PPC; that the appellant went in hiding with effect from 08-11-2021, hence he was suspended from service with effect from 10-11-2012 vide order dated 29-03-2013; that during the period, the appellant did not perform any duty, hence such period was treated as extra-ordinary leave without pay; that status of the appellant in education department was his willful absence from duty; that the impugned order was issued on 22-01-2015, whereas the appellant filed departmental appeal on 13-03-2018, which is badly time barred; that when the departmental appeal is barred by time, the service appeal before this tribunal is incompetent. Reliance was placed on 2011 SCMR 676; that civil servant could not be allowed to put a premium on his abscondence and to use the same as a ground for absence from his official duty. Reliance was placed on 2003 SCMR 338 and CP No. 935/2015; that acquittal of civil servant from criminal charges would have absolutely no bearing

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Peshawar Pakhtunkhwa
Service Tribunal
Peshawar

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on merits of case as disciplinary proceedings were to be initiated according to service rules independently. Reliance was placed on 2007 SCMR 562. The learned Deputy District Attorney further added that this Tribunal in Service Appeal No. 138/2013 and Service Appeal No. 23/2013 in similar case has dismissed such cases on the ground of absconson.

05. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant after his involvement in criminal case was rightly suspended from service as per provisions in CSR-194-A. The respondents did not take any further action against the appellant, until his BBA was confirmed by the trial court on 21-10-2014, thereafter the appellant was adjusted against a vacant post of PST, but his suspension period was treated as extra-ordinary leave without pay, which was not correct, as nothing is available in rules to justify the adjustment order of a civil servant and to convert the suspension period into leave without pay, as a civil servant is entitled to full emoluments during suspension period as suspension is not a punishment, rather a temporary measure. We have observed that the appellant rightly waited until his acquittal from the criminal charges and after acquittal filed departmental appeal, as the adjustment order created so many issues for him to the effect that he was considered as newly appointed from the impugned order dated 22-01-2015. The appellant lost his Salary account, GP Fund account; his annual increments even his seniority as well as promotion. The departmental appeal preferred by the appellant after his acquittal from criminal case was required to be examined by the respondents, which however was not done. After acquittal from the criminal charges, upon which he had been placed under suspension, there was no reason whatsoever to deprive him of his rights accrued to him and to this effect FR-54 is very clear that if a civil servant is honorably acquitted of the charges, he is entitled to full pay, if he had not been dismissed or removed from service. Since the appellant was only suspended from service and was adjusted against a vacant post

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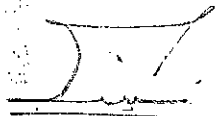
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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after obtaining BBA, now he earned acquittal from the very charges, upon which he was suspended, hence he is entitled to be re-instated in service with all back benefits.

06. In view of the foregoing discussions, the instant appeals are accepted and the appellant stands re-instated in service with effect from the date of his suspension i.e. 10-11-2012 with all back benefits, including restoration of his previous salary, GP Funds, annual increments as well as seniority. The appellant is also held entitled to promotion from the date, when his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.09.2021

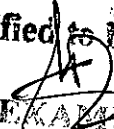


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I KHAN



(ATIQU-R-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I KHAN

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F. K. AKHBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 13/10/21
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بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب ڈیرہ اسماعیل خان

درخواست بمراد عمل درآمد فرمائے جانے حکم و فیصلہ مورخہ 27/09/2021 جاری شدہ ازاں

خیبر پختونخواہ سروس ٹریبونل

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

- ۱۔ یہ کہ سائل بطور PST مورخہ 11/02/2006 میں بھرتی ہوا تھا۔
- ۲۔ یہ کہ مورخہ 08/11/2012 کو من سائل کو بد نتیجی طور پر FIR نمبر 587 زبردفعہ 302,404/34 PPC تھانہ صدر میں غلط طور پر چارج کیا گیا اور مورخہ 10/11/2012 کو سروس سے Suspend کیا گیا۔ من سائل نے مورخہ 18/07/2014 کو ضمانت قبل از گرفتاری دائر کی جو کہ مورخہ 21/10/2014 کو عدالت مجاز نے منظور فرمائی اور بعدہ من سائل کو مورخہ 22/01/2015 کو ایڈجسٹ کر دیا اور دورانہ 09/11/2012 سے لیکر 21/01/2015 کو Leave without pay رکھا۔ بعدہ من سائل کو عدالت ایڈیشنل سیشن جج ڈیرہ اسماعیل خان نے مورخہ 21/02/2018 کو بری کر دیا اور من سائل نے مورخہ 13/03/2018 کو تمام مراعات کیلئے محکمانہ اپیل دائر کی جو کہ فیصلہ نہ ہو سکی بدیں وجہ سائل نے تمام مراعات کیلئے مورخہ 26/06/2018 کو سروس اپیل دائر کی جو کہ مورخہ 27/09/2021 کو منظور ہوئی۔ نقولات لف ہیں۔

لہذا استدعا ہے کہ درخواست ہذا حسب صراحت عنوان و تشریح منظور فرمائی جائے۔

مورخہ 06/01/2021

نیک علی شاہ ولد نجم شاہ حال تعینات PSHT گورنمنٹ پرائمری سکول مروت کالونی ڈیرہ اسماعیل خان

موبائل نمبر 0345-6836477 و 0343-0981629

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No. 1429 RGL57933415

For notices see reverse. Rs. Ps.

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

Received a registered
addressed to _____ Date-Stamp _____

Write here "letter", "postcard", "packet", or "parcel".

Initials of Receiving Officer _____ with the word "insured" before it when necessary.

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

If insured: Insurance fee Rs. _____ Weight _____ Kilo _____ Grams _____

Name and address of sender _____



وکالت نامہ

19

کورٹ
فیس

حساب سروس ٹریبونل پشاور سیکشن کورٹ ڈپٹی ایسٹریبل خان

Petitioner منجانب

Malk Ali Shah vs Govt of K.P.K

Implementation

دعوی یا جرم

تفصیل دعوی یا جرم

باعث تحریر آنکہ

D-i-Khan

شہینہ رفتاری الی و فی ایدو وکالت نامی کورٹ

مقدمہ مندرجہ بالا ڈوان میں اپنی طرف واسطہ پردی وجہ دی برائے پیشگی یا تصفیہ مقدمہ نظام

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا ہذا بذریعہ رو برو عدالت حاضر ہونا رواں کا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کہ حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر ماضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا بیچے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر مقام پکھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا بیچے پیش ہونے پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے جبہ کوکل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض روٹی یا جواب دعوی یا درخواست اجراء اسمائے ذکر کی نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثانی یا راضی نامہ و فیصلہ برائے کرنے اقبال دعوی کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکور بہ ان از پکھری صدر مقام پشاور منظور ثانی اپیل نگرانی و ہر قسم کے مقدمہ یا پیشی ذکر کی ایک طرف یا درخواست حکم اتھالی یا قرآنی یا گرفتاری قبل از فیصلہ اجراء ذمہ داری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ مختصم پردی کا اختیار ہو گا اور تمام ساختہ کرداختہ صاحب موصوف مثل کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو گا کہ مقدمہ مذکورہ یا اس کے کسی بزودی کارروائی یا بصورت درخواست نظر ثانی اپیل نگرانی یا دیگر معامدہ مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر سٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ بر جانہ التواء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پردی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے
11 ماہ جنوری 2022

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Accepted
in this my
sh: Iftikhar ul-Haq

Milani