FORM OF ORDER SHEET

Court of _____

Case No.- 1766/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/12/2022	The appeal of Mr. Fayaz Ahmad resubmitted today by Uzma Syed Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed. By the order of Chairman REGISTRAR

The appeal of Mr. Fayaz Ahmad Constable no.288 Police Post Sawarai District Buner received today i.e. on 30.11.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- The dates mentioned in the memo of appeal are not matching with dates of documents attached with the appeal, the same may be rectified.
2- Wakalat nama attached with the appeal is blank which be filled.

No. 3480 /S.T,

Dt. 30/11 /2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv. Pesh.

Sir,

all objections were removed & resubmitted

8-12-2022

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1766 of 2022

Fayaz Ahmad Constable No. 282 Police Post Sawarai District Buner

.....Appellant

VERSUS

1- Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2- The Regional Police Officer, Malakand, at Saidu Sharif Swat.
3- District Police Officer Buner.

..... Respondents

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1.	Memo of service appeal		1- 6
2.	Affidavit		7
3.	Copy of impugned order	A	8
4.	Copy of Service Tribunal Judgment	B	9-24
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	Wakalat Nama	In original	35-

Dated 30/11/2022

APPELLANT
فیاض احمد
Fayaz Ahmad

THROUGH

Uzma syed

&

Syed Noman Ali Bukhari
Advocates High Court
Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

(1)

Service Appeal No. 1766 of 2022

Fayaz Ahmad Constable No. 282 Police Post Sawarai District Buner

.....Appellant

VERSUS

1- Inspector General of Police, Khyber Pakhtunkhwa Peshawar.

2- The Regional Police Officer, Malakand, at Saidu Sharif Swat.

3- District Police Officer Buner.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 13/10/2011 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AND AGAINST NOT DECIDING THE DEPARTMENT APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD.

Prayer:

ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 13.10.2011 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER RMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRAITE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Respectfully Sheweth:

Facts giving rise to the present Service Appeal

1- That the appellant was the employee of the police and was on the strength of the police force Buner.

2- That during Taliban Militancy in Buner, appellant was dismissed from the service by the respondent No. 3 vide order dated 13.10.2011. **(Copy of impugned order is attached as Annexure-A).**

3- That, neither my show cause notice, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of this duty.

4- That some of the colleagues of the appellant have been re-instated by Service Tribunal, Peshawar. (Copy of Judgments as Annexure-B).

5- That appellant feeling aggrieved, immediately preferred Departmental Appeal before respondent No. 2 and requested therein that case of the appellant is at par with those police officer, who have been re-instated into service by Department himself and Service Tribunal Peshawar, so the appellant has also entitled to re-instatement on

principle of consistency and law of good governance as held by the Supreme Court of Pakistan in Judgment cited as 2022 PLC cs 94 and 2021 SCMR 1313. (Copy of Departmental Appeal and Judgment of Supreme Court is attached as Annexure-C&D).

6- That the Departmental Appeal of the appellant was not responded within statutory period of 90 days, appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this Service Appeal inter-alia on the following grounds amongst others.

Grounds:

A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court Judgment reported as 2007 SCMR 834.

B) That the impugned order was retrospective order which was void and the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006, PLC 221 and KPK Service Tribunal Judgment title as Abdul Shakoor VS Govt of KPK. (4)

C) That according to superior court Judgment reported as 2015 SCMR 795 there is no limitation was run against the void order. Moreover, the Supreme Court of Pakistan has laid down vide reported Judgment PLD 2003 SC 724 and 2003 PLC (Civil Servant) 796 that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board this principle is also held in latest Judgment cited as 2021 SCMR 1313 and 2022 PLC Civil Servant 94.

D) That the appellant has highly been discriminating. Other officials, who were also dismissed with the appellant have been reinstated by the respondent No. 1 and Khyber Pakhtunkhwa Service Tribunal whereas appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.

E) That neither charge sheet, statement of allegation show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.

F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.

G) That no chance of personal hearing was provided to the appellant as such the appellant has been condemned unheard throughout.

H) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT
Fayaz Ahmad

THROUGH

UZMA SYED

&

SYED NOMAN ALI BUKHARI

ADVOCATES HIGH COURT

(6)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. _____ of 2022

Fayaz Ahmad Constable No. 282 Police Post Sawarai District Buner

CERTIFICATE

It is certified that no other Service Appeal earlier has been filed between the present parties in this Tribunal, expect the present time.

LIST OF BOOKS

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

APPELLANT
فیاض احمد
Fayaz Ahmad

THROUGH

UZMA SYED
&
SYED NOMAN ALI BUKHARI
ADVOCATES HIGH COURT

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

(7)

Service Appeal No. _____ of 2022

Fayaz Ahmad Constable No. 288 Police Post Sawarai District Buner

.....Appellant

VERSUS

Police Department

..... Respondent

Affidavit

I, Fayaz Ahmad Ex Constable do hereby solemnly affirm and declare on oath that the contents of the accompanied service appeal is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

فیاض احمد

Deponent

A-8

ORDER

This order will disposed of departmental enquiry against Constable Fayaz Ahmad No. 282 brief facts of the case the Constable Fayaz Ahmad No. 282 absented himself from his lawful duty without leave or prior permission vide DD Report No. 26 dated 07/07/2011 Police Post Sawarai and suspended vide this office OB No. 166. dated 07/09/2011.

Proper departmental enquiry conducted by the committee consisting of Mr. Mohammad Jan Khan DSP / Hqr and Inspector Said Zamin Shah with issuing proper Charge sheet / Summary of allegation vide this office No. 380-81/E dated 07-09-2011.

The committee submitted finding report with the conclusion that the defaulter concerned is habitual absentee and his total period of absence are 137 days and recommended him for major punishment i.e dismissal from service. He was issued final show cause notice vide No. 389/E Dated 29-09-2011 and served upon him through local police on his home address and also call upon for 10-10-2011 vide D.D report No. 17 dated 08-10-2011 P.S Nawagai for heard in person in orderly room but he failed

I Danishwar Khan DPO Buner is competent authority agree with the recommendation of the committee / E.O and award him major punishment by dismissing the Constable Fayaz Ahmad No. 282 from service from the date of his absence i-e 07/07/2011 under Police rules 12.21

Order announced

District Police Officer,
Buner.

O.B NO. 190

Dated 13/10/2011.

Copy to:-

1. Pay Officer for necessary action
2. District Account Officer Buner for necessary action.
3. OHC District Buner.

District Police Officer,
Buner.

Appellant

B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 874/2019

Date of Institution ... 20.06.2019

Date of Decision ... 05.01.2022

Aurangzeb Ex-Constable No. 390 District Buner. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand, at Saidu Sharif Swat and one another. ... (Respondents)

Uzma Syed, Advocate ... For Appellant

Noor Zaman Khattak, District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**

ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 30-05-2009, against which the appellant filed departmental appeal followed by service appeal No 1385/2017, which was allowed vide judgment dated 29-01-2019 with direction to the appellate authority for re-deciding the appeal of the appellant within three months on merit and in accordance with law. On receipt of the judgment, the respondents once again regretted his departmental appeal vide order dated 27-05-2019, against which the appellant filed the instant service appeal with prayers that the impugned orders dated 30-05-2009 and 23-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

02. Learned counsel for the appellant has contended that the impugned orders are void, against law and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article 4 and 25-of the Constitution; that codal formalities required for imposition of major penalty of dismissal from service has not been fulfilled, while issuing the impugned orders; that the respondents acted in arbitrary and malafide manner, while issuing impugned dismissal orders dated 30-05-2009 and 27-05-2019; that the impugned order s void in a sense that retrospective effect have been given; that imposing major penalty of dismissal for 25 days absence is a harsh punishment and contrary to the norms of natural justice; that the appellant absented due to life threat to his person and his family due to militancy in the region, hence his absence was not willful, but was due to compelling reasons; that no regular inquiry has been conducted in the matter, which is must before imposition of major penalty of dismissal from service; that the appellant has been condemned unheard as no opportunity of defense was afforded to the appellant.

03. Learned District Attorney for the respondents has contended that it is correct that some of the police personnel including the appellant absented from their duty during the period of militancy but after pak army operation, the absent police personnel joined their duty but the appellant failed to resume his duty well in time; that being member of a disciplined force, the appellant absented himself from lawful duty, thus he was rightly dismissed from service; that vide judgment of this tribunal dated 29-01-2019, departmental appeal of the appellant was examined and the appellant was called in orderly room but the appellant failed to prove his innocence, hence his departmental appeal was rejected being barred by time.

04. We have heard learned counsel for the parties and have perused the record.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05. Placed on record is an earlier judgment of this tribunal in service appeal No 1385/2017 in favor of the appellant, which shows that the appellant was dismissed from service without conducting any inquiry against the appellant, nor any showcause was served upon the appellant and the appellant was condemned unheard. In view of the illegality on part of the respondents, the impugned orders were set aside and the appellant was re-instated in service with direction to the respondents to re-decide appeal of the appellant in accordance with law. In a manner, the period of limitation was condoned in submission of departmental appeal, but the respondents again filed his appeal on the issue of limitation without touching merits of the case, which amounts to negation of the verdict of this tribunal and on this score alone, the impugned orders are liable to be set aside. Besides, the respondents in many other similar cases has already re-instated other police personnel, who had deserted due to militancy and many others were re-instated by this tribunal, hence under the principle of consistency, the appellant also deserve the same treatment.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 30-05-2009 and 23-05-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	19-01-22
Number of Words	1200
Copying Fee	14/-
Urgent	4/-
Total	18/-
Name of Copyist	
Date of Completion of Copy	19-01-22
Date of Delivery of Copy	19-01-22

(1) (12)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7 /2018

1467
28/12/2017

Saeed Ullah, EX- Constable, No. 1655
Distt: Swat.

.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 05.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 05.12.2008 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filedto-day
Registrar
25/12/17

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2/1/18

ORDER
28.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 5/2018 titled "Noor-Ul-Amin Versus The Regional Police Officer, Malakand, Saidu Sharif Swat", the impugned orders are set aside and the appellant is re-instated in service. Since the appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he is not entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellant not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 19/04/22
Number of Words 800
Copying Fee 10/-
Urgent 5/-
Total 10/-
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Date of Completion of Copy 20/4/22
Date of Delivery of Copy 20/4/22

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017

Date of Decision ... 28.01.2022

Khyber Pakhtunkhwa Service Tribunal Peshawar

Noor-Ul-Amin, Ex-Constable No. 75/RR Distt: Swat. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand, Saidu Sharif, Swat and one another ... (Respondents)

Uzma Syed, Advocate ... For Appellant

Noor Zaman Khattak, District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**

ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1. Service Appeal bearing No. 6/2018 titled Nizam Khan
2. Service Appeal bearing No. 7/2018 titled Saeed Ullah
3. Service Appeal bearing No. 8/2018 titled Ubaid Ullah

02. Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 12-10-2009. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide

order dated 29-11-2017, hence the instant service appeal with prayers that the impugned orders dated 12-10-2009 and 29-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law had badly been violated; that the impugned order has been passed in volition of mandatory provision of law, hence such order is void and illegal. Reliance was placed on 2007 SCMR 1129 and 2006 PLC CS 221; that departmental appeal of the appellant was rejected being barred by time, but since the impugned order is void, hence no limitation would run against void order. Reliance was placed on 2015 SCMR 795; that delay if any is condonable if delay already condoned in identical cases. Reliance was placed on PLD 2003 SC 724 and 2003 PLC CS 796; that this tribunal in similar cases has already granted condonation of delay and granted relief, hence the appellant is also entitled to the same under the principle of consistency; that the appellant has been discriminated, as other police officials, who were dismissed with the appellant, have been re-instated, whereas the appellant has been denied the same treatment.

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

departmental appeal after lapse of 8 years, which was rejected being barred by time; that stance of the appellant being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave

ATTESTED

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without pay. The department is at liberty to conduct dé-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19/4/22
Number of Words 1600
Copying Fee 18/-
Urgent
Total 18/-
Name of Co
Date of Co [illegible] of Copy 20/4/22
Date of Delivery of Copy 20/4/22

(18)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 508/2018

Date of Institution ... 11.04.2018

Date of Decision ... 24.01.2022

Muhammad Ayub S/o Sher Ali Khan R/o Navay Kalay Mingora Swat, Ex-Constable No. 1460, PS, Imam Dhery, Swat . ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal, Advocates ... For Appellant

Asif Masood Ali Shah, Deputy District Attorney ... For respondents

MIAN MUHAMMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was rejected vide order dated 18-09-2017. The appellant filed revision petition dated 27-09-2017, which was also rejected vide order dated 03-10-2017 communicated to appellant on 26-03-2018, hence the instant service appeal with prayers that the impugned orders dated 21-02-2009, 18-09-2017 and 03-10-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that absence of the appellant was not willful, but was due to compelling reason of terrorism in the area and which does not constitute gross misconduct entailing major penalty of dismissal; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the appellant has been discriminated as similarly placed employees were re-instated but case of the appellant was not considered.

03. Learned Deputy District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty and did not turn up despite repeated summons; that the appellant while posted at Imam Dheri check post Police Station Kanjo absented himself without permission of the competent authority vide daily diary No 11 dated 17-10-2008; that the appellant was issued charge sheet/statement of allegation and proper inquiry was conducted; that the appellant was summoned repeatedly but he did not turn up, hence he was proceeded ex-parte; that after fulfillment of all codal formalities, the appellant was awarded with major punishment of dismissal from service vide order dated 2-02-2009; that the appellant filed departmental appeal with delay of more than seven year, which was considered but was rejected vide order dated 11-09-2017 being barred by time.

04. We have heard learned counsel for the parties and have perused the record.

05. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such

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personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and threats from Taliban. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

06. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 498/2018

Date of Institution ... 10.04.2018

Date of Decision ... 24.01.2022

Rashid Ahmad S/o Sher Zada, R/o Village Kokarai, Swat, Ex-Constable No. 1834, District Police Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal, Advocate ... For Appellant

Asif Masood Ali Shah, Deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN

ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 571/2018 titled "Aamir Shah Versus District Police Officer, Kohat and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant while serving as constable in police department, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was not responded. Subsequent appeal was submitted to respondent No 2, which was rejected vide order dated 12-03-2018, hence the instant service appeal with

(22)

prayers that the impugned orders dated 21-02-2009 and 12-03-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence but absence of the appellant was not willful but was due to compelling reason of terrorism; that a large number of police personnel had deserted their jobs due to threats of Taliban, who were again re-instated in service vide orders dated 30-11-2010, 15-03-2017 and 09-08-2017, but case of the appellant was not considered positively; that this Tribunal in numerous cases has already granted relief to the similarly placed employees and the appellant is also requesting for the same treatment under the principle of consistency; that absence of the appellant was not willful, which does not constitute gross misconduct and the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the impugned order was issued with retrospective effect, which is void ab initio; that no codal formalities were fulfilled and the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated.

04. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of willful absence from duty, therefore proper departmental proceedings were initiated against him, which culminated into his removal from service under RSO 2000; that the appellant file departmental appeal with a considerable delay, which was rejected being barred by time; that numerous other officials were re-instated into service but every case has its own merits, whereas the appellant was awarded punishment for his own conduct; that final show cause notice was also served at his home address, but the appellant did not turn up, hence he was proceeded in absentia.

05. We have heard learned counsel for the parties and have perused the record.

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06. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and keeping in view humanitarian aspect, re-instated such personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and cause of terrorism. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases under the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Situation at that particular time was so perturb, as how to proceed such large number of cases of desertion, for which publications were made in newspapers, hence the proceedings so conducted in such like cases were not in accordance with law. In the instant case no regular inquiry was conducted, nor any charge sheet/statement of allegation was served upon the appellant and the appellant was condemned unheard and which shows that the appellant was summarily proceeded without adhering to the method prescribed in law.

07. We are also mindful of the question of limitation, but since the impugned order was passed without proper legal process and when an adverse order is passed without fulfilling the legal formalities, such order is void and no limitation runs against void order. Still another reason exists for condonation of delay that the impugned order was issued with retrospective effect being void ab initio.

(24)

ne situation mentioned above and keeping in view the principle e are inclined to partially accept the instant appeal as well as the vice appeal by converting the major penalty of dismissal from minor penalty of stoppage of increments for two years. The g period is treated as leave without pay. Respondents however are at o conduct de-novo inquiry as per mandate of law, if they so desire. Parties left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Annex-C

25

TO THE HONOURABLE INSPECTOR GENERAL OF POLICE

Departmental Appeal through proper channel against the impugned order whereby the appellant was dismissed from service.

Respectfully Sheweth:

1. That the appellant was appointed in 2007 as Police constable and was allotted constable No. 282 and was placed on the strength of district Police Buner.

2. That due to Talibanisation in District Buner and due to Threats to the appellant and his family he left district Buner in Emergency condition because that time the circumstances is beyond the control of the appellant.

3. That vide impugned order dated 13.10.2011 the appellant dismissed from service without issuing any show cause notice and without even informing him. (Dismissal order is attached).

4. That the appellant filed appeal before the Regional Police Officer but the said appeal is not respondent.

5. That the impugned order has passed at the back of the appellant and rule of national justice has been violated while passing the said impugned order.

6. That the impugned order has been passed with retrospective effective and executive authority has no power to pass such order with retrospective so the said order is a void order.

7. That other similar place person have already been reinstated by the competent authority and the Service Tribunal Judgment is attached.

8. That the impugned order is a void order, no mandatory provision were follow before passing the impugned order so the impugned order is illegal, void and against the natural justice.

It is therefore kindly requested that the appellant may be reinstated service with all back benefits.

Dated 20.07.2022.

Appellant,

فیاض احمد

Fayaz Ahmad

2022 P L C (C.S.) 94

[Peshawar High Court (Mingora Bench)]

Before Ishtiaq Ibrahim and Wiqar Ahmad, JJ

JAWAD KHAN and others

Versus

NATIONAL DATABASE AND REGISTRATION AUTHORITY (NADRA) through Chairman at Islamabad and others

Writ Petitions Nos.1043-M, 1044-M and 1045-M of 2018, decided on 1st December, 2020.

(a) National Database and Registration Authority Ordinance (VIII of 2000)---

----Ss.3 & 35---Constitution of Pakistan, Art.3---Exploitation, elimination of---Non-statutory rules---Petitioners participated in process of recruitment for specific posts but authorities appointed them for some other posts lower in grade--- Plea raised by Authority was that petition was not maintainable as its service rules were non-statutory--- Validity--- State authorities, under Art. 3 of the Constitution were to ensure elimination of all forms of exploitation and gradual fulfillment of fundamental principles, from each according to his ability, to each according to his work--- Petitioners were not treated fairly over the years and unfair treatment of petitioners at the hands of employer in public sector domain was not at all acceptable--- National Database and Registration Authority was performing governmental functions, directly under the authority of Federal Government which was evident from S.3 of National Database and Registration Authority Ordinance, 2000--- National Database and Registration Authority was amenable to Constitutional jurisdiction of High Court--- High Court directed the Authority to treat petitioners similar to other officials--- High Court declared that petitioners were appointed to the posts for which they were tested and interviewed with effect from the date of their appointment---Constitutional petition was allowed accordingly.

1995 SCMR 650; 2005 SCMR 100; Umar Baz Khan through L.HRs v. Syed Jehanzeb and others PLD 2013 SC 268; 2016 SCMR 1299; 2016 SCMR 2146; 2014 PLC (C.S.) 987; 2017 CLC 1002; 2017 PLC (C.S.) 1270; 2018 PLC (C.S.) 133; 2018 PLC (C.S.) 292; 2019 PLC (C.S.) 1139; Dr. Shamsher Ali Khan and 27 others v. Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others 2019 MLD 87; Hameed Akhtar Niaz v. The Secretary Establishment Division Government of Pakistan and others 1996 SCMR 1185; Government of Punjab through Secretary Education Lahore and others v. Sameena Parveen and others 2009 SCMR 01; 2017 SCMR 571; Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others 2017 SCMR 1979 and Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another 2019 SCMR 984 ref.

Dr. Shamsher Ali Khan and 27 others v. Government of Khyber akhtunkhwa through Secretary Finance and 2 others 2019 MLD 87; Chairman ADRA Islamabad through Chairman and another v. Muhammad Ali Shah and thers 2017 SCMR 1979; Maj. (Retd.) Syed Muhammad Tanveer Abbas and another . Federation of Pakistan through Secretary, Ministry of Interior and another 2019 CMR 984 and Pakistan Telecommunication Co. LTD Through Chairman v. Iqbal Nasir PLD 2011 SC 132 rel.

b) Constitution of Pakistan---

---Art.199---Constitutional petition---Laches---Principle---Laches has been relevant n grant or refusal of discretionary or equitable reliefs and is considered relevant--- Laches has never been taken as an absolute bar in cases where petitioners were found entitled to a relief which has already been granted by Court of law to similarly placed other petitioner.

Saddaqat Ali Khan through LRs and others v. Collector Land Acquisition and others PLD 2010 SC 878; Umar Baz Khan through L.HRs v. Syed Jehanzeb and others PLD 2013 SC 268; Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 and Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others 2009 SCMR 1 rel.

Muhammad Yar Malezai for Petitioners.

Fawad Ahmad, Legal Officer for NADRA/Respondents.

Date of hearing: 1st December, 2020.

JUDGMENT

WIQAR AHMAD, J.----Through this judgment, we intend to dispose of W.P. No. 1043-M, W.P. No. 1044-M and W.P. No. 1045-M of 2018. Petitioners in all the writ petitions have been having a similar case. National Database and Registration Authority (hereinafter referred to as "NADRA") invited applications for the post of Call Centre/ Customer Service Executive in O-4 scale (NADRA Special Scale) from eligible candidates by getting their proclamation published in daily newspapers on 14.08.2011. Petitioners applied for appointment on the posts. They participated in the process of recruitment. The NADRA authorities conducted their test and interview for the subject posts. In the end, they were not appointed on the post of Call Centre/ Customer Service Executive in O-4 scale but were rather appointed as Data Entry Operators for training purposes vide appointment order dated 10.01.2012. Petitioners have contended in their petitions that they accepted the said offer because it had been coupled with a promise that they would be appointed to the advertised posts on completion of one month on-job training after qualifying the review test and interview which had been promised to be conducted shortly. They further asserted that even after successful completion of training and getting qualifying scores in the review test and interview they could not be appointed to the posts for which they had applied but were appointed on the same posts of Data Entry

Operator on 23.04.2012. One of their colleague who had been similarly placed with (26) petitioners in all these petitions had raised a similar grievance before this Court by filing his Writ Petition No.549-M/2012 which was allowed by this Court through its (28) judgment dated 28.03.2018. Petitioners have stated that after knowing about successful outcome of his similarly placed colleague, they got courage, broke the shackles of their fear and ventured into filing the instant constitutional petitions before this Court.

2. Respondents were summoned who filed their comments, where in Para 2 they have mainly supplied their defence to the instant constitutional petitions couched in similar words in all these cases. Said Para is reproduced from their comments in the case of "Jawad Khan v. Chairman NADRA and others";

> "That the position of Customer Service Executive for newly established call Centre at Swat was advertised in daily newspaper "The Mashriq" on 14th August 2011. The eligibility criterion for the said post was Graduation with one-year experience. The petitioner applied for the post of Customer Service Executive and short listed for test/interview. During interview, the board clearly informed all the candidates who have qualified the test that their initial selection will be Data Entry operator ("DEO") on daily wages basis for a period of one month for on-job training because no candidate was found suitable for the position of Customer Service Executive. Office letter was issued to the petitioner as DEO on daily wages basis vide No. NADRA/HR /APP/35/CC/Swat dated 10th January 2012 (Copy enclosed as Annexure-A) in which all terms and conditions were clearly mentioned regarding further selection as Customer Service Executive. The petitioner accepted the offer letter and joined as DEO on daily wages basis and the same was not objected by him at that time. After completion of one month on-job training as per office letter, all candidates who have been selected as DEO on daily wages basis were reviewed through test/interview. In this regard, review test was held on 20th and 21st February, 2012 at Call Centre Swat. Candidates whose performance were outstanding during the training and also qualified the test/interview were selected as Customer Service Executive in O-4 scale at Call Centre Swat. The petitioner appeared in review test but due to overall poor performance during one month on-job training, the board recommended that Mr. Jawad Khan is not suitable for the post of Customer Service Executive. However, instead of terminating his service, he was posted as DEO on short term basis against requirement of NADRA Registration Office Malakand on 23.04.2012 for period of six months. Which has been executed from time to time based on Organization requirements."

3. Learned counsel appearing on behalf of petitioners started his arguments by submitting that facts of the instant cases depicts worst kind of exploitation of the petitioners and that also at the hands of an authority created and established by the Federal Government through a Statute, with public money. He pressed into service the guarantee against exploitation provided under Articles 3 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as "the

(29)

Constitution"). In order to bolster his submissions, he also relied upon judgments reported as 1995 SCMR 650, 2005 SCMR 100, PLD 2013 Supreme Court 268, 2016 SCMR 1299, 2016 SCMR 2146, 2014 PLC (C.S.) 987, 2017 CLC 1002, 2017 PLC (C.S.) 1270, 2018 PLC (C.S.) 133, 2018 PLC (C.S.) 292, 2019 PLC (C.S.) 1139 and 2019 MLD 87. The learned counsel further added that petitioners in the cases in hand had been similarly placed with petitioner of W.P. No. 549-M of 2012 whose writ petition has been allowed by this Court, and declining the relief to petitioners would amount to discrimination. He also relied upon judgments of Hon'ble Supreme Court of Pakistan in the case of "Hameed Akhtar Niaz v. The Secretary Establishment Division, Government of Pakistan and others" reported as 1996 SCMR 1185 and the case of "Government of Punjab, through Secretary Education Lahore and others v. Sameena Parveen and others" reported as 2009 SCMR 01.

4. Mr. Fawad Ahmad, Legal Officer appearing and arguing the case on behalf of NADRA relied upon judgments of Hon'ble Apex Court reported as 2017 SCMR 571, 2017 SCMR 1979 and 2019 SCMR 984 and stated that since rules of the corporation have not been statutory, therefore the petitioners in all these petitions could not agitate their grievance before this Court which grievances have been arising out of their services in the corporation and the instant writ petitions have not been maintainable. He further added that the writ petitions were hit by the principle of laches as the cause of action had admittedly been accrued to petitioners on 10.01.2012 while they had approached this Court in the year 2018.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. It was a strange way in which petitioners, in all the writ petitions, have been treated by the recruiting authorities in NADRA. They had invited applications for the posts of Call Centre/Customer Service Executive in O-4, petitioners had applied for the said posts, their test and interview has admittedly been conducted for the subject posts. In the end, they have been handed over an order of appointment as Data Entry Operators in a grade and scale much below the posts for which they had applied. It was also understandable that due to the extraordinary high rate of unemployment the petitioners would have felt themselves compelled to accept the offer even if it was much below the post for which they had applied. It is not a hidden truth that a very high proportion of unemployed youth are available in Pakistan, unfortunately, while relatively lesser jobs are available. The ratio become much worse when it comes to employment in public sector corporations. People no doubt prefer jobs in public sector corporations. We are therefore not inclined to accept the plea of NADRA recruiting authorities that petitioners had not been found qualified for the advertised posts, therefore they had been offered lower posts which had been accepted by them and that they had been estopped from agitating the said grievance before this Court. They may have felt themselves compelled because of their circumstances to accept the offer but it is very difficult for us to digest or allow such like treatment to be meted to petitioners. Job seekers in this country may have been numerous but each one of them deserves respect being citizen of the land as well as fair treatment according to law as it had been their fundamental rights

guaranteed under Article 4 of the Constitution. Said article reads;

(38)

A.4 Right of individuals to be dealt with in accordance with law, etc.-(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

It was in such circumstances that this Court has allowed writ petition of a similarly placed petitioner vide its judgment dated 28.03.2018 passed in W.P. No. 549-M/2012 by observing;

"We are not persuaded with the arguments of learned counsel for the respondents, that the performance of petitioner was poor that he could not be appointed to the subject post of Call Data Executive, the conduct of the petitioner also provides sufficient force to this view as he is pursuing his remedy from the year 2012 through the instant writ petition and by now he must have gained sufficient experience required for the subject post. Therefore, we feel that the instant writ petition should be allowed and so respondents are directed to appoint the petitioner to the post of Call Centre Executive as advertised through advertisement in daily newspaper dated 14.08.2011 but from today and not with retrospective effect. There shall be no order as to costs."

Had the petitioners been not found suitable for the job, they may have been refused and the seats may have been re-advertised. It is also very strange to note that among the whole lot of applicants not a single person was found suitable for the job, in this age of unemployment where normally a large number of people apply for jobs whenever advertised. This is common observation that whenever jobs are advertised in public sector corporations, people having more qualification than the one required, and having more expertise than needed for the job comes forth and offer their services. In such a situation this is not believable that the recruiting authorities of NADRA would not have found even a single person capable of appointment to the post of Customer Service Executive for simply running a Call Data Centre in a District. It was not a post of an astronaut nor was running of Call Data Centre a rocket science. The plea of respondents is therefore not found appealable to a reasonable mind. Article 3 of the Constitution mandates the State authorities to ensure elimination of all forms of exploitation and gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work. We do not find the petitioners to have been treated fairly over the years and unfair treatment of the petitioners at the hands of an employer in public sector domain is not at all acceptable. It has been held by this Court in its earlier judgment rendered in the case of "Dr. Shamsher Ali Khan and 27 others v. Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others" reported as 2019 MLD 87 that when actions of a public body were found unfair or unreasonable, same can be corrected by constitutional court on the principle of legitimate expectation and promissory estoppel. It was further highlighted in the judgment that the doctrine of promissory estoppel and legitimate expectation were equitable

doctrine evolved by the judges while adjudicating upon the complaints lodged by aggrieved parties against an unfair and arbitrary action of the government. Relevant part of the observations is reproduced hereunder for ready reference;

> "The argument of the learned counsel for the respondents that writ to the respondent can only be issued, when the government or for that matter the respondent institution has taken an action in disregard of some law, can't be endorsed. It is by now settled law that the actions of the respondent while dealing with the people, if are unfair or unreasonable, can be corrected by the Constitutional Court on the principles of legitimate expectations and promissory estoppel. The doctrine of promissory estoppel and legitimate expectation are equitable doctrine evolved by the Judges while adjudicating upon the complaint lodged by the aggrieved party against an unfair and arbitrary action of the government. It falls in sphere of neither contract nor statutory estoppel. It can be said that if the government promises to any person and the promise is not inconsistent with the law of the land and not against the public interest, then afterwards the government cannot refuse to abide by its promise and in case the government acts inconsistent with its promise, then the said action of the government is subject to the judicial review by the constitutional Court."

7. The objection of representative of respondents regarding the instant writ petitions being barred by principle of laches, cannot be taken to the effect to deprive the petitioners from a right to which they had otherwise been entitled. Petitioners were found to have been similarly placed with petitioner in W.P. No. 549-M/2012, which have already been allowed by this Court and we were also informed that said judgment had already been implemented by respondents. When a similarly placed employee would be working as Customer Service Executive while petitioners are allowed to continue their job as Data Entry Operators, they would no doubt get discriminated and deprived from treatment according to law. Learned counsel for respondents has additionally been relying on one of the conditions given in the appointment order wherein it has been stated that the terms of offer have been strictly confidential and upon acceptance same would form the basis of contract with NADRA. His assertion in this respect is also considerable that the terms of appointment being dictated to be confidential, may have resulted in certain apprehensions in the mind of petitioners that taking the matter to a Court of law might cause them more harm than benefit.

8. Laches has been relevant in grant or refusal of discretionary or equitable reliefs and is considered relevant, but it has never been taken as an absolute bar, in cases where petitioners were found entitled to a relief which has already been granted by Courts of law to similarly placed other petitioner. A six member Bench of Hon'ble Supreme Court of Pakistan has held in the case of Saddaqat Ali Khan through LRs and others v. Collector Land Acquisition and others reported as PLD 2010 Supreme Court 878, in this respect ;

> "And what is further deducible from the long line of judgments, some of

which have been quoted above, is that once a judicial determination, be it of a point of fact or of a point of law, has been made and if such a determination covers not only the ones litigating before the Courts but some others also, then the dictates of justice would command that the benefits accruing from such a determination should not be restricted only to the litigating parties but should be extended even to those who had not indulged in litigation unless there were some extra-ordinary un-exceptionable reasons to the contrary and that all powers, including the powers inherent in the Courts be invoked for the purpose. This would not only ensure justice for all but would also have the effect of eliminating un-necessary litigation. And respectfully following these judgments, we endorse the views expressed therein."

Further reliance in this respect may be placed on judgment in the case of Umar Baz Khan through L.HRs v. Syed Jehanzeb and others reported as PLD 2015 Supreme Court 268. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others reported as 1996 SCMR 1185, Hon'ble Supreme Court of Pakistan had held that "if the Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms and conditions of service of a civil servant, which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demanded that the benefit of such judgment is extended to other civil servants." The dictates of just administration of a public sector corporation would also require that similar treatment is extended to petitioners of the instant petitions and they are given same benefit. Further reliance in this respect may be placed on judgment of Hon'ble Supreme Court of Pakistan in the case of Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others reported as 2009 SCMR 1. The bar of laches, in such circumstance, may conveniently be ignored by a constitutional Court.

9. The other objection of respondents regarding the fact that the instant constitutional petitions have not been maintainable due to the reason that service rules of the petitioners have not yet been clothed with the attire of statutory rules. It is sufficient to say that grievances of the petitioners have been arising from unfair treatment meted to them at the time of their appointments. Their grievance has not arisen when the rules of NADRA authorities had become applicable to them. In other words, they have not been agitating any of the grievance of violation of un-statutory rules of NADRA. Appointments were made by NADRA authorities under the powers vested in it by section 35 of the National Database and Registration Authority Ordinance, 2000 (hereinafter referred to as "the Ordinance"). NADRA has been established under section 3 of the Ordinance. Subsections (1), (2) and (3) of section 3 are relevant in this respect, which are reproduced hereunder for ready reference;

(1) As soon as may be, but not later than thirty days after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an Authority to be known as the National Database

and Registration Authority for carrying out the purposes of this Ordinance. (38)

(2) The Authority shall be a body corporate, with power to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by that name sue and be sued.

(3) The Authority shall consist of a Chairman, also to be called the Registrar General of Pakistan, and [not less than] five members to be appointed by the Federal Government.

The purpose, objects, functions and powers of the authority have been given in detailed in section 5 of the Ordinance which leaves no doubt that it had been performing governmental functions. Reproduction of subsections (1), (2) and (3) of section 5 would also be beneficial for the present discourse, which are accordingly reproduced hereunder;

(1) The purpose and objects of the Authority shall be to formulate and implement policies and plans for;

(a) the development and establishment of an improved and modernized system of registration in the country through appropriate means including technologically advanced, effective and efficient means like computerization, automation, creation of databases, data warehousing, networking, interfacing of databases and related facilities and services;

(b) the broadening of the registration base to bring within its purview all persons and things, wherever and whatever they may be, to the extent and in the manner laid down in this Ordinance; and

(c) the establishment and maintenance of multi-purpose databases, data warehousing, networking, interfacing of databases and related facilities and services.

(2) The purposes of developing, establishing or maintaining a registration or database system may include facilitation of identification, planning, or any other purpose permitted by law.

(3) The Authority may take such measures and exercise such powers and perform such functions as it considers necessary for carrying out the purposes of this Ordinance.

The aboye reproduced section clearly shows that NADRA has been performing governmental functions, directly under the authority of the Federal Government which is also evident from section 3 of the Ordinance and thus there has been no doubt that NADRA has been amenable to the constitutional jurisdiction of this Court. The question that writ petition of an employee in respect of violation of non-statutory rules of NADRA, is not maintainable is a different question altogether. If grievance of an employee arose out of any adverse order passed against him during his service, under the un-statutory rules, a writ petition before a High Court would no doubt be non-maintainable according to ratios of judgments in

ne case of "Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others" reported as 2017 SCMR 1979 as well as in the case of "Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another" reported as 2019 SCMR 984, but as stated earlier grievances of the petitioners have not been arising out of violation of the un-statutory rules but their very appointments in NADRA. Any assailed action of NADRA authorities at the time of appointments would no doubt be amenable to constitutional jurisdiction of this Court, for the reason that NADRA has itself been amenable to constitutional jurisdiction of this Court. In the case of "Pakistan Telecommunication Co. Ltd. Through Chairman v. Iqbal Nasir" reported as "PLD 2011 Supreme Court 132", Hon'ble Supreme Court of Pakistan has expressly held that PTCL had been amenable to writ jurisdiction of the High Court but writ petition of an employee arising out of violation of non-statutory rules would not be maintainable. The distinction between the two questions is necessary for the purpose of instant adjudication. Since grievances of the petitioners in the instant constitutional petitions have not been arising out of violation of any service rules of NADRA, but has been arising out of their first appointment in NADRA, facts of these cases would therefore be distinguishable from facts of cases of the private parties in the judgments reported as 2017 SCMR 1979 and 2019 SCMR 984.

10. In light of what has been discussed above, we allow the instant writ petitions and direct the respondents to treat petitioners of these connected matters similar to petitioner of W.P. No. 549-M of 2012. All the petitioners shall be appointed to the posts Call Centre/Customer Service Executive with effect from the date from which said petitioner has been ordered to be given the post of Customer Service Executive. They shall squarely be placed equal to him in all respects and shall not be discriminated in any manner.

Petition

MH/70/P
allowed.

بعدالت

KP Service Tribunal, Peshawar

مورخہ سنہ 2ء منجانب

مقدمہ فیاض محمد بنام

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے عظمیٰ سید ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہوتو وکیل صاحب پابند ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 30 ماہ 11 سنہ 2022ء

العبد گواہ العبد