

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**  
**FAREEHA PAUL .. MEMBER (Executive)**

*Service Appeal No.163/2018*

**Abdul Hamid Khan S/o Haji Umer Khan, R/O House No. 532, K-4, Phase No.03, Hayatabad Peshawar, Ex-Private Secretary, Establishment Department, Civil Secretariat, Peshawar.**

.....*Appellant)*

Versus

1. **Accountant General, Govt: of Khyber Pakhtunkhwa, Fort Road, Peshawar Cantt.**
2. **Chief Secretary, Govt: of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
3. **Secretary, Govt: of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat, Peshawar.**

.....*(Respondents)*

Present:

Arbab Saif UI Kamal,  
Advocate.....For appellant.

Mr. Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General.....For respondents.

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Date of Institution.....06.02.2018  
Dates of Hearing.....01.11.2022  
Date of Decision.....02.11.2022

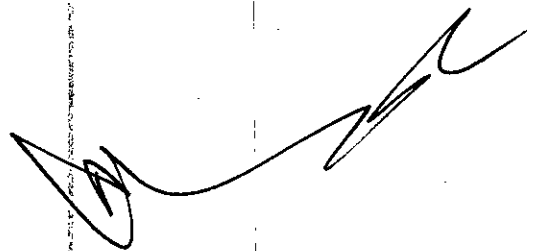
**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO. PN-PEN-I/A-171/2016-17/926-27 DATED 31.07.2017 OF RESPONDENT NO.1 WHEREBY DEDUCTION OF RS. 11,30,790/- WAS MADE FROM PENSIONERY BENEFITS OF APPELLANT FOR NO LEGAL REASON.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** According to the appeal, the appellant served the department in various capacities since 30.05.1975 till 11.09.2014 spread over 38 years spotless service; that the appellant was retired from service on 11.09.2014 with effect from 04.11.2013 on attaining the age of superannuation; that on 11.05.2017, respondent No.3 issued letter for grant of pension to appellant but in the said letter, respondent No.1 was directed to recover overpayment of salaries drawn by the appellant with effect from 05.11.2013 to 30.09.2014 from pensionary benefits, yet appellant rendered services to the department from 05.11.2013 to 30.09.2014 and is entitled for the benefits of pension of the said period; that on 31.07.2017, the impugned letter was issued by respondent No.1 whereby recovery of Rs. 11,30,790/- was made shown from his pensionary benefits; that the appellant feeling aggrieved preferred departmental appeal on 11.08.2017 which was not responded within the statutory period of ninety days, hence this appeal on 06.02.2018.

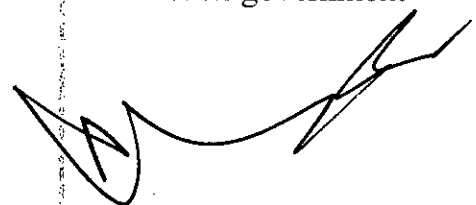
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.



3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents..

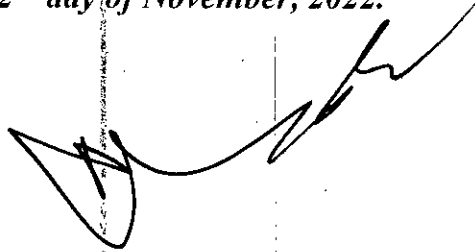
4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned AAG controverted the same by supporting the impugned order(s).

5. For the desired relief, the appellant has in the first instance preferred a writ petition No. 4674-P/2015, which was decided by the Hon'ble Peshawar High Court on 11.01.2018, dismissing the same on the ground that in view of the explicit bar under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, the Hon'ble Peshawar High Court, Peshawar did not have the jurisdiction to entertain the writ petition. In this appeal the appellant has impugned the order No.PN-PEN-I/A-171/2016-17/926-27 dated 31.07.2017, whereby deduction of Rs. 11,30,790/- was made from his pension. The departmental appeal was, though, filed by the appellant on 11.08.2017, but instead of approaching this Tribunal within the time prescribed by law, he, as aforesaid, filed writ petition before the Hon'ble Peshawar High Court, which was dismissed on 11.01.2018, whereafter, the appellant filed this appeal on 06.02.2018 that is after 179 days of his filing the departmental representation and with no application for condonation of delay, therefore, this appeal is barred by time, at the very outset and is liable to be dismissed on this score alone. Moreover, in terms of Rule.1.8 of the Pension Rules, the government reserves the right of recovery from pension of the government servant on account of losses caused to the government based on negligence or fraud of such government.



servant during his service. The appellant had made overwriting in the Service Book by changing his date of birth for malafide intention; hence, he is not entitled for salary drawn due to overpayment. Admittedly, he was overpaid due to his over stay in the service and as such the payment was not justified, therefore, the department has taken the right step and this appeal is thus not worth acceptance. This being so this appeal is not maintainable and is dismissed. Costs shall follow the event. Consign

6. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2<sup>nd</sup> day of November, 2022.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

1<sup>st</sup> Nov. 2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Arguments heard. To come up for order on 02.11.2022 before the D.B. P.P is given to the parties.

(Fareeha Paul)  
Member(Executive)

(Kalim Arshad Khan)  
Chairman

**ORDER**

2<sup>nd</sup> Nov, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.
2. Vide our detailed judgement of today placed on file (containing 04 pages), this being so this appeal is not maintainable and is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of November, 2022.*



(Kalim Arshad Khan)  
Chairman



(Fareeha Paul)  
Member(Execution)

02.06.2022

Appellant present through representative.

Naseer ud Din Shah, learned Assistant AG alongwith Gulzad Khan SI (Legal) for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 22.07.2022 for arguments before D.B.



(Fareeha Paul)  
Member(E)



(Rozina Rehman)  
Member (J)

22.07.2022

Nemo for appellant.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Notice be issued to appellant/counsel for 16.09.2022 for arguments before D.B.

*Handwritten notes:*  
Riaz Khan  
16-9-22  
16-9-22  
16-9-22  
16-9-22



(Fareeha Paul)  
Member(E)



(Rozina Rehman)  
Member (J)

16.09.2022

Appellant present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Riaz Khan, Superintendent for respondents present.

Arguments could not be heard as learned Member Executive (Miss. Fareeha Paul) is on leave. Therefore, case is adjourned to 01.11.2022 for arguments before D.B.



(Rozina Rehman)  
Member (J)

26.07.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Naheed Gul Assistant for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 14.12.2021 before D.B.



(Rozina Rehman)  
Member (J)

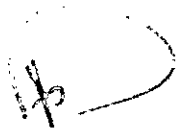


Chairman

14-12-21

*DB is on tour case to come up?*

*For the same on Dated. 29.3.22*



*Rinder*

29.03.2022

Counsel for the appellant present. Mr. Naheed Gul, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 02.06.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

18.08.2020

Due to summer vacations, the case is adjourned to 20.10.2020 for the same.

  
Reader

20.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Naheed Gul, Asstt. for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 31.12.2020 for hearing before the D.B.

  
(Mian Muhammad)  
Member

  
Chairman

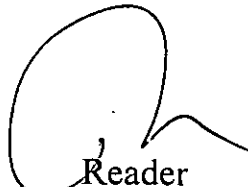
31.12.2020

Due to summer vacation, case is adjourned to 12.04.2021 for the same as before.

  
Reader

12.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 26.07.2021 for the same as before.

  
Reader



13.01.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan learned Deputy District Attorney present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 13.03.2020 before D.B. Appellant be put to notice for the date fixed.

  
Member

  
Member

13.03.2020

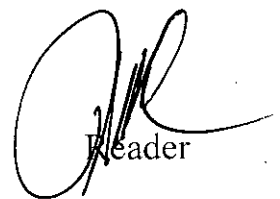
None present on behalf of appellant. Mr. Zia Ullah learned Deputy District Attorney alongwith Zar Muhammad Assistant present. Adjourn. To come up for arguments on 15.05.2020 before D.B. Appellant be put to notice for the date fixed.

  
Member

  
Member

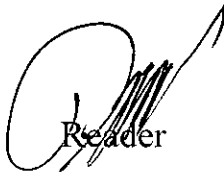
15.05.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 18.08.2020 before D.B.

  
Reader

27.06.2019

Counsel for the appellant and Asstt. AG  
alongwith Saleem Khan, Supdt, for the respondents  
present. Due to incomplete bench case is adjourned  
to 11.09.2019 for arguments before the D.B.

  
Reader

vs. J 112

11.09.2019

Junior to counsel for the appellant present. Mr. Zia  
Ullah learned Deputy District Attorney present. Junior to  
counsel for the appellant seeks adjournment as senior  
learned counsel for the appellant is not in attendance.  
Adjourn. To come up for arguments on 11.11.2019  
before D.B.

  
Member

  
Member

11.11.2019

Learned counsel for the appellant and Mr. Riaz Khan  
Paindakheil learned Assistant Advocate General alongwith Zar  
Muhammad Assistant present. Learned counsel for the appellant  
seeks adjournment. Adjourn. To come up for arguments on  
13.01.2020 before D.B.

  
Member

  
Member

10.12.2018

counsel for the appellant and Mr. Muhammad Riaz Pinda Khel, Asstt. AG alongwith Saleem Khan, Superintendent and Zakiullah, Senior Auditor for the respondents present.

Learned counsel for the appellant requests for time to submit rejoinder to the reply by the respondents. May do so within a fortnight. Adjourned to 30.01.2019 for hearing before the D.B.



Member



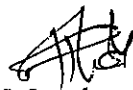
Chairman

30.1.2019

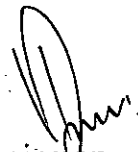
Counsel for the appellant and Mr. Muhammad Riaz Pinda Khel, Asstt. AG for the respondents. Rejoinder to parawise comments submitted.

Learned counsel for the appellant requests for adjournment due to heavy engagement before the Hon'ble High Court.

Adjourned to 10.04.2019 before D.B.



Member



Chairman

10.04.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondent present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.06.2019 before D.B



Member



Member

30.07.2018


Appellant Mr. Abdul Hamid in person present. Mr. Zakiullah, Senior Auditor alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply/comments on behalf of respondent no. 1 submitted. Case to come up for rejoinder and arguments on 19.09.2018 before D.B.

  
Chairman

19.09.2018

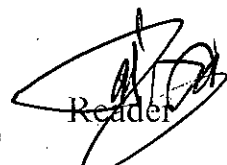
Miss, Uzma, junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for rejoinder and arguments on 23.10.2018 before D.B.

  
(Ahmad Hassan)  
Member


  
(M. Amin Khan Kundi)  
Member

23.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 10.12.2018.

  
Reader


**24.04.2018** Clerk of the counsel for appellant and Addl: AG alongwith Mr. Muhammad Aslam, SO (Lit) for respondents No. 2 & 3 & Mr. Zakiullah, Senior Auditor for respondent No.1 present. Written reply submitted on behalf of respondent No. 2 & 3. Requested for adjournment. Adjourned. To come up for written reply/comments on behalf on **07.05.2018** before S.B.

  
Chairman

**07.05.2018** The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **26.06.2018** before S.B.

  
Reader

**26.06.2018** Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Zaki Ullah, Senior Auditor for respondents No. 1 and Mr. Muhammad Karim, Supdt for respondents No. 2 & 3 present. Written reply already submitted on behalf of respondents No. 2 & 3. Written reply not submitted on behalf of respondents No. 1. Mr. Zaki Ullah, Senior Auditor (Representative) of the respondents No. 1 requested for adjournment. Adjourned. Last opportunity is granted. To come up for reply and comments on behalf of respondents No. 1 on **30.07.2018** before S.B.

  
Member

19.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant has served the department in various capacities since 30.05.1975 till 11.09.2014 with over 38 years spotless service. That the appellant was retired from service on 11.09.2014 with effect from 04.11.2013 on attaining the age of superannuation. That on 11.05.2017 Respondent No. 3 issued letter for grant of pension to appellant but with the directions to recover over-payment on account of salaries drawn by appellant with effect from 05.11.2013 to 30.09.2014 from his pension benefits. That on 31.07.2017 the impugned letter was issued by respondent No. 1 whereby recovery of Rs. 11, 30,790/- was shown from his pensionary benefits and cheque for the balance amount of Rs. 5,78,759/- was issued. That wrong and illegal deduction was made from the pensionary benefits of the appellant for the period mentioned in letter dated 11.05.2017. That the appellant preferred departmental appeal on 31.07.2017 ~~of recovery of Rs. 11, 30,790/-~~ but without any response till date.

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 09.04.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Gul Zeb Khan)  
Member



09.04.2018 Appellant absent. Clerk of the counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG alongwith Muhammad Aslam, AD (Lit) for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 24.04.2018 S.B.

  
Member

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 163/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/02/2018	<p>The appeal of Mr. Abdul Hamid presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	08/02/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	AJM	

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. \_\_\_\_\_/2018

Abdul Hamid

versus

Chief Secretary & Others

**I N D E X**

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-3
2.	Retirement order dated 11-09-2014	"A"	4
3.	Impugned letter dated 11-05-2017 of ED	"B"	5
4.	Impugned letter dated 31-07-2017	"C"	6-8
5.	Representation dated 11-08-2017	"D"	9-10
6.	Judgment dated 11-01-2018	"E"	11-14
7.	Wakalatnama		

Appellant

Through



Saadullah Khan Marwat  
Advocate

21-A Nasir Mension,  
Shoba Bazar, Peshawar

Ph: 0300-5872676

0311-9266609

Dated 06-02-2018



**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. \_\_\_\_\_/2018

Abdul Hamid Khan S/o Haji Umer Khan,  
R/O House No. 532, K-4, Phase No. 03,  
Hayatabad Peshawar, Ex- Private  
Secretary, Establishment Department,  
Civil Secretariat, Peshawar . . . . . Appellant

VERSUS

1. **Accountant General, Govt. of KP,**  
Forth Road, Peshawar Cantt.
2. **Chief Secretary, Govt. of KPK,**  
Civil Secretariat, Peshawar.
3. **Secretary, Govt. of KPK,**  
**Establishment Department,**  
Civil Secretariat, Peshawar . . . . . Respondents

□<=>□<=>□<=>□<=>□

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL  
ACT, 1974 AGAINST OFFICE ORDER NO.  
PN-PEN-I/A-171/2016-17/926-27 DATED  
31-07-2017 OF R. NO. 01 WHEREBY  
DEDUCTION OF RS. 11, 30,790/- WAS  
MADE FROM PENSIONERY BENEFITS OF  
APPELLANT FOR NO LEGAL REASON:**

□<=>□<=>□<=>□<=>□

**Respectfully Sheweth:**

1. That appellant served the department in various capacities since 30-05-1975 till 11-09-2014 spread over 38 years spotless service.
2. That appellant was retired from service on 11-09-2014 with effect from 04-11-2013 on attaining the age of superannuation. (Copy as Annex "A")

3. That on 11-05-2017, R. No. 03 issued letter for grant of pension to appellant but in the said letter, R. No. 01 was directed to recover over-payment of salaries drawn by appellant with effect from 05-11-2013 to 30-09-2014 from pensionary benefits, yet appellant rendered services to the department from 05-11-2013 to 30-09-2014 and is entitled for the benefits of pension of the said period. (Copy as Annex "B")
4. That on 31-07-2017, the impugned letter was issued by R. No. 01 whereby recovery of Rs. 11, 30,790/- was made shown from his pensionary benefits and cheque for Rs. 5, 78,759/- was issued to deposit the same in the account of appellant in HBL, Police Road Branch Peshawar. (Copy as Annex "C")
5. That on 11-08-2017, appellant submitted representations before the respondents to set-aside order / letter dated 31-07-2017 of recovery of Rs. 11,30,790/- but without any response till date. (Copy as Annex "D")
6. That thereafter appellant filed Writ Petition No. 4674-P/2017 before the hon'ble Peshawar High Court, Peshawar for the said purpose which was dismissed being not maintainable. (Copy as Annex "E")

Hence this Appeal, inter alia, on the following grounds:-

**GROUND:**

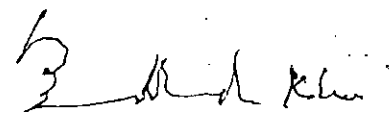
- a. That appellant served the department till the date of retirement i.e. dated 11-09-2014 not at his own sweet will but under the umbrella of respondents.
- b. That pay is equal to duty or duty is equal to pay, so appellant was entitled for salaries of the rendered period.
- c. That payment till date of retirement was made to the appellant in good faith by rendering services to the department till 2014 and no recovery could be affected from him, especially from pensionary benefits.
- d. That wrong and illegal deduction was made from the pensionary benefits of appellant for the period mentioned in letter dated 11-05-2017 i.e. with effect from 05-11-2013 to 30-09-2014.


- e. That the Authority is not vested with un-bridled and un-fettered powers to do an act at her own whims and wishes without re-coursing to Law. Neither any Notice was given to appellant for over payment nor any enquiry was conducted in the matter, being mandatory.
- f. That appellant was entitled for pension of Rs. 17, 09,549/-. Deduction was made of Rs. 11, 30,790/-. He was only paid Rs. 5, 78,759. He shall be paid lump-sum pension of Rs. 17, 09,549/- by deducting Rs. 5, 78,759 which has been paid to appellant.
- g. That respondents are not empowered to do so under the Law. Such act of the respondents is base on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order / letter dated 31-07-2017 of R. No. 01 be set aside and appellant be paid lump-sum pension of Rs. 17, 09,549/- with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

  
Appellant

Through

  
Saadullah Khan Marwat

  
Arbab Saif-ul-Kamal  
Advocates,

Dated: 06-02-2018

A

4

11-9-14



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(Establishment Wing)

Dated Peshawar, the 11.09.2014.

NOTIFICATION.

NO. SOE-IV(E&AD)11(27)/1996:- Mr. Abdul Hamid, Private Secretary (BS 17), Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa, stands retired from service w.e.f. 04.11.2013 (A.N) on attaining the age of superannuation sixty (60) years. His date of birth is 05.11.1953. 55

2. Sanction is also hereby accorded to the grant of encashment of 365 days pay in lieu of LPR, in respect of the aforesaid retiring officer, in pursuance of Finance Department's Notification No. SO(FR)FD/5-92/2005/Vol-V dated 13.12.2012.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

Encl. No. & date even.

Copy forwarded to the: -

- 1 Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2 Section Officer (Admn), Administration Department.
- 3 Section Officer (General), Zakat, Usher & Social Welfare Department, with the request to recover the over payment of salaries drawn by the above officer w.e.f. 05.11.2013 to 11.09.2014 from his pension/emoluments and the same may be deposited into Government Treasury through challan.
- 4 Section Officer (Secret), Establishment Department.
- 5 Estate Officer, Administration Department.
- 6 P S to Special Secretary (E), Establishment Department.
- 7 P A to Addl. Secretary (HRD), HRD Wing, Establishment Department.
- 8 P.A to Deputy Secretary (E), Establishment Department.
9. Officer concerned.
10. Personal file of the officer concerned.

(AKHTAR NAWAZ)  
SECTION OFFICER (E.IV)



OFFICE OF THE  
ACCOUNTANT GENERAL  
KHYBER PAKHTUNKHWA, PESHAWAR.

31-7-17

No. PN- PEN-I / A - 171 / 2016-17 / 926-27

Dated 31/07/17

To

The Drawing & Disbursing Officer,  
GOVT OF KPK ESTABLISHMENT DEP  
SECTION OFFICER (E-IV)

Sub:- SEALED COMMUTATION AUTHORITY IN R/O  
ABDUL HAMID S/O HAJI UMAR KHAN

Please refer to your letter No. SOE.IV(E&AD)11(27)1996  
Dated 04.07.2017 forwarding there is pension case in respect  
of above named officer.

2. You are hereby authorized to submit a bill for Rs.1709549.00  
(Rupees: ONE MILLION SEVEN HUNDRED NINE THOUSAND FIVE HUNDRED FORTY-NINE)  
at the counter of this office for issuance of cross cheque in favour  
of Mr. Mrs. Miss. Mst. ABDUL HAMID S/O HAJI UMAR KHAN  
(Per. No :  
00015530 )  
NIC.NO 1730192736455 on account of Commutation of pension.

Bank Name : HABIB BANK LIMITED  
A/c No : 02960005072201

55731

3. The amount involved is charged / other than charged  
and debit to the Federal Govt. under the following head  
of accounts:-

01 - General Administration.	A04 - Transfer payment.
0112 - Fiscal administration.	A041 - Pensionary benefits.
011210 - Pension.	A04102 - Commuted value of pension.
	A04103 - Gratuity value of pension.

Withheld amount

Amount Payable:	1,709,549.00
Amount With Held:	0.00
Amount Paid:	1,709,549.00

Recoveries OF O/PAYMENT OF PAY&ALL:RS.1130790 U/HEAD C02243

Note:- This authority letter may please be attached with the bill in original  
along with the Office order/notification of retirement. Vendor No, Name of Bank  
and A/c No of payee may also be recorded on the bill

Remarks:-

ACCOUNTS OFFICER (PENSION)

Copy for information to :-

Mr. Mrs. Miss. ABDUL HAMID S/O HAJI UMAR KHAN

H.NO.532 ST.NO.4 SECT:K-4 PH-III HAYATAB

ACCOUNTS OFFICER (PENSION)

*Abid*  
Section Officer (ADMN.)  
Govt. of Khyber Pakhtunkhwa  
Finance Department

*28/7*

7  
**PROVINCIAL CODED CLASSIFICATION PROFORMA**

NAME OF OFFICE :- E&AD Department

SUB HEAD :- Pension

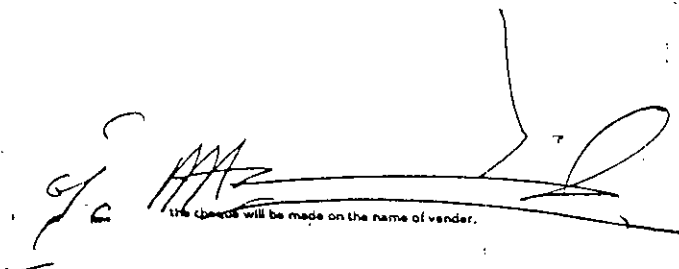
1)	FUND NO	N	C	2	1	0	4	1
2)	DOCUMENT NO							
3)	COUNTER NO							
4)	GOVT:CODE	N						
5)	BUSINESS AREA/DEPTT:	0	6	0	2			
6)	COST CENTRE/DDO CODE	P	R	4	4	5	7	
7)	DETAIL FUNCTION	0	1	1	2	1	0	
8)	VENDER							
9)	C.L.CODE	0	4					
10)	C.N.CODE	0	2					
11)	PAYMENT (Debit)	DEDUCTION (Credit)						
	Detailed Object	Amount			Detailed Head		Amount	
	AO 4102	17,09,549/-			C02243		11,30,790/-	

Gross Payment :- Rs.17,09,549/-

Total Deduction:- 11,30,790/-

Net Payment :- Rs.578,759/-

NOTE :-

  
 the cheque will be made on the name of vender.

Signature of D.D.O  
 Office Stamp

PAY BILL

8

Note: - Government accepts no responsibility or the fraud, misappropriation in respect of money or cheque b made over to a messenger.

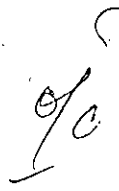
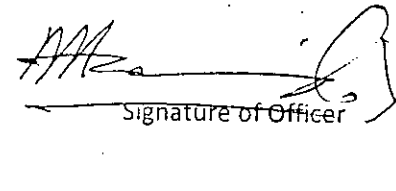
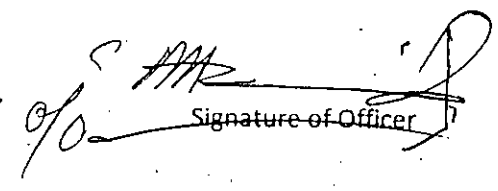
Name of Gazetted Government Servant. Mr. Abdul Hamid, Retired Private Secretary, E&AD Department.

A04 Transfer Payment. A041 Pensionary Benefits A04102 Commted Value of Pension A04103 Gratuity Value of Pension PR-4457 Pension	Voucher No. of list of payment for	17
A04102- Commutation	Rs.17,09,549/-	
Gross Amount	Rs.17,09,549/-	
Recoveriees over payment Pay & Alls	Rs.11,30,790/-	
	Rs.578,759/-	
Net Amount Rs.	Rs.578,759/-	

Net amount to be written (in word) Rupees ( )

Please pay to

The -2017

For use in Audit Office	Admitted Rs.	Object Rs.	Auditor Senior Accountant	For use in Treasury	Pay	Accountant	Treasury Officer	Incorporated in Saddar Treasury Account.	Accountant
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D

9

11-8-17

To

1. Chief Secretary, Govt. of KPK,  
Peshawar.
2. Accountant General, KPK, Peshawar.

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL AGAINST OFFICE LETTER NO. PN-PEN-  
I/A-171/2016-17/926-27, DATED 31-07-2017 OF  
ACCOUNTS OFFICER (PENSION) OF THE OFFICE  
OF THE ACCOUNTANT GENERAL KPK, PESHAWAR  
WHEREBY APPELLANT WAS PAID PENSIONER  
BENEFITS OF RS. 5,78,759/- INSTEAD OF RS.  
17,09,549/- AND MADE DEDUCTION RS.  
11,30,790/- FOR NO LEGAL REASON;

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sir:


1. That appellant served the department in various capacity since 30-05-1975 till 11-09-2014 spreading over 38 years spotless service.
2. That in the Seniority List the date of birth was recorded as 05-11-1953 instead of 05-11-1955 while in the SSC, NIC, Service Book and other as 05-11-1955.
3. That appellant was retired from service on 11-09-2014 with effect from 04-11-2013 on attaining the age of superannuation while he was to be retired with effect from 04-11-2015.
4. That order dated 11-09-2014 retiring appellant from service was assailed before this hon'ble Tribunal in A. No. 1405/2014 which is pending disposal till date.
5. That on 11-05-2017 Establishment Department issued letter for grant of pension but in the said letter Accountant General, Office KPK, was directed to recover over-payment of salaries drawn by appellant with effect from 05-11-2013 to 30-09-2014 from pension/emoluments.

6. That in this letter, it was wrongly held/directed to make recovery of over payment of salaries with effect from 05-11-2013 to 30-09-2014 as for this period rendered services to the department as is evident from Notification of retirement dated 11-09-2014.
7. That on 31-07-2017, the impugned letter was issued by AG office, whereby recovery of Rs. 11,30,790/- was made shown and cheque for Rs. 5,78,759/- was issued for deposit the same in the account of appellant in HBL, Police Road Branch Peshawar.
8. That wrong and illegal deduction was made from pensionary benefits of appellant for the period mentioned in letter dated 11-05-2017, i.e. 05-11-2013 to 30-09-2014.
9. That in this period, appellant rendered services to the department and no recovery could be made from pensionary benefits in any manner. The recovery so made is illegal, unjustified and based on malafide as pay is equal to duty or duty is equal to pay.

It is, therefore, most humbly requested that letter dated 31-07-2017 be kindly reviewed, modified/set-aside and recovery of Rs. 11,30,790/- be made good to appellant.

Appellant

*o/c*

  
Abdul Hamid Khan S/O Haji  
Umar Khan Ex-P.S.  
H. No. 532 K-4, P-3,  
Hayatabad, Peshawar  
Cell.No.0333-9306109

Dated. 11-08-2017

E

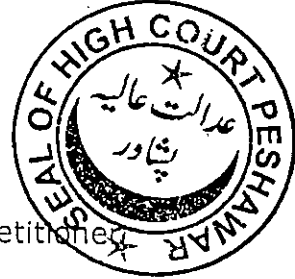
11

11-1-181

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W. P. No. 4674/2017

Abdul Hamid Khan S/o Haji Umer Khan,  
R/O House No. 532, K-4, Phase No. 03,  
Hayatabad Peshawar, Ex- Private  
Secretary, Establishment Department,  
Civil Secretariat, Peshawar



Petitioner

**VERSUS**

1. Chief Secretary, Govt. of KPK,  
Civil Secretariat, Peshawar.
2. Accountant General, Govt. of KP,  
Forth Road, Peshawar Cantt.
3. Secretary, Govt. of KPK,  
Establishment Department,  
Civil Secretariat, Peshawar. . . . . Respondents

□<=>□<=>□<=>□<=>□

**WRIT PETITION UNDER ARTICLE 199 OF  
THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN, 1973:**

□<=>□<=>□<=>□<=>□

**Respectfully Sheweth:**

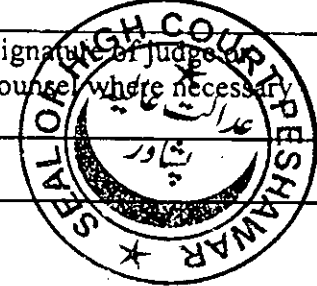
1. That petitioner served the department in various capacities since 30-05-1975 till 11-09-2014 spread over 38 years spotless service.
2. That in the SSC, NIC, Service Book and other service record, the Date of Birth of petitioner was recorded as 05-11-1955, while in the Seniority List, the same was recorded as 05-11-1953 instead of 05-11-1955. (Copies as Annex "A")
3. That petitioner was retired from service on 11-09-2014 with effect from 04-11-2013 on attaining the age of superannuation while he was to be retired with effect from 04-11-2015 as per SSC, being authentic Date of Birth. (Copy as Annex "B")

**ATTESTED**  
EXAMINER  
Peshawar High Court  
18 JAN 2018

PESHAWAR HIGH COURT, PESHAWAR  
FORM "A"  
FORM OF ORDER SHEET.

Court of \_\_\_\_\_  
Case No \_\_\_\_\_

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	11.01.2018	<p style="text-align: center;"><u>W.P No. 4674-P/2017</u></p> <p><u>Present:-</u> Mr. Saadullah Khan Marwat, advocate for the petitioner.</p> <p style="text-align: center;">*****</p> <p><u>MUSARRAT HILALI</u> :- The instant writ petition has been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the prayer that in exercise of the extraordinary constitutional jurisdiction, this court may declare the letter dated 31.7.2017 of the authority to be illegal, improper, unjust, malafide, without lawful authority and of no legal effect with further prayer to direct the respondents to pay petitioner pension of Rs.17,095,49/.</p> <p>2. The petitioner herein served the respondent department and got retired on 11.9.2014. As per averment of the writ petition, the date of birth of petitioner was recorded in the</p>



**ATTESTED**  
EXAMINER  
Peshawar High Court  
18 JAN 2018

	C L Maw	<p>SSC, NIC, Service Book and other service record while in the seniority list, the same was recorded as 05.11.1953 instead of 5.11.1955. The petitioner was retired from service on 11.9.2014 w.e.f 4.11.2013 on attaining the age of superannuation while he was to be retired w.e.f 4.11.2015 as per SSC, being authentic date of birth. That the matter of pre-mature retirement of the petitioner from service was assailed before the hon'ble tribunal in Appeal No.1405/2014 which is pending disposal till date. That on 11.5.2017 Establishment Department issued letter for grant of pension but in the said letter, Accountant General, Office Khyber Pakhtunkhwa was directed to recover over-payment of salaries drawn by petitioner with effect from 5.11.2013 to 30.9.2014 from pensionary benefits, yet petitioner rendered services to the department from 5.11.2013 to 30.9.2014 and entitled to the benefits of pension. Thereafter, on 31.7.2017, the impugned letter was issued by AG office, whereby recovery of Rs. 11,30,790/- was made shown and cheque for Rs. 5,78,759/- was issued for deposit the same in the account of petitioner in HBL, Police Road Branch Peshawar. On 11.8.2017, petitioner submitted representations</p>
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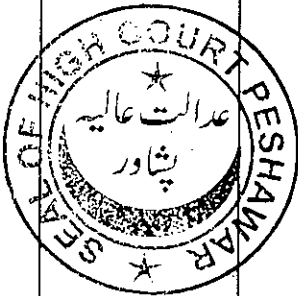
**ATTESTED**  
EXAMINER  
Peshawar High Court  
18 JAN 2018

before the respondents to set aside letter dated 31.7.2017 of recovery of Rs.11,30,790/-. Hence this writ petition.

3. Arguments heard and record perused.

4. The relief claimed by the petitioner falls within the ambit of terms and condition of service and the Service Tribunal has the jurisdiction to decide the matter. As per the averments of the writ petition, the petitioner has already approached the learned Service Tribunal for redressal of his grievances by filing appeal which is pending there. The better course would be that the petitioner should pursue the said appeal.

5. In view of the explicit bar, under article 212 of the Constitution of Islamic Republic of Pakistan, 1973, this court has got no jurisdiction to entertain the instant petition which is dismissed in limine being not maintainable.



*Handwritten signature*  
JUDGE  
*Handwritten signature*  
JUDGE

Announced on;  
Dated. 11.01.2018.

7223

CERTIFIED TO BE TRUE COPY

D.B Hon'ble Mr. Justice Waqar Ahmad Seth and Hon'ble Musarrat Hilali

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 8.7 of  
The Qanun-e-Shahadat Order 1984

18 JAN 2018

*Handwritten notes:*  
18/01/18  
18/1/18  
11/1/18

بعد الت جتاپ سرورس ٹریبیونل صوبہ سرحد پشاور

متجانب اسلٹ  
عبدالحمید خان  
نام  
محکمہ انٹرنٹ و پوسٹ  
دعوی اپیل

باعضرت شریعہ اعلیٰ

بستردہ سند جہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دعویٰ وکیل کاروائی متعلقہ آن مقام اپنا اور  
کیسٹ اسعد احمد خان سرورسٹے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب  
موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے باہمی نامہ و تقرر ثالث و فیصلہ بر عطف  
یہ ہے جواب دعویٰ اور اقبال دعویٰ اور لکھنؤ ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست  
ہر قسم کی تصدیق اور ان پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی  
اور ہر قسم کی تاخیر یا تاخیر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور  
کے لئے یا ہجرتی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا  
اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم منظور  
قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب  
موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ  
پر ہو یا عد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔  
لہذا نکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم

التعبید

التعبید

التعبید

ارباب سید انکال  
ایڈووکیٹ

سید اللہ خان مرقت  
ایڈووکیٹ

AA

من روپیہ تا  
ایڈووکیٹ

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**

**PESHAWAR,**

Appeal No. 163/2018

Abdul Hamid Ex-Private Secretary (BS-17)  
Establishment Department.

(Appellant)

VERSUS

1. Accountant General, Khyber Pakhtunkhwa  
Fort Road, Peshawar Cantt.

2. Chief Secretary Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar

3. Secretary to Govt of Khyber Pakhtunkhwa,  
Establishment Department.

Respondents

Joint parawise comments / reply on behalf of respondents No. 1, 2 & 3.

**PRELIMINARY OBJECTIONS**

1. That the Appellant has got no cause of action against the respondents.
2. The Appellant is estopped by his own conduct to file the present appeal in the Court.
3. That the appeal of the Appellant is time barred.
4. The Appellant has not come to this Honorable Court/ Tribunal with clean hands and has concealed material facts from this Honorable Court.

**ON FACTS:**

1. Correct to the extent that the appellant was appointment as Junior Scale Stenographer Grade-II w.e.f 30.04.1975 (Annex-I) and was



retired from service on superannuation on 04.11.2013 (**Annex-II**).

2. **Correct** to the extent that the appellant was retired from service w.e.f 04.11.2013 on attaining the age of superannuation vide Notification dated 11.09.2014.
3. **Incorrect** the recovery was made from his pension due to the overpayment of salary w.e.f 05.11.2013 to 30.09.2014 from the appellant because the appellant had changed his date of birth from 05.11.1953 to 05.11.1955 in the Service Book while the actual date of birth according to his available official record was 05.11.1953. The documents, mentioning his date of birth as 05.11.1953, are as under:-
  - i. Matric certificate (**Annex-III**).
  - ii. Confidential Reports/ PERs from 1979 to 2010 shows his DOB as 05.11.1953 (**Annex-IV**). It is pertinent to mention here that Part-I portion of the PERs/ACR is usually filled by an employee himself and the appellant himself had written his D.O.B as 05.11.1953 in his PERs from the year 1979 to 2010, but in 2013, the appellant immediately changed his D.O.B to 05.11.1955 (**Annex-V**).
  - iii. On an application, he had submitted for the post of Stenographer Grade-II dated 18.01.1975, he wrote that he is a young man of 22 years, which literally transpires his year of birth as 1953 (**Annex-VI**).

According to (**Annex-II**) and (**Annex-V**) contradiction is self explanatory, which is as below:-

- i. S.S.C certificate with D.O.B of 05.11.1953 at (**Annex-II**) carries 3<sup>rd</sup> Division.
- ii. S.S.C certificate with D.O.B as 05.11.1955 at (**Annex-V**) shows 2<sup>nd</sup> Division.

4. As explained above.
5. **Incorrect.** The request of the appellant was processed and filed as his Writ Petition No.1405/2014, against his retirement Notification is already under process.
6. No comments.

#### GROUNDS:-

- a As replied in Para-3 of facts.
- b **Incorrect.** In terms of rule 1.8 of Pension Rules, the Govt. reserves the right of recovery from pension of the Govt. Servant on account of losses caused to the Govt. based on negligence or fraud of such Govt. pension during his service. Same, the appellant had made overwriting in the Service Book by changing his Date of Birth for malafide intentions; hence, he is not entitled for salary drawn due to overpayment.
- c As explained in Para-b.
- d **Incorrect.** As per official record, the original date of birth of the appellant was 05.11.1953 and he was to retire from service on attaining the age of superannuation w.e.f 04.11.2013, but the appellant with malafide intentions changed his D.O.B by overwriting in the Service Book. Therefore, after verification through inquiry, the appellant was retired from service w.e.f 04.11.2013 vide Notification dated 11.09.2014, so no wrong and illegal deduction was made from his pension.
- e. **Incorrect.** The appellant was held guilty for overwriting in the Service Book and after fulfillment of codal formalities, was retired from Service on superannuation w.e.f 04.11.2013 as per his date of birth

05.11.1953, so no violation has been made and the appellant was treated as per rule.

- f. **Incorrect.** The appellant was paid the pension after deduction of overpaid salary due to his overstay in the service beyond 60 years.
- g. As replied above.

It is therefore, humbly prayed that on acceptance of instant joint parawise comments/ reply, the appeal of appellant may be dismissed with costs.



**Chief Secretary  
Govt. of Khyber Pakhtunkhwa  
(Respondent No.1)**



**Secretary  
Govt. of Khyber Pakhtunkhwa  
Establishment Deptt  
(Respondent No.2)**

Annex I

No. SOS-IV(S&GAD)3(1)75

ORDER

The following selected candidates are hereby appointed as Junior Scale Stenographers Grade-II, in order of merit, on probation for a period of two years and on the terms and conditions contained in the offer of their appointments and posted in the Departments with effect from the dates noted against each :-

- 1. Mr. Samin Jan. P & D Deptt: 10.5.1975 (F.N.)
- 2. Mr. Anwarul Haq. Home & T.A. Deptt: 26.4.1975 (F.N.)
- 3. Mr. Abdul Hamid. Health & Educ: 30.4.1975 (F.N.)  
Department.

Dated Pesh: the  
23rd April, 1975

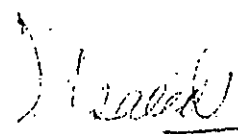
FATEH KHAN DANDIAL  
Chief Secretary, W.B.P.

.....

No. SOS-IV(S&GAD)3(1)75. Dated Pesh: the 15th May, 1975

Copy forwarded to :-

- 1. The Section Officer (G), P & D Department.
- 2. The Section Officer (G), Home & T.A. Deptt:
- 3. The Section Officer (G), Health & Educ: Deptt:
- 4. Officials concerned.
- 5. Personal files.
- 6. Office order file.

  
( MOHAMMAD SARED )  
Section Officer S-IV.

MOST IMMEDIATE

II

Annex II. 2

11-9-14

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(Establishment Wing)

Dated Peshawar, the 11.09.2014.

NOTIFICATION

NO. SOE-IV(E&AD)11/27/1996.- Mr. Abdul Hamid, Private Secretary (BS-17), Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa, stands retired from service w.e.f. 04.11.2013 (A/N) on attaining the age of superannuation sixty (60) years. His date of birth is 05.11.1953. S.S.


2. Sanction is also hereby accorded to the grant of encashment of 365 days pay in lieu of LPR, in respect of the aforesaid retiring officer, in pursuance of Finance Department's Notification No. SO(FR)FD/5-92/2005/Vol-V dated 13.12.2005.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

Encl. No. & date even.

Copy forwarded to the :-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Section Officer (Admn), Administration Department
3. Section Officer (General), Zakat, Usher & Social Welfare Department, with the request to recover the over payment of salaries drawn by the above officer w.e.f. 05.11.2013 to 11.09.2014 from his pension/emoluments and the same may be deposited into Government Treasury through challan.
4. Section Officer (Secret), Establishment Department
5. Estate Officer, Administration Department.
6. P.S. to Special Secretary (E), Establishment Department.
7. P.A. to Adj. Secretary (HRD), HRD Wing, Establishment Department.
8. P.A. to Deputy Secretary (E), Establishment Department.
9. Officer concerned.
10. Personal file of the officer concerned.

  
(AKHTAR NAWAZ)  
SECTION OFFICER (E.IV)

III

Annex = III

Sl. No. 285070.

Roll No. 16047

Board of Intermediate & Secondary Education  
PESHAWAR (PAKISTAN)

( Sealed )

SECONDARY SCHOOL CERTIFICATE EXAMINATION

SESSION 1969

ANNUAL

This is to certify that Abdul Hamid  
son of Haji Umar Khan  
and a student of Government High School, Pezu (Bannu)  
passed the SECONDARY SCHOOL CERTIFICATE EXAMINATION of the Board of Intermediate  
and Secondary Education, Peshawar held in June, 1969 in the Third Division.

The candidate passed in the following subjects:-

- |              |                        |                    |
|--------------|------------------------|--------------------|
| 1- English   | 4- Social Studies      | 7- Islamic Studies |
| 2- Urdu      | 5- General Science     | 8- Art.            |
| 3- Islamiyat | 6- General Mathematics |                    |

Date of Birth Fifth November One thousand  
five hundred and Fifty - three ( 5.11.1953 ).

First December, 1969

Sd/-

my/- my/-

( SECRETARY ).

( Attestation to be true copy ).

*[Signature]*  
15.11.69  
Administrative Officer  
Office of The C.E. of Engineer  
Institution, U. P. Peshawar  
Peshawar

Annex-iv

Appendix D.

GOVERNMENT OF N. W. F. P.

CONFIDENTIAL REPORT FORM FOR STENOGRAPHERS/STENOTYPISTS

Name of Department/Office Health Department, NWFP.

ANNUAL  
SPECIAL

REPORT FOR THE PERIOD 1.1.1979 TO 31.12.1979.

PART-I

Name—Abdul Hamid Date of Birth—5.11.1953.

Designation Stenographer Grade-II Grade—II Pay—418/- P. M.

Date of entry into Government service—May, 75. Date of appointment to the present grade—May, 1975.

Qualifications—Metric.

Training courses  
If any

PART-II

A PERFORMANCE	At.	A	B	C	D	Remarks
1. Standard of Shorthand/Typing (a) Speed. (b) Accuracy.	<i>ASW</i>	-	-	-	-	-
2. Maintenance of Officers engagement, diary and conducting of visitors.	<i>ASW</i>	-	-	-	-	-
3. Movement of files and record of suspense cases.	<i>ASW</i>	-	-	-	-	-
4. Dress and cleanliness.	<i>ASW</i>	-	-	-	-	-
5. Regularity and punctuality in attendance.	<i>ASW</i>	-	-	-	-	-
PERSONAL TRAITS						
6. Intelligence.	<i>ASW</i>	-	-	-	-	-
7. Diligence and devotion to duty.	<i>ASW</i>	-	-	-	-	-
8. Co-operation and tact.	<i>ASW</i>	-	-	-	-	-
9. Amiability to discipline.	<i>ASW</i>	-	-	-	-	-
10. Any disciplinary action taken during the period of report.	X	X	X	X	X	-
11. Integrity:-						

(i) Incorruptible .....

(ii) Reported to be corrupt .....

*ASW*

Appendix-D.

GOVERNMENT OF N. W. F. P.

CONFIDENTIAL REPORT FORM FOR STENOGRAPHERS/STENOTYPISTS.

Name of Department/Office GOVT. OF NWFP HEALTH & SOCIAL WELFARE

ANNUAL  
SPECIAL

REPORT FOR THE PERIOD-1-1-80 TO 31-12-1980

PART-I

Name: Mr. Abdul Hamid.

Date of Birth: 5-11-1958

Designation: Jr. Scale Steno: Gr: I Grade: 10

Pay: 10000/-

Date of entry into Government service: May, 75 Date of appointment to the present grade: 1-1-80

Qualification: Matriculate.

Training courses if any:

PART - II

A. PERFORMANCE	AI.	A	B	C	D	Remarks
1. Standard of Shorthand/Typing (a) Speed. (b) Accuracy.	✓					
2. Maintenance of Office re engagement, diary and conducting of visitors.	✓					
3. Movement of files and record of suspense cases.	✓					
4. Dress and cleanliness.	✓					
5. Regularity and punctuality in attendance.	✓					
PERSONAL TRAITS.						
6. Intelligence.	✓					
7. Persistence and devotion to duty.	✓					
8. Cooperation and tact.	✓					
9. Amenability to discipline.	✓					
10. Any disciplinary action taken during the period of report.	Nil					
11. Integrity.						

(i) Incorruptible

(ii) Reported to be corrupt

X



GOVERNMENT OF N. W. F. P

CONFIDENTIAL REPORT FORM FOR STENOGRAPHERS/STENOTYPISTS

Name of Department/Office

ANNUAL  
SPECIAL

REPORT FOR THE PERIOD 1-1-81 TO 31-12-1981

PART - I

Name Mr. Abdul Hamid, Date of Birth 5-11-1953  
 Designation Jr. Scale Stenographer Gr. I Grade 10 Pay Rs. 616/- accrd.  
 Date of entry into Government service May, 75 Date of appointment to the present grade 28-5-1980  
 Qualifications Matriculate.  
 Training courses  
 if any.

PART - II

A PERFORMANCE	AI.	A	B	C	D	Remarks
1. Standard of Shorthand/Typing (a) Speed. (b) Accuracy.		4				
2. Maintenance of Officers engagement, diary and conducting of visitors.		4				
3. Movement of files and record of suspense cases.		4				
4. Dress and cleanliness.		4				
5. Regularity and punctuality in attendance.		4				
PERSONAL TRAITS.						
6. Intelligence.		4				
7. Perseverance and devotion to duty.		4				
8. Co-operation and tact		4				
9. Amenability to discipline.		4				
10. Any disciplinary action taken during the period of report						No disciplinary action taken during the period of report.

11. Integrity:-  
 (i) Incorruptible.....  
 (ii) Reported to be corrupt.....

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GOVERNMENT OF N.- W. F. P.

CONFIDENTIAL REPORT FORM FOR STENOGRAPHERS/STENOTYPISTS

Name of Department/Office GOVERNMENT OF N.W.F.P., HEALTH & SOCIAL WELFARE DEPARTMENT.

REPORT FOR THE PERIOD 1.1.1982 TO 31.12.1982.

ANNUAL  
~~SPECIAL~~

PART-I

Name Mr. Abdul Hamid Date of Birth 5-11-1953  
 Designation Jr. Scale Steno: Gr. I Grade 10 Pay Rs. 640/- P.M.  
 Date of entry into Government service May, 75 Date of appointment to the present grade 9. 8. 80  
 Qualifications Matriculate  
 Training courses  
 if any.

PART-II

A. PERFORMANCE	AI	A	B	C	D	Remarks
1. Standard of Shorthand/Typing (a) Speed. (b) Accuracy.	A					
2. Maintenance of Officers engagement, diary and conducting of visitors.		A				
3. Movement of files and record of suspense cases.		A				
4. Dress and cleanliness.		A				
5. Regularity and punctuality in attendance.		A				
PERSONAL TRAITS.						
6. Intelligence.		A				
7. Perseverance and devotion to duty.		A				
8. Co-operation and tact.		A				
9. Amenability to discipline.		A				
10. Any disciplinary action taken during the period of report.						
ii. Integrity:-						
(i) Incorruptible.....						<input type="checkbox"/>
(ii) Reported to be corrupt.....						<input type="checkbox"/>

Appendix-13

GOVERNMENT OF N.- W. F. P.

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CONFIDENTIAL REPORT FORM FOR STENOGRAPHERS/STENOTYPISTS.

Name of Department/Office

ANNUAL  
SPECIAL

REPORT FOR THE PERIOD 1-1-33 TO 31-12-33

PART-I

Name [Handwritten Name] Date of Birth 5-11-1933

D. singation [Handwritten] Grade TS Pay [Handwritten]

Date of entry into Government service [Handwritten] Date of appointment to the present grade [Handwritten]

Qualifications [Handwritten]

Training courses [Handwritten]  
if any.

PART-II

A. PERFORMANCE

	AI.	A	B	C	D	Remarks
1. Standard of Shorthand, Typing (a) Speed. (b) Accuracy.	4					
2. Maintenance of Officers engagement, diary and conducting of visitors.	4					
3. Movement of files and record of suspense cases.	4					
4. Dress and cleanliness		4				
5. Regularity and punctuality in attendance.		4				
PERSONAL TRAITS.						
6. Intelligence.		4				
7. Attendance and loyalty to duty.	4					
8. Co-operation and tact	4					
9. Amiability to discipline.	4					
10. Any disciplinary action taken during the period of report.						

No other remarks  
Date taken signature  
[Handwritten]

II. Integrity  
(i) Incorruptible.....  
(ii) Reported to be corrupt.....

CONFIDENTIAL

FOR OFFICERS IN BPS 17 & 18

اسکیل ۱۷ اور ۱۸ کے افسران کے لیے

# GOVERNMENT OF N.-W.F.P.

حکومت صوبہ سرحد

بصفت از

Department/Office ERS Edu. KPKP Service/Group Secretariat  
سرحدی گروپ

## PERFORMANCE EVALUATION REPORT

کارکردگی رپورٹ  
FOR THE PERIOD 01-01 2010 TO 31-10-2010.  
۰۱-۰۱-۲۰۱۰ تا ۳۱-۱۰-۲۰۱۰

### PART I

حصہ اول

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)  
(متعلقہ افسر خود پُر کریں)

1. Name (in block letters) ABDUL HAMID MARWAT  
نام (دائج حروف میں)
  2. Personnel number 15530  
انفرادی نمبر
  3. Date of birth 05-11-1953  
تاریخ پیدائش
  4. Date of entry in service 1st June, 1975  
ملازمت اختیار کرنے کی تاریخ
  5. Post held during the period (with BPS) Section Officer (B&A), ERSE KPKP BPS-17  
پیش نظر عرصہ میں عہدہ (مع اسکیل)
  6. Academic qualifications B.A.  
تعلیم
  7. Knowledge of languages \* (Please indicate proficiency in speaking (S), reading (R) and writing (W))  
(دولے (ب)، پڑھنے (پ)، اور لکھنے (ل) کی صلاحیت)
- Pashto, Urdu, English by w a n r.

e. Training received during the evaluation period

متعلقہ عرصہ کے دوران حاصل کی گئی تربیت

130

Name of course attended کورس کا نام	Duration with dates تاریخوں کے ساتھ دورانیہ	Name of institution and country اگارتے اور ملک کا نام
STI 09 nine weeks. and other courses.	in 2006	STI

9. Period served

عرصہ ملازمت

(i) In present post 02 yrs. 10ms (ii) Under the reporting officer D.S. (Admin.) E&SEdu.

درج ذیل عہدہ پر

رپورٹنگ افسر کے تحت

## PART II

حصہ دوم

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)

(متعلقہ افسر خود پُر کریں)

1. Job description

ذمہ داریوں کی تفصیل

Performed the duties of all accounts matter and budget through out the province and other matters like PG-IVs of all estt./ugredation of schools and fixation of pay/advance increments to all the staff of the employees through out the province.

FOR OFFICERS IN BPS 17 & 18

اسکیل ۱۷ اور ۱۸ کے افسران کے لیے

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CONFIDENTIAL

بصیغہ راز

# GOVERNMENT OF N.-W.F.P.

حکومت صوبہ سرحد

Department/Office Health Deptt.

Service/Group Scotl. Group

## PERFORMANCE EVALUATION REPORT

کارکردگی رپورٹ

FOR THE PERIOD 01-01-2012 TO 31-12-2012

### PART I

حصہ اول

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)  
(متعلقہ افسر خود پُر کریں)

1. Name (in block letters) ABDUL HAMID
2. Personnel number \_\_\_\_\_
3. Date of birth 05-11-1955
4. Date of entry in service May 30, 1975
5. Post held during the period (with BPS) Scotl. and Senior
6. Academic qualifications B.A.
7. Knowledge of languages (Please indicate proficiency in speaking (S), reading (R) and writing (W)) Urdu and English by S.S.W.

8. Training received during the evaluation period.

متعلقہ عرصہ کے دوران حاصل کی گئی تربیت

132

Name of course attended: کورس کا نام	Duration with dates تاریخوں کے ساتھ دورانیہ	Name of institution and country ادارے اور ملک کا نام

9. Period served

عرصہ ملازمت

(i) In present post One year (ii) Under the reporting officer One year

موجودہ عہدہ پر

رپورٹنگ آفیسر کے تحت

PART II

حصہ دوم

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)

(متعلقہ آفیسر خود پُر کریں)

1. Job description

ذمہ داریوں کی تفصیل

Pool in litigation of all kind of cases throughout Province of all courts and Supreme Court of Pakistan and also in secret section i.e. P.E.Rs, C.M.P.M./Governor and President directives with engineers of the Deptt. from BPS-1 to 21.

Annex v

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S.No 065289

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Roll No. 16047

**BOARD OF INTERMEDIATE AND SECONDARY EDUCATION**

**Peshawar N.W.F.P. Pakistan**

**Secondary School Certificate Examination**

**SESSION Annual 1969**



VERIFIED

SECRETARY OFFICER  
 Office & Secor  
 Education Peshawar (Pak)

This is to certify that Abdul Raaid  
 Son Daughter of Haji Umar Khan  
 and a Resident Student of Cvt High School Pezu Barru  
 Enrollment No. 16047

has passed the Secondary School Certificate Examination  
 of the Board of Intermediate and Secondary Education, Peshawar held in June 1969  
 in the SECOND Division as a Regular/Private Candidate.

The Candidate passed in the following subjects

- |              |                     |                 |
|--------------|---------------------|-----------------|
| 1. English   | 4. Pakistan Studies | 7. Isl, Studies |
| 2. Urdu      | 5. Mathematics      | 8. Pashto       |
| 3. Islamiyat | 6. Science          |                 |

Date of birth according to admission form is Fifth November  
 one thousand nine hundred and Fifty Five (5.11.1955)

*[Signature]*  
 Asst. Secretary

*[Signature]*  
 Secretary

This certificate is issued without alteration or erasure.

108710

Section Officer (General)



Annex-VI

The Joint Secretary,  
Planning & Development  
Government of N.W.F.P.  
Peshawar.



Subject: - APPLICATION FOR THE POST OF STENOGRAPHER GRADE -

Respected Sir,

With due respect I beg to say that I have come to know through reliable sources that some posts of Stenographers are lying vacant in P & D Deptt: under your kind control. I offer my humble services for one of the same.

My particulars, qualifications & experiences are as under:-

- |                       |                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------|
| 1- Name:              | Abdul Hamid.                                                                                          |
| 2- Father's Name:     | Haji Umar Khan.                                                                                       |
| 3- Permanent Address: | Village & P/O Shabbaz Khel,<br>Mohallah : Sarwar Khel,<br>Tehsil : Lakki Marwat,<br>District : Bannu. |
| 4- Education:         | F.A. (1st) and having speed in<br>Shorthand 100 W.P.M. Typing speed<br>50 W.P.M.                      |

More over I have served in office of the Chief Engineer Irrigation Deptt: Peshawar from 5-1-1973 to 17-7-1973, and fully conversant with the office work. At present I am serving in Sarva Development Authority as a Stenotypist from 18-7-1973 till today.

I am a youngman of 22 years with good physique and sound moral character.

In view of the facts explained above, it is requested that may please be given a chance to serve in your Department. I assure you sir, that I will leave no stone un-turned to discharge my duties with satisfaction of my superiors.

Note:- Attested copies of my necessary certificates are attach.

Thanking you in anticipation.

Dated: 16-1-1976.

Your most obedient servant,

(ABDUL HAMID)  
Steno Typist, Mining Wing,  
S.O.A., N.W.F.P., Peshawar.

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

**Appeal No.163/2018**

Abdul Hamid Khan.....(Appellant)

**VERSUS**

Accountant General, Govt of Khyber Pakhtunkhwa,  
Fort Road, Peshawar, Cantt and others .....(Respondents)

**(Para wise reply/comments on behalf of Respondent No. 1)**

**Preliminary Objections:-**

1. That the appellant has got no cause of action.
2. That the appellant has no locus standi.
3. That the appellant has not come to this court with clean hands.
4. That the appeal in hand having no merits hence liable to be dismissed.
5. That the appeal in hand is time barred.
6. That the Finance Department Peshawar is also the competent authority, which has not been made as respondent by the appellant.

**Respectfully Sheweth:-**

1. Prove by record; however, liable to be proved by the Appellant.
2. Correct to the extent that Establishment Department Peshawar (Establishment Wing) Notification No.SOE-IV(E&AD) 11 (27) 1996, dated 11.09.2014 has clearly mentioned the date of birth of the appellant as 05.11.1953 and the Appellant thus stands retired w.e.f 04.11.2013.



3. Correct. In light of Retirement Notification SOE-IV(E&AD)11(27)/1996 dated 11.09.2014, the date of birth of the Appellant is 05.11.1953 and he has been retired w.e.f 04.11.2013 after attaining the age of superannuation 60 years. Recovery of over payment of salary from the period w.e.f 05.11.2013 to 30.09.2014 drawn by the Appellant is under the rules and as per letter of Establishment Department Peshawar No.SOE.IV(E&AD)11(27)/2014, dated 11/05/2017.
4. Recovery has been made in light of Establishment Department letter No.SOE-IV(E&AD)11(27)/2014, Dated 11.05.2017.
5. Respondent No.3 is in better position to satisfy the grievances of the Appellant.
6. No Comments.

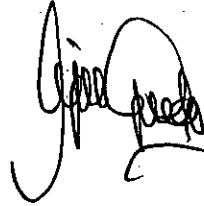
**GROUND S :-**

- A. Proved by record; however, liable to be proved by the Appellant.
- B. Incorrect. The appellant is not entitled for the salaries of the period w.e.f 05.11.2013 to 30.09.2014 as he has been retired from service w.e.f 04.11.2013.
- C&D. That Respondent No.1 is bound to follow the rules and instructions issued by provincial Government of Khyber Pakhtunkhwa from time to time. And has made recovery of over and above salaries as asked by Respondent No.3. There is no bar on recovery.
- E. Relates to Respondent No.3 and they are in better position to show the status of the case.
- f. That in light of Establishment Department Peshawar Letter dated 11.05.2017. Respondent No.1 has rightly calculated the pension of the Appellant under the rules.



g. That respondent No.1 is bound to follow the rules and instructions issued by Provincial Government of Khyber Pakhtunkhwa from time to time. And has processed the case in light of Retirement Notification No. SOE-IV (E&AD) 11(27)/1996 dated 11.09.2014 and not malafied.

Keeping in View the above mentioned facts it is, therefore, humbly prayed that the appeal in hand having no merits may be dismissed with cost.



**ACCOUNTANT GENERAL  
KHYBER PAKHTUNKHWA**

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A. No. 163/2018

Abdul Hamid Khan

versus

A.G &amp; Others

**REPLICATION****Respectfully Sheweth,****PRELIMINARY OBJECTIONS:**

All the 06 preliminary objections of R. No. 01 and 04 preliminary objections of R. No. 02 and 03 are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action, locus standi, unclean hands, without merit, time barred and necessary party.

**ON FACTS:**

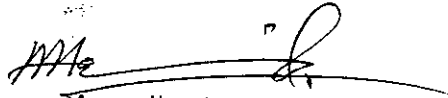
1. Needs no comments.
2. As above. The correct date of birth of appellant was 05-11-1955.
3. R. No. 01 admitted the para of the appeal as correct, while R. No. 02 and 03 denied the same. No one is allowed to make recovery from pensionary benefits of a servant. Appellant should have been retired will within time as per the appreciation of the department alleging his date of birth 05-11-1953, but this date of birth was incorrect and the actual date of birth of appellant was / is 05-11-1955 after correction of the same in the Service Book and in other service record. Old service record of appellant was attached with the reply.
4. Not correct. Appellant rendered services in good faith till the age of superannuation i.e. 11-09-2014. The recovery made from pensionary benefits was totally illegal as per the verdicts of the apex court. (Copy attached)

5. Not correct. The para of the appeal is correct.
6. Needs no comments.


**GROUNDS:**

All the grounds of the appeal are legal and correct, while that of the reply are illegal and incorrect. The same are again adopted. R. No. 01 stated in ground C & D that recovery was made by the direction of R. No. 03 and there exists complete bar over deduction from pensionary benefits. Lapses of the department when appellant was not retired well within time, was on the shoulder of respondents. How they woke up from the dream when appellant served the department till 11-09-2014. No notice was served upon appellant regarding over payment or deduction of the same from the pensionary benefits. No enquiry was also conducted and appellant was put to loose in millions.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

  
Appellant

Through

  
Saadullah Khan Marwat  
Advocate,

Dated: 30-1-2019

**AFFIDAVIT**

I, Abdul Hamid, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

  
DEPONENT

**GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE**

**FINANCE DEPARTMENT**

---



---

**NORTH-WEST FRONTIER PROVINCE**

**CIVIL SERVANTS PENSION**

**RULES AND ORDERS**

*(Corrected and amended up to 15<sup>th</sup> July 2006)*

**[www.nwfpfinance.gov.pk](http://www.nwfpfinance.gov.pk)**

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exercise option within the stipulated period shall be assumed to have opted for the West Pakistan Civil Services Pension Rules.

Note-(1) Government servants who were in pensionable service on 1<sup>st</sup> July, 1966 were given option to exercise in favour or otherwise of the West Pakistan Civil Services Pension Rules 1963/Revised Rules and Rates 1967 vide West Pakistan Letter No. S.O. (SR)-V-257/67, dated 27<sup>th</sup> April, 1967, Appendix-I).

Note-(2) The Accounts Officer should acknowledge the receipt of option communicated to him by Gazetted Servants.

1.5 These rules shall not apply to-

- (i) Government servants paid from contingencies or borne on Work-charged Establishment;
- (ii) Government servants engaged on contract which contains no stipulation for pension under these rules;
- (iii) Any person for whose appointment and conditions of service, special provision is made by or under any law for the time being in force;
- (iv) Any Government servant or class of Government servants who may be excluded by a competent authority from the application of these rules;
- (v) Any Government servant who holds a post which has been declared by a competent authority to be Non pensionable;
- (vi) Any person whose whole time is not retained for public service but is merely paid for work done, such as Government Pleaders and Law Officers not debarred from private practice;
- (vii) Any person who is not paid from the Provincial Consolidated Fund, but is paid from a fund held by Government as a Trustee, or from a local fund or is remunerated by fees for the grant of a tenure of land or of any other source of revenue or of a right to collect money.

- 1.6. (i) **Definitions-** Unless expressly specified otherwise in these rules, terms defined in Chapter-I of the West Pakistan Traveling Allowance Rules have the same meaning when used in these rules.
- (ii) Pension-Except when the term "Pension" is used in contradistinction to gratuity, pension includes gratuity.
  - (iii) Class IV service means any kind of service which may be specially classed as such by Government.
  - (iv) **Superior Service-**Superior Service means any kind of service which is not Class-IV Service.
  - (v) **Ordinary Pension-**Ordinary pension means, pension other than extraordinary pension and includes special additional pension.
  - (vi) **Full pension-**Full pension means the amount of ordinary pension admissible including 1/4<sup>th</sup> of the surrendered portion of the pension.

1.7 In any case where pension or gratuity is not admissible under these rules, a competent authority may grant pension which will, not save in most exceptional circumstances, exceed Rs. 100 a month or a gratuity not exceeding the equivalent value of that amount; provided that the general spirit of the rules is observed.

1.8 (a) Good conduct is an implied condition of every kind of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed.

(b) Government reserve to themselves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner.

(c) In case the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess.

(d) Except with the previous sanction of the Provincial Government, no pensioner shall, within a period of two years from the date of his retirement take part in any election or engaged in political activity of any kind.

In future all Civil Servants who are under enquiry be excluded from the enquiry proceedings under the E&D Rules after attaining the age of superannuation and they may be allowed full pensionary benefits as provided under the rules. However it has further been decided that if some pecuniary loss caused to the Government is likely to be proved against a Government Servant who superannuates before decision of the case against him, an FIR should be lodged against him for judicial proceedings immediately after the date of superannuation and exclusion of his name from the departmental enquiry.

NO.SOR-II(S&GAD)3-29/97-Vol-II  
GOVERNMENT OF NWFP,  
SERVICES & GENERAL ADMN. DEPARTMET

Dated Peshawar, the 22<sup>nd</sup> August 1998.

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\* Added by Finance Department (West Pakistan) Notification No. FD (SR-V) 1286/65, dated 15<sup>th</sup> June, 1965.



# KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 06<sup>th</sup> SEPTEMBER, 2021.

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

## NOTIFICATION

Dated Peshawar, the 06<sup>th</sup> September, 2021

No. SOSR-II/RD/2-4/2021.---In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of Khyber Pakhtunkhwa is pleased to make the following rules, namely:

### KHYBER PAKHTUNKHWA CIVIL SERVANTS PENSION RULES, 2021

#### Chapter-I Preliminary

1. Short title and commencement--- (1) These rules may be called the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021.

(2) These rules shall come into force at once.

2. Definitions.---In these rules, unless the context otherwise requires:-

(a) "Act", means the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973);

(b) "Accounts Officer", means an officer, who keeps the accounts of Government and includes the Accountant General, Khyber Pakhtunkhwa, District Comptrollers of Accounts and District Accounts Officers and any other officer, who keeps Government accounts;

(c) "competent authority" means the authority to appoint civil servants in various basic pay scales respectively;

(d) "commutation", means the advance payment of 35% of gross pension to the pensioner for the specific period as specified under these rules, which shall be restorable when the paid amount is recovered;

(22) If a civil servant eligible for pension remains missing or un-heard for a period of twelve (12) months or more, to the satisfaction of the department concerned, family pension may be allowed to his family as admissible under the rules, provided that:

- (a) the family member claiming to be entitled to the pensionary benefits of the missing person shall, before such benefits are paid, guarantee through affidavit or as the pension sanctioning authority may require, the repayment of pensionary benefits to the missing person if subsequently he appears and makes any claim thereto; and
- (b) The pension sanction authority shall not be responsible for repayment of any pensionary benefits to the missing civil servant, which has already been paid to his family members who shall personally be responsible for satisfaction thereof on appearance of the missing civil servant.

#### Chapter-VI

#### Conditions for Pension

16. **Date of commencement of pension** Apart from special orders, an ordinary pension is payable from the date on which the pensioner ceases to be in service. A commutation shall be paid in a single sum.

17. **Place of payment.**- A pension is payable through bank account in a scheduled bank, at any place in Pakistan.

18. **Payment of pension in foreign currency:** A pensioner is entitled to draw his pension in foreign currency during the period he resides outside Pakistan, at the official rate of exchange of that country prevalent on the date of payment.

19. **Conduct of pensioner.**- Good conduct of pensioner is an implied condition of every kind of pension. The pension sanctioning authority may withhold or withdraw a pension or any part of it, if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service; provided that before any order to this effect is issued, the pensioner shall be informed in writing.

★ 20. Recovery from pension. (1) The pension sanctioning authority reserve to himself the right of recovery from the pension of pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such a pensioner during his service; provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the civil servant.

(2) In case the amount of pension, granted to a pensioner be after wards found to be in excess of that to which he is entitled under these rules. he shall be called upon to

2011 S C M R 21

[Supreme Court of Pakistan]

Present: Javed Iqbal and Raja Fayyaz Ahmed, JJ

MUHAMMAD SHARIF---Petitioner

Versus

CHIEF SECRETARY and another---Respondents

Civil Petition No.30-Q and Civil Appeal No. 53-Q of 2010, decided on 30th June, 2010.

(On appeal from the judgment dated 19-3-2010 passed by Balochistan Service Tribunal, Quetta in S.A.No. 59 of 2009).

**Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979--**

---R.12-A---Retirement age---Determination---Grievance of civil servant was that his date of retirement had wrongly been calculated from seniority list---Civil servant relied upon his date of birth mentioned in his Secondary School Certificate, Computerized National Identity Card and Service Book---Validity---Date of birth of civil servant mentioned in Service Book could not be ignored as it was the most authenticated document---Date of birth mentioned in seniority lists could not be referred over date of birth mentioned in Service Book--Supreme Court accepted the date of birth of civil servant mentioned in Secondary School Certificate, Computerized National Identity Card and Service Book---Supreme Court converted petition for leave to appeal into appeal and set aside notification of retirement of civil servant---Appeal was allowed.

Muhammad Riaz Ahmad, Advocate Supreme Court/Advocate-on-Record for Petitioner.

Salahuddin Mengal, Advocate-General along with Iftikhar Ali, PDSP for Respondents.

Date of hearing: 30th June, 2010.

## JUDGMENT

**JAVED IQBAL, J.**---The petitioner is aggrieved by order dated 19-3-2010 passed by the Balochistan Service Tribunal, Quetta whereby the appeal preferred on behalf of petitioner has been dismissed and notification bearing No.SCW(SOA)2-95/2001/426 dated 4-2-2009, qua retirement of the petitioner has been kept intact by considering 1-3-1949 as correct date of birth of the petitioner, hence this petition.

2. Mr. Muhammad Riaz Ahmed, learned Advocate Supreme Court/Advocate-on-Record entered appearance on behalf of petitioner and urged vehemently that the exact date of birth of the petitioner is 1-3-1951. In order to substantiate his contention reference has been made to the Secondary School Certificate, Computerized National Identity Card and Service Book of the

petitioner which according to learned Advocate Supreme Court have been ignored by the learned Service Tribunal without assigning any cogent reasoning which resulted in serious miscarriage of justice.

3. Mr. Salahuddin Mengal, learned Advocate-General entered appearance on behalf of respondents and controverted the view point as canvassed at bar by Mr. Muhammad Riaz Ahmed, learned Advocate Supreme Court for the petitioner and supported the judgment impugned for the reasons enumerated therein with the further submission that the date of birth of the petitioner is 1-3-1949. In support of his contention reference has been made to the old Identity Card bearing No.616-49-045747 and the seniority lists issued on 24-9-1985 and 28-6-2003. The learned Advocate General has contended further that the Secondary School Certificate and new Identity Card were never made available to the Competent Authority and hence the question of their consideration does not arise. It is next argued that the Annual Confidential Report for the year 1998 is indicative of the fact that 1-3-1949 is the exact date of birth of the petitioner. Learned Advocate-General has also invited our attention to the provisions as enumerated in Rule 12-A of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979 which, inter alia, provides that the date of birth of a civil servant recorded once at the time of joining Government service cannot be changed and shall be treated as final.

4. We have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of law and record of the case. In so far as the provisions as enumerated in Rule 12-A of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979 are concerned the same are free from any ambiguity and capable enough to meet all sort of such eventualities but the question would be as to whether it can be made applicable in the case of the petitioner in view of the Secondary School Certificate showing date of birth of the petitioner as 1-3-1951, authenticity whereof was never challenged. For the sake of abundant caution the Service Book of petitioner was summoned and perused carefully. It is worth mentioning that the date of birth of the petitioner has been shown as 1-3-1951 and being an authentic and the most relevant document it cannot be ignored. There is no cavil to the proposition that the date of birth mentioned in the seniority lists cannot be preferred over the date of birth mentioned in Service Book. After having gone through the Secondary School Certificate, Computerized Identity Card and Service Book of the A petitioner, we have no hesitation in our mind to hold that the exact date of birth of petitioner is 1-3-1951. In such view of the matter, the petition is converted into appeal and accepted. The notification qua retirement of the appelland is hereby set aside and the date of superannuation shall be determined from the date of birth which is 1-3-1951. These are the reasons for our short order dated 30-6-2010.

M.H./M-87/SC

Appeal allowed.

2021 PL C (C.S.) 570

[Supreme Court of Pakistan]

21/7/2021

Date of Birth  
Not allowed.

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Sayyed Mazahar Ali Akbar Naqvi, JJ  
MUHAMMAD KHALIQ MANDOKHAIL

Versus

GOVERNMENT OF BALOCHISTAN through Chief Secretary, Civil Secretariat Quetta and another

Civil Petition No. 4428 of 2019, decided on 16th February, 2021.

(Against the judgment dated 31.10.2019 of the Balochistan Service Tribunal, Quetta passed in Appeal No.490/2018)

**(a) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration of date of birth in service record---Disallowed---Mala fide of Education Board in changing date of birth---Academic credentials of the petitioner-civil servant clearly reflected that the date of birth was recorded as 1-3-1959 on every document including NADRA record---Petitioner moved for correction of his date of birth after a lapse of 22 years of continuous service in the year 2014, and approached the Board of Intermediate and Secondary Education ('the Board'), to get his date of birth changed from 01-03-1959 to 20.12.1963---Board without any hesitation proceeded according to the whims of the petitioner and made the alteration, when it had no authority to entertain such a request---In the absence of any declaration from a Civil Court of competent jurisdiction, the Board was not empowered to change the date of birth---Whole proceedings carried out by the Board smacked of mala fide---Consequently the proceedings carried out regarding the change of date of birth were prima facie based upon an act of Board which was mala fide, based upon extraneous consideration, therefore, any superstructure raised over it would fall to the ground---Since the whole proceedings for alteration of date of birth were carried out by the petitioner after a lapse of 22 years of active service, therefore, it could safely be held that such proceedings were based upon an afterthought just to prolong the service tenure on the basis of frivolous and tainted documents---Petition for leave to appeal was dismissed and leave was refused with the observation that the Supreme Court in a number of cases had discouraged change in the date of birth of a civil servant, which could be for the purpose of unduly enhancing the tenure of service in employment.

Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

**(b) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Pre-requisites---While seeking such an alteration/correction, a declaration was sine qua non which could only be issued by the Civil Court of competent jurisdiction on the basis of evidence produced during the proceedings regarding the authenticity of the subject matter. [p. 574] B

**(c) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Scope---Civil servant could not seek alteration in his date of birth at the verge of his retirement.

Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

**(d) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Rule 11 of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, interpretation of---Date of birth of the petitioner mentioned in his Secondary School Certificate was 01-03-1959, while in his service book, it was registered as 20-12-1963---Plea of petitioner that according to R. 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, (the 2009 Rules) the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration

## JUDGMENT

Date of hearing: 16th February, 2021.

Nemo for Respondents.

Muhammad Shoaib Shaheen, Advocate Supreme Court for Petitioner.

therein shall be permissible---Held, that service book was only a piecemeal and for all intents and purposes it would not be considered as a complete service record---Other documents relating to his service record including the academic record, the CNIC, the seniority lists prepared on different occasions, the ACRs and the retirement notification, all conjointly reflect that the date of birth of the petitioner was incorporated as 01.03.1959---Petitioner agitated his grievance in the year 2014 after a lapse of 22 years of joining service---Proceedings initiated by the petitioner seeking alteration in the date of birth while pressing in R. 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 were intended on the basis of extraneous considerations just to prolong his service period---Petition for leave to appeal was dismissed and leave was refused.

**SAYYED MAZHAR ALI AKBAR NAQVI, J---**The instant petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioner calling in question the judgment of the Balochistan Service Tribunal, Quetta dated 31.10.2019 whereby the Service Appeal filed by him seeking correction of date of birth in the service record was dismissed.

2. Briefly stated the facts of the matter are that the petitioner was appointed as Naib Tehsildar in the Revenue Department of Government of Balochistan on 18.08.1992. He was promoted to the Post of Tehsildar vide notification dated 07.03.2010 and he was further promoted to BPS-18 vide notification dated 18.10.2017. The date of birth of the petitioner was mentioned in the Secondary School Certificate as 01.03.1959, while in the service book, it was registered as 20.12.1963. However, the petitioner approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth corrected in the Secondary School Certificate in the year 2014 after the lapse of 22 years. The said certificate was duly issued to him on 29.12.2014 by correcting the date of birth of the petitioner from 01.03.1959 to 20.12.1963. The petitioner after securing correction of date of birth in the Secondary School Certificate, also got his date of birth corrected from NADRA in his CNIC. The department issued seniority lists dated 15.10.2014 and 03.01.2018, however, the date of birth of the petitioner was mentioned as 01.03.1959. The petitioner being aggrieved by the seniority lists duly issued by the department filed objections before the competent authority but the objections raised by the petitioner were not addressed and the department paid no heed to it. Consequently, on 27.09.2018 a notification was issued by the department regarding the date of retirement of the petitioner, after attaining the age of superannuation, with effect from 28.02.2019 basing his date of birth as 01.03.1959. Against the notification of superannuation, the petitioner filed departmental appeal which was rejected vide order dated 02.01.2018. Being aggrieved by the rejection of departmental appeal, the petitioner preferred service appeal before the Balochistan Service Tribunal, Quetta, which was dismissed by the Tribunal vide judgment dated 31.10.2019. Hence this petition for leave to appeal.

3. Learned counsel for the petitioner inter alia contends that in the service book the date of birth of the petitioner was rightly mentioned as 20.12.1963 and according to law, the first date of birth entered in the service record has to be presumed to be the correct date of birth; that the learned Tribunal has failed to take into consideration Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, according to which the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible; that the learned Tribunal has also not considered that the petitioner's date of birth recorded in the matriculation certificate was corrected by the Board by issuing a duplicate certificate. He lastly added that while passing the impugned judgment, the learned Service Tribunal has erred in law, therefore, the same is not sustainable in the eyes of law.

4. We have heard learned counsel for the petitioner and have perused the available record.

5. We have noticed that the petitioner was appointed as Naib Tehsildar on 18.08.1992. The



academic credentials of the petitioner clearly reflect that the date of birth was recorded as 01.03.1959 on every document including NADRA record. It was very surprising that the petitioner moved for correction of his date of birth after the lapse of 22 years of continuous service in the year 2014. He approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth changed from 01.03.1959 to 20.12.1963. It is surprising that the Board without any hesitation proceeded according to the whims of the petitioner and submitted itself before the desire of the petitioner, although the Board had no authority to entertain such a request and made alteration of its own. We have specifically confronted the learned counsel to show us from the record the material placed before the Board which prompted the Board to come for the rescue of the petitioner and act according to the illegal desire of the petitioner. It has been informed that an affidavit was tendered, which was made basis for conversion of the date of birth from 01.03.1959 to 20.12.1963. It is established law that while seeking such like correction, a declaration is sine qua non which can only be issued by the Civil Court of competent jurisdiction on the basis of evidence produced during the proceedings regarding the authenticity of the subject matter. In the absence of any declaration the Board was not empowered to change the date of birth. The whole proceedings carried out by the Board are nothing but squarely smack mala fide at the end of Board as well as the litigant. The said conduct of the Board is deprecated. As a consequence the proceedings carried out regarding the change of date of birth are prima facie based upon an act of Board which is mala fide based upon extraneous consideration, therefore, any superstructure raised over it would fall to the ground. As we have noticed that the whole proceedings were carried out after the lapse of 22 years of active service, therefore, it can be safely held that the proceedings carried out by the petitioner were based upon an afterthought just to prolong the service tenure and it was nothing but an attempt to continue with the service on the basis of frivolous and tainted documents which speak volume in relation to its genuineness. This Court in a number of cases has discouraged change in the date of birth of a civil servant, which could be for the purpose of unduly enhancing the tenure of service in employment. In the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456), it has been held by this Court that a civil servant could not seek alteration in his date of birth at the verge of his retirement. The material produced and examined by the Tribunal clearly suggests that the petitioner got changed his date of birth when he was at the verge of his retirement.

6. Now we will advert to the contention raised by the learned counsel for the petitioner that according to Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible. It would be in order to reproduce the said rule, which reads as under:-

"11. The date of birth of a civil servant once recorded at the time of joining the Government service shall be final and no alteration therein shall be permissible, except, where a clerical mistake occurs in recording the date of birth in the Service record:

Provided that, no request of a civil servant on this ground shall be entertained after a period of two years from the date of such entry in his service record; and all such cases shall be decided by the Appointing Authority, on the recommendation of an Enquiry Committee with the following composition:

1. Senior Member, Board of Revenue
2. Secretary, S&GAD
3. Secretary, Law Department
4. Secretary of the concerned

Member  
Co-opted  
Member  
Administrative  
Department"

7. A bare perusal of the aforesaid Rule makes it abundantly clear that the date of birth of a civil servant once recorded at the time of joining of Government service as a general principle shall be final and would not be altered except (i) there is a clerical mistake (ii) the change is sought within the period of two years. This Rule narrows down the scope for change of date of birth by stipulating that no alteration shall be permissible after the expiry of the time as mandated in the said rule. Otherwise, the

service book is only a piecemeal and for all intents and purposes it would not be considered as a complete service record. We have noticed that the other documents relating to his service record including the academic record, the CNIC, the seniority lists prepared on different occasions, the ACRs and the retirement notification, all conjointly reflect that the date of birth of the petitioner was incorporated as 01.03.1959. The petitioner joined the service on 18.08.1992, whereas he agitated his grievances in the year 2014 after the lapse of 22 years. Hence keeping in view the facts and circumstances, it is clear that the proceedings initiated by the petitioner seeking alteration in the date of birth while pressing in Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 were intended on the basis of extraneous considerations just to prolong the service period. The whole proceedings carried out by the petitioner can be dubbed as tainted on this score alone. Otherwise no substantial question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised before this Court.

8. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.

MWA/M-13/SC

Petition dismissed.

the absence of any express prohibition in the Act, it can borrow the procedure from available avenues, chartered by law.

Question of non-applicability of the Code barring sections 10 and 11 thereof came up before the Court in the case of Muhammad Tabish Naeem Khan v. Additional District Judge Lahore and others (2014 SCMR 1365), in the said case, plea of ouster of procedure was repelled as under:

*"We are not persuaded to hold, that the ex parte decree dated 4.7.2008 was void, for the reason that there is no provision in the West Pakistan Family Courts Act, 1964 to strike off the defence of the petitioner, when he failed to file the written statement, thus, it (decree) should be ignored; suffice it to say that the Family Court is the quasi judicial forum, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial,....."*

In the case of Haji Muhammad Nawaz v. Samina Kanwal and others (2017 SCMR 321) it was reiterated that:

*"Family Court, whether as a trial court or an executing court, are governed by the general principles of equity, justice and fair play"*.

Impact of fraud practiced upon tribunals exercising plenary or limited jurisdictions, respectively, cannot be procedurally classified as in all jurisdictions it unredeemably vitiates the very solemnity of adjudication, a wrong that cannot be countenanced and must be remedied through dynamic application of equitable principles of law and such approach has been approved by this Court in a good number of cases arising out of erstwhile rent laws that too excluded wholesale application of the Code. See PLD 1975 SC 331 The Chief Settlement Commissioner, Lahore v. Raja Mohammad Fazil Khan and others, 1992 SCMR 917 Tanveer Jamshed and another v. Raja Ghulam Haider, 1992 SCMR 1908 Mst. Fehmida Begum v. Muhammad Khalid and another, 1993 SCMR 226 Fazal Elahi Malis through legal heirs v. Miss Abida Reasat Rizvi, 1997 SCMR 1986 Haji Khudai Nazar and another v. Haji Abdul Bari, 2000 SCMR 540 Masjid Intizamia Committee and others v. Anjuman-e-Falah-o-Bahood and others, 2001 SCMR 577 Hanif and others v. Malik Armed Shah and another, 2005 SCMR 882 Suhail Printing Press v. Syed Aley Eba Zaidi, 2007 SCMR 818 Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami and others, 2007 SCMR 1434 Ammanullah Khan Legharl v. Abid Shaikh Ahmed, 2014 SCMR 1694 Sheikh Saleem v. Mrs. Shamim Attaullah Khan and others and 1984 CLC 2855 Abdul Salam v. Mrs. Tahira Zaidi.

5. Recourse to plenary jurisdiction as suggested by the learned counsel for the respondent would be a journey into a blind alley as in the face of a final decree by the Family Court, holding the field, the proposed course would inevitably lead to a chaotic collusion, if at all the petitioner ever succeed. Therefore, in the circumstances, reconsideration/re-examination of the impugned judgment and decree by the learned Family Court is the only expedient option, conducive to the interest of the contestants. The petition is converted into appeal and allowed with no order as to costs. Impugned judgment dated 04.03.2019 is set aside, as a consequence thereof, appellant's claim in the property as mentioned in his application be attended by the learned Additional District Judge Multan before whom his application under section 12(2) of the Code shall be deemed as pending. Since this matter is pending for considerable time, the learned Court seized of the matter, in the fullness of time, shall decide it with all convenient dispatch sooner rather than later.

MWA/M-32/SC

Petition allowed.

2021 S C M R 1151

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J.,  
Ijaz ul Ahsan and  
Sayyed Mazahar Ali Akbar Naqvi, JJ

SECRETARY (M-V) FEDERAL BOARD OF REVENUE,  
ISLAMABAD---Appellant

versus

ZEENAT BANGASH and others---Respondents

Civil Appeal No. 1989 of 2019, decided on 29th April, 2021.

(On appeal against the judgment dated 11.10.2018 passed by the Federal Service Tribunal, Islamabad in Appeal No. 407(L)CS/2016)

(a) Civil service---

---Deputation allowance, entitlement to---Officer of Postal Group working on deputation in Federal Board of Revenue---Held, that pursuant to a judgment of the Federal Service Tribunal passed in Appeals Nos. 39 and 40(R)CS/2003, which was upheld by the Supreme Court vide order dated 21-09-2005 passed in Civil Petitions Nos. 519 and 524/2004, all officers/officials of ministries, divisions etc, who had

been transferred and posted on deputation basis were held entitled to deputation allowance vide Office Memorandum No. F.5(8)R-2/2007 dated 04-07-2007. Service Tribunal had rightly observed that according to paragraph 'ii' of the said Office Memorandum, old cases of transfers/postings on deputation basis were granted deputation allowance, and that on the basis of said Office Memorandum deputation allowance was allowed and disbursed to all the civil servants either old or fresh and no distinction was made between those, inducted in Office Management Group or otherwise. Appeal was dismissed. *Ip. 1153, 1154] A & B*

#### (b) Civil service---

----Deputation allowance, entitlement to----Limitation----Officer of Postal Group (respondent) working on deputation in Federal Board of Revenue----Respondent worked in Federal Board of Revenue on deputation from the year 1994 to 2001 but he was not given deputation allowance----Contention of Federal Board of Revenue that the respondent was repatriated to his parent department in the year 2001 but filed his departmental appeal on 08-06-2015 which was clearly barred by limitation----Held, that present matter being a financial matter (as it related to deputation allowance), limitation would not have any adverse implication on respondent's claim----Service Tribunal had rightly held that respondent was entitled to the deputation allowance----Appeal was dismissed. *Ip. 1154] C*

M.D. Shahzad Feroz, Advocate Supreme Court for Appellant.

Respondent No. 1 in person.

Date of hearing: 29th April, 2021.

#### JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.---Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has assailed the judgment dated 11.10.2018 passed by the Federal Service Tribunal, Islamabad, whereby the Service Appeal filed by the respondent No. 1 was accepted and he was held entitled to deputation allowance.

2. Briefly stated the facts of the matter are that the respondent No. 1 being officer of Postal Group remained working in Federal Board of Revenue on deputation from the year 1994 to 2001 but he was not given deputation allowance. After his repatriation to his parent department, he on 27.11.2012 approached the Federal Board of Revenue for grant of deputation allowance on the basis of judgment of the Federal Service Tribunal, which was upheld by this Court and also on the basis

Zeenaat Bangash (Sayyed Mazahar Ali Akbar Naqvi, J)

of discrimination that the same was extended to other employees with similar circumstances. However, the request of the respondent was turned down by the department vide order dated 12.05.2015 on the ground that pursuant to Office Memorandum No. F3(8)R-2/2007 dated 01.07.2007 deputation allowance is only admissible to fresh cases and it is not meant for old cases, therefore, it could not be given retrospective effect. The respondent then filed appeal before the Appellate Authority i.e. Secretary Finance Division, which was referred to the Establishment Division vide letter dated 01.02.2016 but it was never decided. The respondent, thereafter, filed appeal before the Federal Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal with leave of the Court.

3. Learned counsel for the appellant *inter alia* contended that the respondent was repatriated to his parent department in the year 2001 and he filed departmental appeal on 08.06.2015 which was clearly barred by limitation; that the office memorandum of 2007 clearly states that deputation allowance is admissible to only fresh cases and it has no retrospective effect.

4. On the other hand, the respondent No. 1, who appeared in person defended the impugned judgment by stating that several of his colleagues were granted deputation allowance whereas he was ignored, which act is grossly arbitrary, illegal, unlawful and against the principle of natural justice.

5. We have heard learned counsel for the appellant and respondent in person and have gone through the available record.

6. We have noted that vide Office Memorandum dated 02.04.1999 the deputation allowance was made admissible only to the cases of foreign service of Pakistan and the cases of other deputationists of ministries, divisions etc were excluded. However, pursuant to a judgment of the Federal Service Tribunal passed in Appeals Nos. 39 and 40(R)CS/2003, which was upheld by this Court vide order dated 21.09.2005 passed in Civil Petitions Nos. 519 and 524/2004, all officers/officials of ministries, divisions etc, who have been transferred and posted on deputation basis were held entitled to deputation allowance vide Office Memorandum No. F.5(8)R-2/2007 dated 04.07.2007. Therefore, the only question which remains to be clarified is whether the said office memorandum has retrospective effect or is it only meant for "fresh cases". The learned Service Tribunal took into consideration the Office Memorandum dated 02.04.1999 which was further elaborated by Office Memorandum dated 04.07.2007 and while observing that according to paragraph 'ii' of the Office Memorandum dated 04.07.2007, the old cases of transfers/postings on deputation basis were

granted deputation allowance held that "there is no denying the fact that on the basis of O.M. of the Finance Division dated 4th of July, 2007, deputation allowance was allowed and disbursed to all the civil servants either old or fresh and no distinction was made between those, inducted in OMG or otherwise. It could not be acceptable even otherwise on the touchstone of rule of consistency i.e. that one set of civil servants posted on deputation or under section 10 is allowed deputation allowance retrospectively and others are deprived of that", which otherwise would be in defiance of Article 25 of the Constitution of Islamic Republic of Pakistan. When we confronted learned counsel for the appellant with this aspect of the matter, he could not give any plausible answer. So far as the question raised by learned counsel for the appellant that the claim of the respondent was barred by laches as he was repatriated to his parent department in the year 2001 and he filed departmental appeal on 08.06.2015 is concerned, suffice it is to state that being a financial matter, limitation will not have any adverse implication on respondent's claim.

7. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

MWA/S-25/SC

Appeal dismissed.

2021 S C M R 1154

[Supreme Court of Pakistan]

Present: Umar Ata Bandial,  
Faisal Arab and Ijaz ul Ahsan, JJ

FEDERAL BOARD OF REVENUE through Chairman,  
Islamabad and others---Petitioners

versus

ABDUL GHANI and another---Respondents

Civil Petition No. 1298 of 2019, decided on 4th October, 2019.

(Against the judgment dated 06.02.2019 passed by the Lahore High Court, Lahore in I.C.A. No. 98311 of 2017)

**(a) Sales Tax Act (VII of 1990)---**

---Ss. 11(5) & 74---Default in payment of sales tax---Show cause notice, issuance of---Limitation---Delay of almost fifteen (15) years in

sending notice---Condonation of delay under S. 74 of the Sales Tax Act, 1990---Scope---Section 11(5) of the Sales Tax Act, 1990 ('the Act') prescribed a limitation period of five years from the relevant date for commencing action through a show cause notice against the person in default---In the present case, to overcome the delay of nearly 15 years in the issuance of the said notice permission was obtained from the Federal Board of Revenue ('the Board') under S. 74 of the Sales Tax Act, 1990---Held, that order passed under S. 74 of the Act by the Board failed to state any reason for extending the limitation period for issuance of a show cause notice against the respondent-tax payer---Said requirement was meant to ensure fairness and transparency in the exercise of statutory discretion by the Board which suffered from opacity and therefore unreasonableness---Section 74 of the Act neither specifically envisaged nor provided guidance, criteria or parameters for overriding any limitation period prescribed by the Act for initiating action against a taxpayer---Consequently, on the facts of the present case S. 74 could not be interpreted so as to authorise the unchecked reversal of a statutory limitation period and consequential legal rights created by it---Show cause notice issued by the tax department suffered from fatal defects that floated on the face of the record---Petition for leave to appeal was dismissed and leave refused.  
[p. 1156] A & B

**(b) Sales Tax Act (VII of 1990)---**

---S. 11(5)---Law Reforms Ordinance (XII of 1972), S. 3---Default in payment of sales tax---Show cause notice, issuance of---Intra-Court Appeal before the High Court challenging show cause notice issued after the limitation period of five years---Maintainability---No remedy was provided in the Sales Tax Act, 1990 against the issuance of show cause notice, therefore the Intra Court Appeal filed by the tax payer was competent under S. 3 of the Law Reforms Ordinance, 1972---Petition for leave to appeal was dismissed and leave refused.  
[p. 1156] C

M. Umar Riaz, Advocate Supreme Court for Petitioners.

M. Naeem Shah, Advocate Supreme Court for Respondents.

**ORDER**

UMAR ATA BANDIAL, J.---The Respondent is a registered person under Sales Tax Act, 1990 ("the Act") in his capacity as an importer. However, he is still not a registered person even in his capacity as a manufacturer/supplier. The matter in issue is that the petitioner-department served the Respondent with a show cause notice dated 29.02.2016, alleging default in payment of sales tax from 07/2001

**P L D 1992 Supreme Court 207****Present: Muhammad Afzal Zullah, C.J., Abdul Qadeer Chaudhry and Wali Muhammad Khan, JJ****THE ENGINEER-IN-CHIEF BRANCH through Ministry of Defence, Rawalpindi and another--Appellants****Versus****JALALUDDIN—Respondent**

Civil Appeal No.202 of 1988, decided on 19th January, 1992.

(On appeal from the judgment and order dated 5-7-1987 of the Federal Service Tribunal, Islamabad in Appeal No.453(R) of 1984).

**(a) Locus Poenitentiae--**

---Principal of---Application---Order in question which was incorrect had already been acted upon--- Principle of locus poenitentiae would not be applicable.

**(b) General Clauses Act (X of 1897)--**

--S. 21---Authority which can pass an order, is entitled to vary, amend, add to or to rescind that order.

**(c) Locus Poenitentiae--**

--Principle of---Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction.

Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiase would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.

**(d) Locus Poenitentiae--**

---Principle of--- Recovery of amount paid on basis of incorrect order and the recipient had received same on a bona fide belief that he was entitled to it---Payer was not entitled to recover the amount from the payee during the period when incorrect order remained in field and principle of locus poenitentiae would be applicable to the case.

Ch. Ijaz Ahmed, Dy. A.-G. instructed by Manzoor Ilahi, Advocate-on-Record for Appellants.

Ch. M. Ikram, Advocate Supreme Court and K.E. Bhatti, Advocate-on-Record for Respondent.

Date Of hearing: 10th December, 1991.

**JUDGMENT**

**ABDUL QADEER CHAUDHRY, J--** This appeal by leave of the Court is directed against the judgment of the Federal Service Tribunal dated 5-7-1987.

The facts of the case are that respondent Jalaluddin was appointed as Draughtsman Class 'C' in the M.E.S. Department on 1st of March, 1971. On the implementation of the National Pay Scale with effect from 1st March, 1972, the respondent was placed in National Pay Scale No.5. As per rules, the respondent qualified the departmental promotion examination from Draughtsman Class 'C' to Draughtsman Class 'B' in May, 1976. He was promoted to Draughtsman Class 'B' on 15-5-1976. On 8th of May, 1974, the Ministry of Finance issued an Office Memorandum which reads as under:--

"It has been decided that in the case of Engineering Diploma holders and technical draughtsmen employed under the Federal Government the enhanced pay scale shall be as follows:--

(a) NPS-11 shall be allowed for posts for which the prescribed qualification for direct entry is Matriculation plus 3 years diploma course in any branch of engineering from a recognised institution.

(b) NPS-11 shall also be allowed for posts of draughtsmen requiring for direct recruits the educational qualification of Matric with 3 years diploma course.

(c) The promotees to posts (a) and (b) above shall get the same NPS as direct recruits irrespective of their educational qualification."

According to respondent, he was allowed National Pay Scale 11 with effect from 13-5-1976. He stated at the time of hearing that he was granted the National Pay Scale 7, on 13-5-1976. It means, on the same day, he was given escalated pay scale from 7 to 11. (If the contention of the appellant be accepted, then he was granted this Scale No.11 on 13-5-1976). The perusal of letter dated 8th May, 1976, clearly shows that National Pay Scale-11 was allowed to all promotees irrespective of their educational qualifications. Thus the qualification for promotion as contended by the department of the appellant, was done away by this Notification. Under the Recruitment Rules, the qualification for direct recruits of Draughtsman is Matric. The Certificate of Draughtsmanship from the recognised institution and there is no dispute between the parties about the qualifications for appointment of Grades 'A' and 'B' of the Draughtsmen, as direct recruits.

The Draughtsman Class 'A' were allowed National Pay Scale No. 9' with effect from 1-3-1972. They were placed in National. Pay Scale No. 11 with effect from 1-5-1974. If the contention of the respondent is accepted then irrespective of their qualifications and experience, both categories of Draughtsmen would get National Pay Scale 11. This is to our mind, against the principle of fairness and justice. By the letter dated 24th May, 1976, the Finance Division stated that NPS-11 shall be allowed to the post for which the prescribed qualification for direct entry is matriculation and three years' diploma course in any branch of engineering from the recognised University. However, relaxation was made for those who had been appointed/recruited directly without the requisite qualification, by the competent authorities, in consideration perhaps of their practical experience. They were also allowed NPS-11. There is no reference in this letter that Grade 'B' is also entitled to the same National Pay Scale. In the letter dated 12-10-1977 issued by MA.G., Rawalpindi, it has been stated that for the post of Draughtsman 'B' grade of M.E.S., the minimum qualification is Matric plus Certificate from a recognised institution in Draughtsmanship. Accordingly, it is clear that Draughtsman 'B' Grade of M.E.S. being not Diploma-holders, whether appointed direct or promoted

form 'C' Grade are not entitled to NPS-11.

By letter dated 27th February, 1984, MAG directed to recover the overpayment for the last 12 months from the date it was challenged. The letter dated 12th October, 1977, was cancelled on 28th November, 1977, by the Engineer-in-Chief Branch, Rawalpindi. Similarly, on 18-5-1982, it was stated that incorrect fixation of pay of Draughtsmen Grade 'B' in Grade-11 has been carried out and this was not in order. It was directed that all the cases be reviewed and necessary re-fixation may be made out. The facts narrated above, make it clear that the respondent was never promoted to NPS-11 and no decision of the competent authority has been placed on record to substantiate the contention of the respondent about his fixation in NPS-11. He was not properly and legally allowed the Grade-11. The respondent challenged the action of the appellants in an appeal before the Federal Services Tribunal. The appeal was allowed. The reasons which weighed with the learned Tribunal are as follows:--

"Be that as it may however, it is a well-settled legal position that a public authority which can pass an order, is empowered to vary, amend or rescind that order. But this power to recede can be exercised only till a decisive step to carry out that order is taken. If, however, the order has been given effect to, so that no locus poenitentiae is left, there will be no occasion for exercise of such power. Thus the power to amend or cancel an order cannot be carried into effect if the order has been acted upon. In the present case the pay of the appellant was duly fixed in NPS-11 in 1976 which was being paid to him for about seven years. Therefore, the departmental authorities had no valid power of receding the orders of fixation of the appellant's pay in NPS-11 which was fully carried into effect. Consequently we hold that the impugned action is incompetent and unjust."

It is therefore, clear that the Tribunal has also not disputed the contention of the appellant that respondent was not entitled to be fixed in Grade-11 of National Pay Scale. The principle of locus poenitentiae was invoked by the learned Tribunal in aid of the respondent. Having gone through the facts of the case, we have come to the conclusion that this principle is not attracted in the present case. Additionally, under section 21 of the General Clauses Act, the authority which can pass an order, is entitled to vary, amend, add to or to rescind that order. The order under which the payment was made to the respondent had no sanction of law. Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field. Learned counsel for the appellants had submitted that the appellants had drawn Rs.12,890.86 (Rupees twelve thousand, eight Hundred, ninety and paisa eighty-six only) during this period but the Engineer-in-Chief had directed the recovery of Rs.1,860.00 only (Rupees one thousand, eight hundred, sixty and paisa nil only). We consider that as far as the recovery of the amount in question is concerned, the principle of locus poenitentiae would be applicable and the appellants are not entitled to recover the amount. The appellants have themselves taken a liberal view and the recovery of only 12 months is being made.

For the reasons stated above, WC accept this appeal and set aside the order of the Tribunal. However, the appellants would not recover even Rs.1,860 (Rupees one thousand, eight hundred, sixty and paisa nil only) from the respondent. There would be no order as to costs.

M.B.A./E-24/S

Appeal accepted.

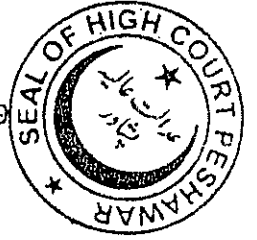


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IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 5245-P / 2019



Musahib Gul S/O Ajab Khan,  
R/O Mianisa, Shabqadar,  
Ex-Driver, TMA, Town-III,  
Peshawar. . . . . Petitioner

VERSUS

1. Resident Deputy Director (Audit),  
Town Municipal Administration,  
Town-III, Peshawar.
2. Director, Local Fund Audit,  
Benevolent Fund Building,  
Peshawar.
3. Town Municipal Officer,  
Town Municipal Administration,  
Town-III, Peshawar . . . . . Respondents

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WRIT PETITION UNDER ARTICLE 199 OF  
THE CONSTITUTION OF ISLAMIC  
REPUJBLIC OF PAKISTAN, 1973:

☞<=>☞<=>☞<=>☞<=>☞

~~TESTED~~  
EXAMINER  
Peshawar High Court

Respectfully Sheweth:

1. That petitioner was initially appointed as Driver on 06-02-1988, vide order dated 13-03-1988 by the then Chief Officer, Municipal Committee Peshawar. (Copy as annex "A")
2. That In the Service Book, Date of Birth of petitioner was recorded as 1956, while In Medical Certificate of the Medical Officer of Health, Municipal Corporation, Peshawar he was assessed as of 30 years age. (Copy as annex "B")

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**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(JUDICIAL DEPARTMENT)

Writ Petition No.5245/2019



**PRESENT:-**

For the petitioner:- M/S Saadullah Khan Marwat  
and Arbab Saiful Karnal,  
Advocates.

For the respondents:- Mr. Atif Ali Khan, AAG and  
Mr. Sabah ud Din khattak,  
advocate.

Date of hearing:- 09.09..2020.

**J U D G M E N T**

**MUHAMMAD NAEEM ANWAR, J.-** Through the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has prayed for issuance of a writ declaring letter/order dated 25.02.2019 to be illegal, improper, unjust, malafide, without lawful authority and of no legal effect with added prayer to direct the Authority to pay him the deducted amount of Rs. 8,13,375/- from the pension with markup till its realization..

2. The case of the petitioner, precisely, is that he was appointed as Driver, vide order dated 13.03. 1988, by the Chief Officer, Municipal Committee, Peshawar, and at the time of entry into service, his Service Book was prepared wherein his date of birth was entered as 1956.

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

NE

The respondents, in response to the notice, have submitted their parwise comments, which in substance of the desired writ was opposed.

4. Arguments heard and record perused. Learned counsel for the petitioner vehemently contended that order bearing No. 8302/TMOMV-1111 Peshwar dated 02.03.2018 pertaining to the petitioner's retirement still holds the field. He further contended that date of birth of the petitioner was counted by the department as 13.03.1924, thus, he has rightly been entitled to the salary not only for work done but his age was also not counted to sixty years till 13.03.2018, while on the other hand, learned AAG and learned counsel representing respondent-department by submitting that the petitioner has not applied for correction of his date of birth in accordance with rules, thus, supported the impugned order.

*h*

6. We have considered the submissions of learned counsel for the parties and gone through record of the case.

7. The petitioner has mainly relied upon the medical report which reveals that the same is not only undated but a name carried the name of the concerned Medical Officer, nor his designation in the relevant column nor it is stamped. Similarly, the correction in the relevant

**ATTESTED**  
**EXAMINER**  
Peshwar High Court

Book was made under the signature of Town Municipal Officer and the signature under the correction and the one available on the office order dated 02.03.2018, vide which the petitioner was ordered to be retired, appear to be of one and same officer, thus, the correction seems to have been made in the year, 2018, therefore, the correction of date of birth made in the service book is not in accordance with law as the date of birth of an employee, once recorded, under the standing rules, it cannot be altered or changed except in the case of a clerical error, without the previous order of the Authority and that too within two years from the date of his entry into Government service. The General Financial Rules (G.F.R) (Volume-I) and notification bearing No. SOR-II (S & DAD)/5 (40)/87 dated 15.02.1989, provide that "the date of birth of an employee once recorded cannot be altered except in the case of clerical error, and that too after special inquiry and only if the Government servant applied for it within two years from the date of his entry into Government service." Moreover, as per CNIC of the petitioner, his date of birth is still mentioned as 1956, which was in his knowledge and if he was aggrieved of the entry in his service Book regarding his date of birth he could have submitted an application before the Authority concerned in accordance with rules

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~~ATTESTED~~  
EXAMINER  
Peshawar High Court

within the time required by the law, therefore, he cannot be held entitled for the pensionary benefit as per the amended date of birth.

6. For the reasons discussed above, the instant petition is hereby dismissed. Needless to mention, the correct date of birth, as per CNIC of the petitioner, entry made in his service Book and medical certificate is 1956 and on the basis of which he ought to have been retired after reaching to the age of sixty years, which was to be completed in the year, 2016, and to that effect the respondents were required to go through the service record of the petitioner and by giving effect to his date of birth, the retirement order should have been issued, however, the department by not doing so, allowed the petitioner to remain in service, thus, he was regularly performing his duty and there is nothing on record to show that the petitioner during the period has not performed his duty, therefore, in our considered view, the salaries received by him cannot be withdrawn on the ground that his retirement was made in violation of the relevant rules and, in fact, action should have been initiated against those who are sitting the helm of affairs for such irregularities and the petitioner cannot be held responsible in any manner whatsoever, so, the salaries received by him for performance of his duty cannot be

~~ATTESTED~~  
EXAMINER  
Peshawar High Court

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recovered from him as "payment is made in return for the work done". Proceedings against the delinquent officer be initiated and be taken up till its logical conclusion with the intimation to Judicial Registrar of this court.


Announced  
09.09.2020  
\*M.Zafar PS\*

  
CHIEF JUSTICE

  
JUDGE

(DB: Hon'able Mr. Justice Waqar Ahmad Seth, HCJ & Hon'able Mr. Justice Muhammad Naeem Anwar)

No. 24304  
Date of Presentation of Application 29/1/2021  
No of Pages 7-7  
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Date of Preparation of 29/1/2021  
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CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Constitution of Pakistan Order 100  
29 JAN 2021

①

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

Writ Petition No.1843-P/2017



**JUDGMENT**

Date of hearing.....01-03-2018.....

Petitioner: (Mst.Munir Akhtar) in person.

Respondents:(Inspector General, (Prison) Khyber Pakhtunkhwa and others) by Syed Qaiser Ali Shah, AAG.

\*\*\*\*\*

YAHYA AFRIDI, C.J.- Mst.Munir Akhtar,

petitioner, seeks the constitutional jurisdiction of this

Court praying that:-

*"It is, therefore, humbly prayed that on acceptance of this petition, directions be issued to the respondents to implement the decision of the Provincial Ombudsman dated 12.09.2014."*

2. The petitioner had moved an application to the Human Rights Cell, Peshawar High Court, Peshawar, which was converted into the instant petition.

3. The respondents were put to notice and they have in their response stated that the petitioner performed her duties beyond the date of superannuation for which period she has been paid

**APPROVED**

**EXAMINED**  
Peshawar High Court

12 MAR 2018

and the same is now under consideration of the Finance Department for the deduction of the said amount from her pension.

4. It is but a settled principle of law that once payments are received by a person for services rendered, and that too without any misrepresentation or fraud, then the same should not be recovered.

When the petitioner has not committed any fraud or misrepresentation in continuing her performance of her duties beyond the age of superannuation and she has been paid for the services so rendered by her then the said amount cannot be deducted from her pension.

5. Accordingly, for the reasons stated hereinabove, this Court holds that the payment made to the petitioner should not be deducted from her pension and her due pension be paid to her regularly.

Dt. 01-03-2018.

CHIEF JUSTICE

JUDGE

Witness

Hon'ble Mr. Justice Yalya Afridi, Chief Justice.  
Hon'ble Mr. Justice Qaiser Rashid Khan, Judge.

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Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Constitution of Pakistan

12 MAR 2018