


06.09.2022

Appellant present through counsel.

Naseer Ud Din Shah, learned Assistant Advocate General alongwith Waseem Abbas Focal Person for the respondents present.

Reply on behalf of respondents was not submitted. Representative of respondents requested for time to submit reply; granted but on payment of cost of Rs.5000/- which was paid to the learned counsel for appellant on behalf of respondents, receipt of which is placed on file. To come up for reply as well as arguments on 23.11.2022 before D.B.



(Fareeha Paul)
Member(E)



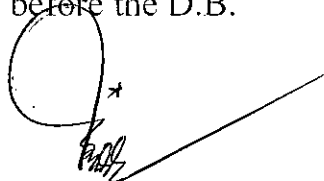
(Rozina Rehman)
Member(J)

23.11.2022

Learned counsel for the appellant present. Mr. Waseem Abbas, Focal Person alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Para-wise comments on behalf of respondents submitted, copy of which handed over to learned counsel for the appellant, who requested for adjournment on the ground that he has not gone through the para-wise comments submitted by the respondents today. Adjourned. To come up for rejoinder, if any, as well as arguments on 12.01.2023 before the D.B.

SCANNED
K.P.S.T
Peshawar

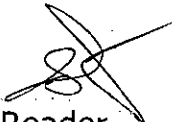


(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

23.11.2021 Proper D.B is not available, therefore, case is adjourned to 2/3/2022 for the same as before.



Reader

2-3-22

*Due to Retirement of the Honble Chairman
The case is adjourned to come up for the
Same as before on 17-6-22
of Justice
Reader*

17.06.2022

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present and sought time for submission of reply/comments. Respondents have been given several opportunities for submission of reply/comments, therefore, last chance given. In case the last chance as given is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 5000/- to the appellant. Adjourned. To come up for submission of reply/comments as well as arguments on 06.09.2022 before the D.B.

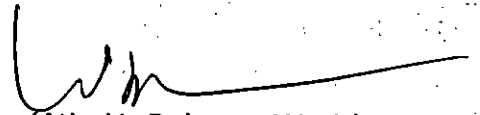

(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

29.03.2021

Appellant with counsel present. Mr. Kabirullah Khattak learned Addl. AG alongwith Wasim Abbass for respondents present.

Reply/comments on behalf of respondents not submitted. Representative of respondents requested for time to submit reply/comments. To come up for reply/comments on 02.07.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member (E)

02.07.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Wasim Abbas, Litigation Assistant for the respondents present.

Respondents have not submitted reply/comments. They are required to submit reply/comments within 10 days in office, positively. In case the respondents have not submitted reply/comments within stipulated time, office shall put up the appeal with a report of non-compliance. To come up for arguments on 23.11.2021 before the D.B.

Stipulated period has passed and reply has not been submitted.


Chairman

P.S

14.07.2021

Learned Addl. A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.


Chairman



03.11.2020

Nemo for appellant.

Since the Members of the High Court as well as of the District Bar Association, Peshawar, are observing strike today, therefore, learned counsel for appellant is not available today. Adjourned to 07.01.2021 on which date to come up for preliminary hearing before S.B.

(Muhammad Jamal Khan)
Member (Judicial)

07.01.2021

Syed Ghuffran Ullah Shah, Advocate, for appellant is present.

The sum total of what has been agitated at the bar by the learned counsel representing appellant is that, being allowed the requisite relief by the Services Tribunal that there is no lower time scale for the Junior Clerk who was to be demoted consequent upon awarding of penalty there was no post below the Junior Clerk for one time scale to which he could be reduced to that lower stage, he was not granted seniority nor the seniority was revisited, nor his promotion order dated 31.05.2008 was restored till issuance of seniority list dated 09.04.2014. Appeal for the purpose was filed in the Service Tribunal but during the pendency appellant was promoted to the post of Senior Clerk on 13.07.2015 which was withdrawn. Service Appeal No. 750/2016 was filed before this Tribunal challenging the prospective effect of promotion order dated 13.07.2015 but due to defect in prayer in appeal it was withdrawn on 22.10.2019. Departmental representation was filed impugning therein order dated 22.10.2019 but in vain hence, the present service appeal.

The point so agitated at the bar needs consideration. The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 29.03.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

Appellant Deposited
Security and Process Fee

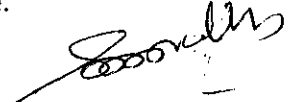


21/1/21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6334 /2020

| 1S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 29/06/2020 | <p>The appeal of MR. Fazal Khliq resubmitted today by Syed Ghufuran Ullah Shah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | | <p>This case is entrusted to S. bench for preliminary hearing to be put up there on <u>07/08/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> |
| 07.08.2020 | | <p>No one for the appellant has forth come at the moment i.e 10:35 A.M. Reportedly learned counsel for the appellant namely Syed Ghufuran Ullah Shah has proceeded to Chitral and is not available today. Adjourned to 03.11.2020. To come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER</p> |

The appeal of Mr. Fazal Khalig Senior Clerk DPO Office Chitral received today i.e. on 28.02.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1 Memorandum of appeal may be got signed by the appellant.
- 2 Affidavit may be got attested by the Oath Commissioner.
- 3 Annexures of the appeal may be attested.
- 4 Annexures of the appeal may be flagged.
- 5 Page no 20 of the appeal is missing.
- 6 Copies of Service appeal bearing no. 1102/2014 and order passed by this Tribunal on that appeal mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 7 Copy of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 8 Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

Annex I: 7

No. 501 /S.T.

Dr. 09-03 /2020

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Ghufuranullah Shah Adv. Pesh.

Report of Sr. Registrar for re-extension due to absence of some necessary documents and correction in the said case

Abstract
Syed Ghufuran Shah

(10) days further extended.

R/S,

Resubmitted for extension of time please 13/3/2020

(10) days further extended.

21/4/2020

Note :

Respected Sir, due to CoVID pandemic and lock down across across the country, all the correspondences has been stopped. The instant case requires some important documents but due to lock down, it is not possible to secured it. It is requested to extend in the interest of justice.

Chy
Conc

15 days further extended.

4/5/2020

R/S,

Resubmitted for extension of time please

15 days further extended.

R/S

Resubmitted for extension of time
18/5/2020

10 days further extended.

8/6/2020

R/s,

Resubmitted extension of time please

17/06/20

Jin

10 days were ~~ended~~ used last time

R/s,

Resubmitted extension of time

Jin
17/6/2022

All objection removed fix before the court please

Jin

R/s.

Respectfully Submitted that I, withdrawn
S.A being No 750/16 on 22.10.2019
with the prior permission of Honorable S.T
for refiling fresh Appeal with fresh grounds.

Impugned order as "B"

Departmental Appeal/Application for
specification revision as "C"

Rejection of Departmental appeal as "D"

Fresh Departmental appeal annexed "1"
kindly Submitted for putting
before the Honorable bench. Thers

J
23/6/20

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

Service Appeal No: 6334 /2020

Fazal Khaliq

VERSUS


Inspector General Police & others

I N D E X

| S.No. | Description of Documents | Annexure | Pages |
|-------|--|----------|--------|
| 1. | Memo of Appeal | | 1- 8 |
| 2. | Copy of Appointment letter dated <u>05-11-1989</u> | A | 9- 10 |
| 3. | Copy of Impugned order dated <u>08-10-2005</u> | B | 11- 12 |
| 4. | Copy of Departmental Appeal dated <u>28-10-2005</u> | C | 13- 14 |
| 5. | Copy of Rejection Order dated <u>16-04-2007</u> | D | 15- 16 |
| 6. | Copy of Promotion order dated <u>31-05-2008</u> | E | 17- 19 |
| 7. | Copy of order dated <u>25-02-2009</u> | F | 20- 23 |
| 8. | Copy of the amended order dated <u>25-07-2009</u> | G | 24 |
| 9. | Copy of the Service Appeal | H | 25- 31 |
| 10. | Copy of the Order and Judgment dated <u>22-10-2019</u> | I | 32- 38 |
| 11. | Wakalat Nama | | 39 |


Appellant/Petitioner

Through


Syed Ghufuran Ullah Shah
Advocate High Court
Office, 22-A Nasir Mansion
Railway Road, Peshawar
Cell No.0334-918580

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 6334 /2020

Fazal Khaliq
Senior Clerk DPO-Office Chitral
R/O Kuju, P/O Chitral
Tehsil Chitral, District Chitral.

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1423

Dated 28/2/2020

Appellant

V E R S U S

1. Inspector General Of Police
Khyber PukhtunKhuwa at Civil Secretariat Peshawar.
2. Additional Inspector General Of Police
Khyber PukhtunKhuwa at Civil Secretariat Peshawar
Peshawar.
3. District Police Officer (DPO) Chitral.

.....Respondents

Appeal U/S 4 of KPK, Service Tribunal Act 1974 IN
LIGHT OF THE ORDER OF KPK SERVICE TRIBUNAL
DATED 22-10-2019; AGAINST THE INITIAL
IMPUGNED VOID ORDER DATED 08-10-2005
"AWARD HIM MAJOR PUNISHMENT OF REDUCTION
TO TIME SCALE JUNIOR CLERK BPS-05"
FOLLOWED BY IMPUGNED ORDER DATED 04-06-
2008 FOR WITHDRAWAL OF HIS PROMOTION
ORDER DATED 31-05-2008, AMENDED IMPUGNED

Wednesday

Registrar

28/2/2020

ORDER DATED 25-07-2009 AS MIS
INTERPRETATION OF THE ORDER OF KPK
SERVICE TRIBUNAL DATED 25-02-2009 AND
FINALLY THE IMPUGNED PROMOTION ORDER
FROM JUNIOR CLERK (BPS-05) TO SENIOR
CLERK(BPS-07) DATED 13-07-2015 ; WHEREBY
HIS SENIORITY AND SERVICE BENEFITS FROM HIS
EARLIER DAY OF PROMOTION I.E. 31-05-2008 ;
HAS BEEN DENIED .

RESPECTFULLY SHEWETH:

That brief facts and grounds giving rise to the instant Service Appeal are as under;

1. That initially the appellant was appointed as junior Clerk (BPS-05) on 05-11-1989 and was posted at the office of District Police Officer, Chitral.

(Copy of the appointment letter dated 05-11-1989 is annexure "A")

2. That in the year, 2005 a baseless complaint was made against him consequently, he was prosecuted through case FIR No.42 dated 02-02-2005 U/S 419/420/204/217 PPC at PS-Chitral and was awarded major punishment of reduction to time scale Junior clerk BPS-05 vide impugned order dated 08-10-2005, the appellant filed departmental appeal on 28-10-2005, which remained under de novo Enquiry and finally rejected on 16-04-2007.

(Copy of impugned Order dated 08-10-2005, Departmental appeal dated 28-10-2005 and rejection Order dated 16-04-2007 are annexed as annexure "B", "C" and "D" respectively)

3. That on 24-04-2007 the appellant was acquitted from the competent Criminal Court, the appellant submitted Departmental Appeal etc before the competent authority, and consequently the same was impugned before the KP Service Tribunal vide Service Appeal No. 939/2008.

4. That in the meanwhile, the appellant was promoted to the post of Senior Clerk on 31-05-2008 and was withdrawn on 06-04-2008 due to the subject mentioned case / Enquiry.

(Copy of the promotion Order dated 31-05-2008, as annexure "E")

5. That on 25-02-2009 the learned KP Service Tribunal disposed the appeal, and it was held that "there is nothing on record to show that there was any lower time scale for the Junior clerk and there was not only one time scale. He could be reduced to a lower stage in the same time scale, the respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

(Copy of the Order dated 25-02-2009 is annexed as "F")

6. That vide impugned amended order dated 25-07-2009 the same has been so called corrected but despite several representation neither Seniority of the appellant was revised nor his promotion order dated 31-05-2008 was restored, till issuance of Seniority List dated 09-04-2014. Furthermore the same is silent about the time specification.

(Copy of the amended Order dated 25-07-2009 is annexure "G")

7. That the appellant filed Service Appeal No. 1102/2014 before the KP Service Tribunal for his promotion etc but during the pendency of the same the appellant was promoted to senior clerk (BPS-15) on 13-07-2015 and the same was withdrawn to avail the remedy in post promotion scenario.

(Copy of the Service Appeal No 1102/2014 is annexed as "H")

8. That consequently Service Appeal No.750/2016 was filed before the KP Service Tribunal challenging the prospective effect of the promotion order dated 13-07-2015 but due to defect in pray of appeal the same has been withdrawn on 22-10-2019, hence the instant representation.

(Copy of the Order & Judgment dated 22-10-2019 is annexure "I")

9. That the appellant filed departmental representation in light of order dated 22-10-2019 before the appellate authority on 30-10-2019 but in vain; hence the instant appeal amongst the following other grounds:-

GROUND:

- A. That the appellant has not been treated in accordance with law, Rules and his rights guaranteed under the law therefore, this conduct of the respondents tantamount to naked violation of the provisions of the Civil Servants laws.
- B. That it is already decided by this honorable Tribunal and it was held that *"there is nothing on record to show that there was any lower time scale for the Junior clerk and there was not only one time scale. He could be reduced to a lower stage in the same time scale, the respondents, therefore, have to correct the impugned order to this extent from the date of its issue."* Therefore to hold an

illegal and void punishment is not sustainable in the eyes of justice.

- C. That not updating the seniority list of the Senior Clerks and allowing the back benefits to the appellant is against the principles governing the civil servants because most of the junior clerks are enjoying the higher position in the seniority list, therefore, this discriminatory conduct of the respondents should be discouraged.
- D. That even otherwise the punishment order dated 25-07-2009 was also illegal as no period for which it was to be effected was mentioned therefore, on this score ground it clearly shows the malafide on the part of the respondents.
- E. That the appellant has been acquitted on 24-04-2007 and since then he has made several representations before the respondents but not even a single representation has been decided by the respondents to give the reason as to why the appellants has been deprived of his rights guaranteed under the law.
- F. That the conduct of the respondents is a clear violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 which provides equal treatment of every citizen in accordance with law.
- G. That on one hand the respondents promoted the appellant to senior clerk BPS-14 vide notification dated 13-07-2015 therefore admitting his rights to seniority, but

at the same time not allowing his consequential back benefits and updating/revising the seniority list for the same purpose amounts to grave miscarriage of the settled principles of justice.

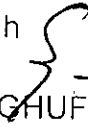
- H.* That the notification dated 13-07-2015 promoting the appellant along with the other Clerks is illegal to the extent that the period of the promotion of the appellant should have been counted from 31-05-2008 but instead it was given effect from 2015 which is against the law, facts and material on record.
- I.* That the appellant has an excellent service record throughout and there is nothing irregular against him on the record which could be used as a pretext or reason for not updating his seniority list as per the rules and depriving him of his back benefits. This conduct of the respondents severally effect the service of record of the appellants.
- J.* That the acts and omission of respondent is against the KPK Civil Servant (Appointment, Promotion and Transfer rules 1989 as well as against the relevant provision of KPK Civil Service act 1973.
- K.* That the instant appeal relates to terms and conditions of civil servant and this honorable tribunal has been vested with statutory power to entertain the matter.

L. That any other grounds will be furnished at the time of final arguments with the prior permission of this honorable tribunal

Therefore, it is, most humbly prayed that the instant service appeal may kindly be accepted as prayed for.


Appellant

Through


SYED CHUFRAN-ULLAH SHAH
(Advocate High Court Peshawar)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No: _____/2020

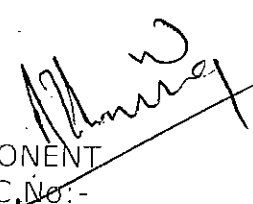
Fazal Khaliq

V E R S U S

Inspector General Police & Others

AFFIDAVIT

*I, Fazal Khaliq Senior Clerk DPO-Office Chitral R/O
Kuju, P/O Chitral Tehsil Chitral, District Chitral do hereby
solemnly affirm and declare on oath that the contents of this
accompanying **Service Appeal** are true and correct to the best of
my knowledge and belief and nothing has been concealed from
this Honourable Court.*


DEPONENT
CNIC No:-
Cell No:-

FOR THE GENERAL TO THE H. H. PESHAWAR DISTRICT OFFICE-II
ISSUED BY THE HON. DEPT. SECRETARY OF POLICE, PESHAWAR

NOTIFICATION
PESHAWAR THE 5/11 1989

NO. 18723 /B-III CANCELLATION:- This office Gazette Notification No. 18250, dated 25.10.88, in which it relates to the posting of Mr. Asad Khan s/o Haji Amanullah Khan s/o House No. 2351-A, Mohallah Sarbanon, Road I/S Lakori Gate Peshawar City on 22/10/88 as District Officer District Peshawar is hereby cancelled.

NO. 18724 /B-III POSTING:- On appointment as Jr. Clerk Mr. Asad Khan s/o Amanullah Khan s/o House No. 2351-A Mohallah Sarbanon, Road I/S Lakori Gate Peshawar City is posted to the Office of Inspector of Police Dir.

NO. 18725 /B-III APPOINTMENT/POSTING:- Mr. Fazal Khaliq son of Amanullah Khan village Kugu Tehsil and Distt; Chitral is appointed as Jr. Clerk (B-III) purely on temporary basis in the PWP Police with effect from the date he actually reports. For duty to him on the date of posting subject to medical fitness and verification of character and antecedents etc.

On appointment he is posted to the office of Inspector of Police.

The conditions of his services are as under:-

- i) His services are liable to be terminated within 30 days notice without assigning any reason.
- ii) He will not be deemed as Jr. Clerk nor be considered for promotion as Officer/Clerk until he has passed type test/departamental training etc; during the period of his service as Jr. Clerk failing which his services will be dispensed with.

BY: INSPECTOR GENERAL OF POLICE,
PESHAWAR.

NO. 18726(3) /B-III Peshawar the 5/11 1989.
Copy forwarded for information and n/action to the

- 1. By: Inspector General of Police, Lakand Hange Saidu Sharif Swat.
- 2. Supdt. of Police, Dir.
- 3. Supdt. of Police, Chitral.
- 4. Supdt. of Police, Peshawar. (5) Asstt. Secret CPO Peshawar
- 5. Mr. Asad Khan s/o Amanullah Khan s/o House No. 2351-A Mohallah Sarbanon, Road I/S Lakori Gate Peshawar City.
- 6. Mr. Fazal Khaliq s/o Amanullah Khan village Kugu Tehsil Distt; Chitral.

Handwritten notes:
Fazal Khaliq
2
4/11

Handwritten signature:
Asad Khan

COPY

Handwritten initials:
HJ

A.O.

FOR PUBLICATION IN THE NWFP POLICE GAZETTE PART-II
ORDERS BY THE DY: INSPECTOR GENERAL OF POLICE HQRS NWFP PESHAWAR:

NOTIFICATION

DATED PESHAWAR THE 5/11/1989

No.18723/E-III CANCELLATION:- This office Gazette Notification No.18230/E-III dated 25.10.89 so far it relates to the posting of Mr. Ajmal Khan s/o Haji Amanullah Khan r/o House No.2351-A Mohallah Sarbanan, Sabz Pir Road, I/S Lahori Gate Peshawar City on appointment as Jr: Clerk to Chitral District issued over Endst:No.18231-37/E-III of even date in hereby cancelled:-

No.18724/E-III POSTING:- On appointment on Jr: Clerk Mr. Ajmal Khan s/o Amanullah Khan r/o House No.2351-A Mohallah Sarbanan, Sabz Pir Road, I/S Lahori Gate Peshawar City is posted to the Office of Supdt: of Police Dir.

No.18725/E-III APPOINTMENT/ POSTING:- Mr. Fazal Khaliq son of Amirdullah Khan village Kuju Tehsil and Distt; Chitral is appointed as Jr: Clerk (BPS-5) purely on temporary basis in the NWFP Police with effect from the date he actually reports for duty to his place of posting subject to medical fitness and verification of character and antecedents etc.

On appointment he is posted to the office of SP Chitral.

The condition of his services are as under:-

- i) His services are liable to be terminated within 14 days notice without assigning any reason.
- ii) He will neither be confirmed as Jr: Clerk nor considered for promotion as Offg: Sr: Clerk until and unless he passes type test/ departmental training etc; during the period of his service as Jr: Clerk failing which the services will be dispensed with.

Sd/-

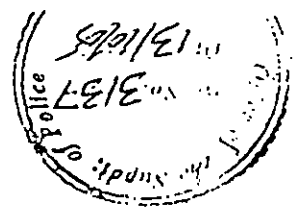
DY: INSPECTOR GENERAL OF POLICE,
 HQRS: NWFP PESHAWAR

No.18726-31/E-III Dated Peshawar the 5/11/1989

Copy forwarded for information and n/action to the:-

1. Dy: Inspector General of Police, Malakand Range Saidu Sharif Swat.
2. Supdt: of Police Dir.
3. Supdt: of Police Chitral.
4. Supdt: Estt: CPO Peshawar. (5) ASstt: Secret CPO Peshawar.
6. Mr. Ajmal Khan s/o Amanullah Khan r/o House No.2351-A Mohallah Sarbanan, Sabz Pir Road, I/S Lahori Gate Peshawar City.
7. Mr. Fazal Khaliq s/o Amirdullah village Kuju Teh: & Distt: Chitral.

TRUE COPY



Handwritten notes:
F.C. Form No. 51c a report
for Mr. M. M. M. M. M.

1. Deputy Inspector General of Police, Matkand Station-III, Swat.
2. Distt: Police Officer (M.T. & T.).
3. Assistant Secret (P.O. Peshawar).

Copy of above is forwarded for information and necessary action to the :-

NO: 17731-33 / M-II dated Peshawar the 08/10/2005.

FOR RECOGNITION POLICE OFFICERS
REGISTERED WITH
(KARACHI AND ALI KHAN)

Handwritten signature:
D. C. Fargal

On going through the finding and recommendations of the Magistry Officer and having the material of the record and other connected papers as well as explanation of the official, I Khushid also Khan Adil/IPS before competent authority to exercise of power vested in me under Section 100A (Special Powers) Ordinance 2002, hereby award him the major punishment of suspension to a time suitable in my discretion for immediate effect.

Satisfactory reply on account of his illegal act. He was issued charge sheet and statement of alleged conduct under Section-5 of the Ordinance was constituted to conduct enquiry into the matter. The enquiry committee findings and submitted finding wherein the enquiry Officer has his responsibility for removing the medico legal report from case. The Magistry Officer recommended him for major punishment. Enquiry report alongwith relevant records received and perused. Final charge sheet was issued to the detainee official. He was also heard in person by the undersigned but he could not give satisfactory reply on account of his illegal act.

This is an order on the Departmental Enquiry against Mr. J. K. Fazal Khaliq of P.O. Chitral involved in case PPS No: 42 of 419/420/204/217 P.O. Chitral for removing Medico Legal report from case FIR No: 715 dated 22/8/2004 U/S 324/337(1)(I) through PIA for argument of the bail petition of accused who was relative of the accused official.

Vertical handwritten note:
Copy to D.C. Fargal
through D.S. P. M. M. M. M.

Annex "B"

12

ORDER

This is an order on the Departmental Enquiry against Jr. Clerk Fazal Khaliq of DPO/Chitral involved in case FIR No:42 U/S 419/420/204/217 PPC PS Chitral for removing Medico legal report of victim from Case FIR No:315 dated 22/8/2004 U/S 324/337(1)(TV)/147 PPC PS Chitral from the Judicial file which he had received from the office of PI for onward dispatch to Peshawar High Court through PIA for argument on the bail petition for accused who was relative of the accused official.

He was issued charge Sheet and Statement of allegations under NWFP removal from service (Special Powers) Ord:2000, a Committee under Section-5 of the Ordinance was constituted to conduct enquiry into the matter. The enquiry Committee finalize the enquiry and submitted finding wherein the enquiry Officer has hold him responsible for removing the medico legal report from case file. The Enquiry Officer recommended him for major punishment. Enquiry report alongwith relevant record received and perused. Final Show Cause Notice was issued to the defaulter official. He was also heard in person by the undersigned but he could not give any satisfactory reply on account of his illegal act.

On going through the finding and recommendations of the Enquiry Officer and having been considered the material placed on record and other connected papers as well as explanation of the Official. I Khurshid Alam Khan Addl: IGP/HQRS being competent authority in exercise of powers vested in me under Removal from Service (Special Powers) Ordinance 2000, hereby award him the major punishment of reduction to a time scale Jr: Clerk BPS-5 with immediate effect.

Sd/-

(KHURSHID ALAM KHAN)
ADDL: IGP/HQRS
FOR PROVINCIAL POLICE OFFICER
NWFP PESHAWAR

NO: 17731-33/E-III Dated Peshawar the 08/10/2005

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police Malakand Region-III Swat.
2. Distt: Police Officer, Chitral.
3. Assistant Secret CPO Peshawar.

TRUE COPY

M

Annex-C

13

The Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.

Through; Proper Channel

Subject: APPLICATION FOR SPECIFICATION / DETERMINATION OF PUNISHMENT AWARDED TO APPLICANT VIDE ORDER DATED 8-10-2005 REDUCING THE APPLICANT TO LOWER STAGE IN HIS EXISTING PAY-SCALE

- 1- That the Applicant is presently serving as Junior Clerk in the office of District Police Officer, District Chitral.
- 2- That the Applicant was awarded major punishment by the Additional Inspector General of Police (Headquarters) by reducing him to time scale Junior clerk (BPS-5) vide Order dated 8-10-2005.
- 3- That the Applicant filed a service appeal against the aforesaid order dated 8-10-2005 before the Khyber Pakhtunkhwa Service Tribunal. However, the same was dismissed with the observation that " There is nothing on record to show that there was any lower time scale for the junior clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale. The Respondents, therefore, have to correct the impugned order to this extent from the date of its issue."
- 4- That the Applicant preferred Civil petition No. 180-P of 2009 in the august Supreme Court of Pakistan from the afore-said judgment of the Honorable Tribunal. However, the same was dismissed by the august Supreme Court of Pakistan vide order dated 8-4-2010.
- 5- That the Additional Inspector General of Police (Headquarters) vide order dated 25-7-2009, amended the order dated 8-10-2005 and the Applicant was reduced to the lower stage of his existing pay scale from the date of issuance of the Order dated 8-5-2005.
- 6- That however, the order dated 25-7-2009 is silent about the time period of reduction to lower stage of the Applicant.
- 7- That furthermore, the same Order is also lacking in clarifying the status of seniority of the Applicant.

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It is therefore, humbly requested that on acceptance of this application the Applicant may be graciously allowed the following remedies;

- I- The period of time of reduction to lower stage as awarded vide Order dated 25-7-2009 may be determined and declared.
- II- The seniority of the Applicant may be counted from the date of order dated 31-5-2008.

Thanking You.

Yours faithfully,

TRUE COPY
MK


(Fazal Khaliq)

Junior Clerk, D.P.O. Office,
Chitral.

15

Annex D

87-16/

ORDER

This order will dispose of departmental appeal filed by junior clerk Fazal Khaliq office of the DPO/Citral. He while posted in the office of DPO/Citral, had allegedly removed medico legal report from the record i.e. case file of case FIR No. 315 dated: 22.08.2004 U/S 324/337(D) (IV) 147 PPC PS Citral which he had received from the office of Inspector Legal for onward submission to Peshawar High Court through PIA in connection with bail petition of the accused. A criminal case vide FIR No. 42 dated: 04.09.2004 U/S 419/420/204/217/34 PPC PS Citral was also registered against him.

He was charge sheeted for the above allegations and an enquiry committee was constituted to conduct proper departmental enquiry. The inquiry officer on the conclusion of inquiry held the accused official guilty of the misconduct / charges and recommended him for major punishment of reduction to time scale junior clerk.

On the basis of above finding he was awarded major punishment of reduction to time scale junior clerk. He preferred the present representation and requested to set aside the punishment.

Relevant record was perused. Beside the representationist was also summoned and heard in person in the orderly room held on 07.04.2007.

Perusal of record reveals that the charges levelled against the accused officials are proved beyond any doubt. Therefore, I found no grounds to interfere in the decision made by the competent authority, which is up held. His appeal is rejected accordingly.

Order announced.

[Signature]
District Police Officer
CITRAL

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[Signature]
(MUHAMMAD SHARIF VIRK)
Provincial Police Officer,
W.P.P., Peshawar.
18/4/2007

No. 8302-10 /-III, dated Peshawar the

Copy of above is forwarded for information and necessary action to the

1. DIG/Malakand Region-III, Swat.
2. DPO/Citral.
3. Assistant Secer CPO, Peshawar.
4. Official concerned.

[Handwritten notes]
attached with PIA
etc.

Office of the Supdt. of Police
1357
Dy No.
0128/4/07

Received today on
30-4-07

[Signature]
District Police Officer
CITRAL
18/4/07

16

Amor
DORDER

This order will dispose of departmental appeal filed by junior clerk Fazal Khaliq office of the DPO/Chitral. He while posted in the office of DPO/Chitral, had allegedly removed medico legal report from the record i.e. case file of case FIR No.315 dated: 22.08.2004 U/S 324/337(1)(IV)/147 PPC PS Chitral which he had received from the office of Inspector Legal for onward submission to Peshawar High Court through PIA in connection with bail petition of the accused. A criminal case vide FIR No.42 dated: 04.09.2004 u/s 419/420/204/217/34 PPC PS Chitral was also registered against him.

He was charge sheeted for the above allegations and an enquiry committee was constituted to conduct proper departmental enquiry. The inquiry officer on the conclusion of inquiry held the accused official guilty of the misconduct/ charges and recommended him for major punishment of reduction to time scale junior clerk.

On the basis of finding he was awarded major punishment of reduction to time scale junior clerk. He preferred the present representation and requested to set aside the punishment.

Relevant record was perused. Beside the representationist was also summoned and heard in person in the orderly room held on 07.04.2007.

Perusal of the record reveals that the charges leveled against the accused officials are proved beyond any doubt. Therefore, I, found no grounds to interfere in the decision made by the competent authority, which is up held. His appeal is rejected accordingly.

Order announced.

Sd/-
(MUHAMMAD SHARIF VIRK)
Provincial Police Officer
NWFP Peshawar

No.8308-10/E-III Dated Peshawar the 16/04/2007.

Copy of above is forwarded for information and necessary action to the:-

1. DIG/Malakand Region-III, Swat.
2. DPO/Chitral.
3. Assistant Secret CPO Peshawar.
4. Official concerned.

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17/04/2008

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Annex 'E'

P.01

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1857/6
31/5/08

NOTIFICATION
IN THE SWFP POLICE GAZETTE PART-II ORDERS BY
THE GENERAL POLICE HEADQUARTERS SWFP.

NOTIFICATION

Dated: 31/5/2008.

PROMOTION OF SENIOR CLERKS (BS-09):
In pursuance of Notification No. 1074-III dated: 16.01.2008, the
vacancies (100-07) are hereby promoted to: O.B. Senior Clerk (BS-09) w
regions.

| NAME |
|--------------------------------|
| Headquarters of FRP/Abbottabad |
| Headquarters of M. Band Region |
| Headquarters of M. Region |
| Headquarters of M. Region |
| Headquarters of M. Region |
| Headquarters of M. Region |
| Headquarters of M. Region |

Handwritten notes and signatures:
18/6/08
2/6/08
District Police Officer
CENTRAL

promoted to their present Region & their colleagues.

Office of the Supt. of Police
No. 1616
2-6-08
CENTRAL

MUHAMMAD SHARIF KHAN
DIG Headquarters
Headquarters of Police Officer,
Peshawar

12/4-28

Inspector General
Inspector General
Inspector General
Inspector General
Inspector General
Inspector General
Inspector General
Inspector General
Inspector General
Inspector General

Region M
Region Swat

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E

FOR PUBLICATION IN THE NWFP POLICE GAZETTE PART-II ORDERS BY
THE DY: INSPECTOR GENERAL OF POLICE HEADQUARTERS NWFP.

NOTIFICATION

Dated: 31/5/2008

No.1923/E-III PROMOTION AS OFFIG: SENIOR CLERKS (BS-09):

This office notification No. (sick) 1107/E-III dated: 16.01.2008, the following Junior Clerks (BS-07) are hereby promoted as Offg: Senior Clerk (BS-09) with their colleagues.

NAME

1. Inamullah of FRP/Abbottabad
2. Muhammad Farooq of Malakand Region
3. Muhammad Hamayun of Malakand Region
4. Fazl-e-Khaliq Malakand Region
5. Ubaid-u-Rehman-I Malakand Region
6. Abdul Aziz of Malakand Region
7. Ishtiaq Hussain of Malakand Region

The above named persons are posted to their present Region with their colleagues.

Sd/-
(MUHAMMAD SULAMAN KHAN)
DIG/Headquarters
Provincial Police Officer,
NWFP, Peshawar.

No.1924-29/E-III Dated Peshawar the 31/5/2008

Copy of the above forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police, Mardan Region Mardan.
2. Deputy Inspector General of Police, Malakand Region Swat.
3. Commandant FRP/HQ, NWFP Peshawar.
4. SP/FRP Abbottabad.
5. Registrar CPO.
6. Assistant Secret CPO.

19

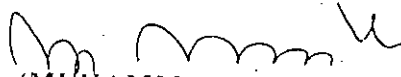
FOR PUBLICATION IN THE NWFP POLICE GAZETTE PART-III,
ORDER BY THE PROVINCIAL POLICE OFFICER NWFP, PESHAWAR

NOTIFICATION

Dated: 04/6/2008.

No. 15229 /E-III, PROMOTION AS OFFG: SENIOR CLERKS (BPS-09).

This office Notification No. 14923/E-III dated: 31.05.2008 so far it relates to the promotion of Junior Clerk Fazal -e- Khaliq as Senior Clerk is hereby withdrawn due to punishment awarded to him vide this office order No. 17731-33/E-III dated: 08.10.2005 as Time Scale Junior Clerk.

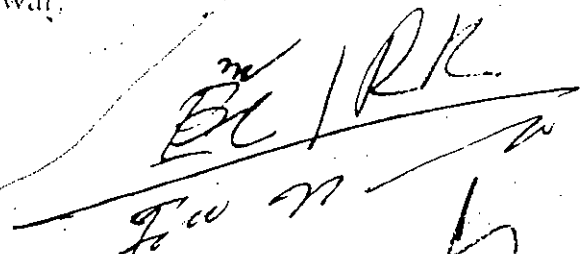

(MUHAMMAD SULAMAN KHAN)
DIG/Headquarters
For Provincial Police Officer,
NWFP, Peshawar.

No. 15230-36 /E-III,

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police Mardan Region-I Mardan.
2. Deputy Inspector General of Police Malakand Region Swat.
3. Commandant FRP NWFP Peshawar.
4. SP/FRP Abbottabad.
5. DPO/Chitral
6. Registrar CPO
7. Assistant Secret CPO




District Officer
CHITRAL
25/6/08

DO
15

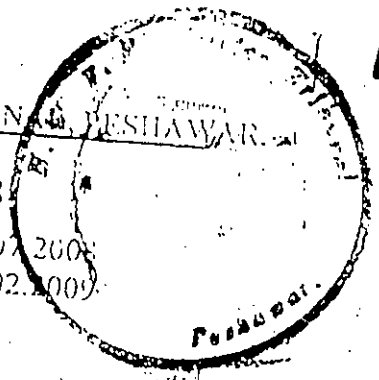
Annex
F

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 939/2008

Date of institution ... 09.07.2007

Date of decision ... 25.02.2009



Fazli Khaliq, Junior Clerk,
Office of the D.P.O Chitral.

VERSUS

(Appellant)

- 1. The Govt. of NWFP through Secretary, Home & Tribal-Affairs Department, Peshawar.
 - 2. The Provincial Police Officer, NWFP, Peshawar.
 - 3. Additional Inspector General of Police (H.Qrs) NWFP, Peshawar.
 - 4. The District Police Officer, Chitral.
- (Respondents)

Service Appeal U/S 4 of the NWFP Service Tribunals Act, 1974 against the order bearing Endst: No. 17731-33-III dated 8.10.2005 passed by respondent No.3, whereby major penalty of reduction to a time scale of Junior Clerk (BPS-5) was imposed on the appellant and the departmental appeal dated 28.10.2005 by the appellant to respondent No.2 was declined on 16.4.2007 on acquittal of the appellant of the false charge by Judicial Magistrate Chitral on 24.4.2007, the appeal dated 11.5.2007 to respondent No.2 on fresh grounds was moved which is as yet unacted meaning thereby that the same has been declined.

Mr. Naqibullah Khan Khattak,
Advocate.

Mr. Zahid Karim Khalil,
Addl: Govt. Pleader.

For appellant

For respondents

Mr. Justice (R) Salim Khan,
Mr. Bismillah Shah.

Chairman
Member

TRUE COPY
[Signature]

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN:-

The appellant was a Junior Clerk (BPS-5) in the office of the District Police Officer, Chitral. A complaint dated 31.1.2005 was submitted against the appellant for allegation that the appellant had malafidely and with ulterior motive taken out medical injury sheet and other important documents from the Police file to the benefit of the accused so that bail could be granted to them. F.I.R No.42 dated 2.2.2005 was registered against the appellant. A charge sheet and statement of allegations was served against him on 12.2.2005. Alta-ur-Rehman, D.S.P., Inquiry

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EXAMINER
NWFP Service Tribunal
Peshawar

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

APPEAL NO.939/2008

Date of institution ... 09.07.2008
Date of decision ... 25.02.2009

Fazli Khaliq Junior Clerk,
Office of the D.P.O Chitral.

(Appellant)

VERSUS

1. The Govt. of NWFP through Secretary, Home & Tribal-Affairs Department, Peshawar.
2. The Provincial Police Officer, NWFP, Peshawar.
3. Additional Inspector General of Police (H.Qrs) NWFP, Peshawar.
4. The District Police Officer, Chitral. (Respondents)

Service Appeal U/S 4 of the NWFP Service Tribunals Act, 1974 against the order bearing Endst: No.17731-33-III dated 8.10.2005 passed by respondent No.3; whereby major penalty of reduction to a time scale of Junior Clerk (BPS-5) was imposed on the appellant and the departmental appeal dated 28.10.2005 by the appellant to respondent No.2 was declined on 16.4.2007 on acquittal of the appellant of the false charge by Judicial Magistrate Chitral on 24.4.2007, the appeal dated 11.5.2007 to respondent No.2 on fresh grounds was moved which is as yet unactioned meaning thereby that the same has been declined.

Mr. Naqibullah Khan Khattak,
Advocate,
Mr. Zahid Karim Khalil,
Addl: Govt. Pleader

For appellant

For respondents

Mr. Justice (R) Salim Khan,
Mr. Bismillah Shah

Chairman
Member

JUDGMENT

JUSTICE(R) SALIM KHAN, CHAIRMAN:- The appellant was a Junior Clerk (BPS-5) in the office of the District Police Officer, Chitral. A complaint dated 31.1.2005 was submitted against the appellant for allegation that the appellant had malafidely and with ulterior motive taken out medical injury sheet and other important documents from the Police file to the benefit of the accused so that bail could be granted to them. F.I.R No.42 dated 2.2.2005 was registered against the appellant. A charge sheet and statement of allegations was served against him on 12.2.2005. Atta-ur-Rehman D.S.P, Inquiry

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[Signature]



Officer, asked for defence reply on 28.3.2005 which was complied with on 7.4.2005. Further reply was asked for from the appellant which was submitted. The report dated 11.4.2005 was submitted wherein it was mentioned that the action against the appellant be subjected to the decision of the Court conducting criminal trial.

2. Respondent No.3 appointed Mir Qalam Khan, D.S.P. Chitral for conducting denovo inquiry proceedings vide order dated 14.5.2005. It was on 25.6.2005 that the representative of the department and the appellant submitted separate replies wherein they did not want to produce fresh evidence and they relied on the statements already recorded. The new Inquiry Officer held the appellant guilty of the offence and proposed major penalty against the appellant. A show cause notice was given to the appellant on 15.8.2005, and major penalty of reduction to time scale Junior Clerk BPS-5 was passed against the appellant on 8.10.2005 with immediate effect. The appellant submitted departmental appeal dated 28.10.2005 which was declined on 16.4.2007.

3. The learned Judicial Magistrate Chitral acquitted the appellant on 24.4.2007. The appellant filed fresh departmental appeal on 11.5.2007. But no reply was given to him till the filing of this appeal on 9.7.2008.

4. The respondents contested the appeal on the ground of limitation as well as other grounds. They were of the view that thorough probe and impartial proceedings were conducted by the Inquiry Officer.

5. We heard the arguments and perused the record.

6. The learned counsel for the appellant contended that the inquiry proceedings were not proper because the appellant was not given chance of cross-examining the witnesses and that the inquiry proceedings were

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Officer, asked for the defence reply on 28.3.2005 which was complied with on 7.4.2005. Further reply was asked for from the appellant which was submitted. The report dated 13.4.2005 was submitted wherein it was mentioned that the action against the appellant he subjected to the decision of the Court conducting criminal trial.

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3. The learned Judicial Magistrate Chitral acquitted the appellant on 24.4.2007. The appellant filed fresh departmental appeal on 11.5.2007. But no reply was given to him till the filing of this appeal on 9.7.2008.

4. The respondents contested the appeal on the ground of limitation as well as other grounds. They were of the view that thorough probe and impartial proceedings were conducted by the Inquiry Officer.

5. We heard the arguments and perused the record.

6. The learned counsel for the appellant contended that the inquiry proceedings were not proper because the appellant was not given chance of cross-examining the witnesses and that the inquiry proceedings were

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concluded by Mir Aslam Khan DSP on the basis of the previously recorded evidence. The appeal by itself shows that the appellant had agreed that he did not want to produce fresh evidence and he relied on the previously recorded statements recorded before the Inquiry Officer. The appellant cannot step back from his own commission at this stage.

7. The learned counsel for the appellant further contended that the present appeal and the departmental appeal dated 11.5.2007 were well within time from the judgment of the learned Judicial Magistrate dated 24.4.2007. It has been admitted by the appellant that he had previously filed departmental appeal on 28.10.2005 which was declined on 16.4.2007. The learned counsel contended that fresh cause of action arose for the appellant when he was acquitted after the criminal trial. It has repeatedly been held by the Courts of competent jurisdiction that criminal proceedings are altogether different from the departmental proceedings, and both the sets of proceedings can run simultaneously and, even, one after the other. The appellant had not filed any Service Appeal when his previous departmental appeal was declined. No fresh cause of action has arisen to the appellant regarding the same departmental proceedings.

8. The only question which needs consideration in this case is that the major penalty granted to the appellant is reduction to time scale Junior Clerk (BPS-5). Rule 4 of the N.W.F.P Government Servants (Efficiency & Discipline) Rules, 1973, provides the major penalty "reduction to a lower post, grade or time scale, or to a lower stage in a time scale." The appellant has not been posted to a lower post. He has been appointed as time scale Junior Clerk. In fact he could be reduced to a lower time scale or to the next lower stage in a time scale. There is

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EXAMINED
MIR ASLAM KHAN
DSP

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concluded by Mir Qalam Khan DSP on the basis of the previously recorded evidence only. The appeal by itself shows that the appellant had agreed that he did not want to produce fresh evidence and be relied on the previously recorded statements recorded before the Inquiry Officer. The appellant cannot step back from his own commission at this stage.

7. The learned counsel for the appellant further contended that the present appeal and the departmental appeal dated 11.5.2007 were well within time from the judgment of the learned Judicial Magistrate dated 24.4.2007. It has been admitted by the appellant that he had previously filed departmental appeal on 28.10.2005 which was declined on 16.4.2007. The learned counsel contended that fresh cause of action arose for the appellant when he was acquitted after the criminal trial. It has repeatedly been held by the Courts of competent jurisdiction that criminal proceedings are altogether different from the departmental proceedings, and both the sets of proceedings can run simultaneously and, even, one after the other. The appellant had not filed any Service Appeal when his previous departmental appeal was declined. No fresh cause of action has arisen to the appellant regarding the same departmental proceedings.

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nothing on record to show that there was any lower time scale for the Junior Clerk and there was only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

9. Finding no other merit in the present appeal, we dismiss the same but leave the parties to bear their own costs.

ANNOUNCED
25.02.2009

sd/- Justice (2) G. Srinivasan
Chairman
sd/- Biswajit Mohapatra
Member

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[Faint vertical text, possibly a stamp or list]

16-02-2009
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27-6-09
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nothing on record to show that there was any lower time scale for the Junior Clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

9. Finding no other merit in the present appeal, we dismiss the same but leave the parties to bear their own costs.

ANNOUNCED
25.02.2009

Sd/- Justice(R) Salim Khan
Chairman

Sd/- Bismillah Shah
Member

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Annex. G

ORDER

Appeal preferred by Junior Clerk Fazal Khaliq against the order of punishment of reduction to a time scale issued vide this office Encl: No. 731-5374-III dated 08.10.2005 was dismissed by the Service Tribunal finding no other any merit. The Court observed that there is nothing on record to show that any lower time scale for the junior clerk & there was not only one time Scale for Junior Clerk. The respondents therefore have to correct the impugned order to this extent from the date of the issue.

Therefore the above order is amended and the Junior Clerk is reduced to the lower stage of his existing pay scale from the date of issuing of the order date 08.10.2005.

(ABDUL MAJEED KHAN WARIWAT)
PSP

Adm: IGP/1 Q's
For Provincial Police Officer,
NWFP, Peshawar

8784-86

Encl: III, dated Peshawar 25/8/2009

Copy of above is forwarded for information and necessary action to

- 1. Deputy Inspector General of Police Malakand Region III Swat.
- 2. District Police Officer Chitral alongwith a copy of Court decision.
- 3. Office Supdt. Secret CPD.

For Court Decision

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For Information

District Police Officer
CHITRAL

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Annex "G"

ORDER

Appeal preferred by Junior Clerks Fazal Khaliq against the order of Punishment of reduction to a time scale issued vide this office Endst: No.17731-33/E-III dated 08.10.2005 was dismissed by the Service Tribunal for finding no other any merit. The court observed that there is nothing on record to show that any lower time scale for the junior clerk & there was not only one time Scale for him. The respondents therefore have to correct the impugned order to this extent from the date of its issue.

Therefore the above order is amended and the Junior Clerk is reduced to the lower stage of his existing pay scale from the date of issuing of the order date 08.10.2005.

Sd/-

(ABDUL MAJEED KHAN MARWAT)

PSP

Add: IGP/IIQrs
For Provincial Police Officer,
NWFP, Peshawar

No.18784-86/E-III, dated Peshawar (16/25/7/2009)

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police, Malakand Region-III Swat.
2. District Police Officer Chitral alongwith a copy of Court decision.
3. Office Supdt: Secret CPO.

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Annex. Hⁿ

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1102 of 2014

Fazal Khaliq S/O Amirdullah Khan R/O village Kuju,
Tehsil and District Chitral, presently serving as
Junior clerk D.P.O office Chitral.....Appellant

V E R S U S

1. Government of Khyber Pakhtun Khwa through secretary Home and Tribal affairs department Peshawar.
2. The Provincial Police officer Peshawar.
3. Additional Inspector General of Police (H.Qrs) K.P.K Peshawar.
4. District Police officer (DPO) Chitral.

..... Respondents

Service appeal under section 4 of the Khyber Pukhtun Khwa Service Tribunal Act 1974, for allowing promotion to the appellant from junior clerk (BPS 5) to senior clerk (BPS 9) w.e.f from 31-05-2008 being most senior, with all consequential benefits and arrears, and for grant of these benefits the departmental representation dated 9-04-2014 has not been replied so far.

Respectfully Sheweth:

1. That the appellant was appointed as junior clerk (BPS 5) by the Dy. inspector General of Police Peshawar vide order No 18725

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dated 5-11-1989 while arrival dated is 16-11-1989. (Copy of the Appointment order is attached as Annexure A).

2. That on 31-01-2005 a complaint was submitted against the appellant with the allegation that the appellant with mala fide and ulterior motive taken out medical injury sheet and other important documents from the police file to the benefit of the accused so that bail could be granted to them. In this respect a case vide FIR No 42 dated 2-2-2005 U/S 419/420/204/217 PPC police station Chitral was registered against the appellant.
3. That keeping in view the above, departmental proceedings were initiated against the appellant and ultimately the appellant was declared guilty of the offence and major penalty was proposed to the appellant. (Copy of the charge sheet and order for departmental inquiry dated 14-5-2005 are attached as Annexure B and B/1 respectively).
4. That on recommendation of the inquiry officer a show cause notice dated 15-8-2005 was given to the appellant and major penalty of reduction to time scale junior clerk (BPS 5) was imposed on the appellant on 18-10-2005 with immediate effect. Aggrieved with the order dated 18-10-2005, the appellant submitted departmental representation before the competent authority which was declined on 16-4-2007. It is pertinent to mention here that on 31-1-2007 an order No 1685-87/E-III was issued by respondent No. 3 which reads as follows:-

The inquiry officer conducted proper departmental inquiry and submitted inquiry report, in his finding he recommended that as criminal case is subjudice in the court,

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hence the inquiry be kept pending till the decision of the court. Since 2002 the case is remained under trail in the court. However on 27-7-2006 the parties effected compromise in both cases as a result both the accused charged in the cases were acquitted. In view of the above I Khurshid Alam Khan Add: I.G.P Hqrs N.W.F.P Peshawar being competent authority in exercise of power vested in me hereby awards him following punishment.

1. Warned to be careful in future.
2. He is reinstated in service from the date of suspension.

(Copies of the order dated 8-10-2005, 16-4-2007 and 31-1-2007 are attached as Annexure C, D and E) respectively.

5. That on 24-4-2007 the learned judicial Magistrate Chitral acquitted the appellant from the charges leveled against him in case FIR No 42 dated 2-2-2005 U/S 419/420/204/217 PPC police station Chitral, the appellant again filed departmental representation on 11-5-2007 with fresh grounds but no reply was given to him. (Copy of the order of JMIC Chitral dated 24-4-2007 is attached as Annexure F).
6. That on 20-9-2007 the respondent No 2 has asked written willingness for promotion from all those junior clerks including the appellant whose promotion is due. (Copies of the letters are attached as Annexure G and G/1 respectively)
7. That the appellant aggrieved with the order dated 8-10-2005 filed service appeal No 939/2008 before this hon'ble court on 9-2-2008. The respondents contested the same and finally this hon'ble court dismissed the appeal of the appellant with these observation:-

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(28)

The only question which needs consideration in this case is that the major penalty granted to the appellant is reduction to time scale junior clerk BPS 5, rule 4 of the NWFP government servants Efficiency and Discipline Rules 1973 provides the major penalty "reduction to a lower stage in a time scale or to a lower stage in a time scale. The appellant has not been posted to a lower post. He has been appointed as time scale junior clerk. In fact he could be reduced to a lower time scale or to the next lower stage in a time scale. There is nothing on record to show that there was any lower time scale for the junior clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents therefore, have to correct the impugned order to this extent from the date of its issuance.

(Copy of the order of this hon'ble court dated 25-2-2009 is attached as Annexure H)

8. That it is worth-mentioning here that between this period the appellant was promoted as senior clerk (BPS 9) on 31-5-2008 with other employees of the department, but letter on the same has been withdrawn due to departmental proceeding and punishment awarded to him, the appellant aggrieved with the same filed another department appeal before the competent authority but no reply was given to the appellant.(Copies of the order dated 31-5-2008, 4-6-2008 and representation are attached as Annexure J,J/1 and J/2 respectively.
9. That after announcing the judgment of this hon'ble court and keeping in view the observation therein the appellant filed an application that his punishment order dated 8-10-2005 may be corrected and consequently on the perusal of the application the respondent No2 amended the said vide order dated 25-7-2009 and the appellant was reduced to lower stage of his existing pay scale from the date of issuance of the order dated 8-10-2005.The appellant aggrieved with same filed departmental representation taking many grounds including ground of time period of reduction to lower stage.(Copies of the application & order dated 25-7-2009 and representation etc are attached as Annexure K and K/1 L L/1 and L/2.
10. That the respondent No 2 in the year 2013 again asked written willingness for promotion from those employees who are due for promotion but unfortunately most of junior employees in all over KPK have been promoted and the appellant was ignored

TRUE COPY

MA

again.(Copies of the letter and seniority lists are attached as Annexure M, M/1 to M/8 respectively).

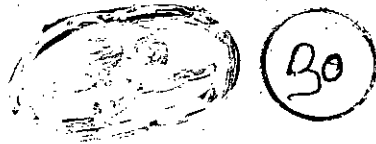
11. That the appellant remained deprived of his rights for promotion since 2008 by filing many representations before the competent authority but the respondents did not replied so far, lastly on 9-4-2014 the appellant approached to the respondents by filing another representation for his promotion but no reply was given.(Copy of the representation and other documents are attached as Annexure N).
12. That the appellant was neither allowed promotion nor his departmental representation was replied despite the laps of 90 days hence this appeal inter-alia on the fallowing grounds:-

GROUNDS

- a. That the appellant has not been treated in accordance with the law his rights secured and guaranteed under the law have been violated.
- b. That the batch-mates and most junior employees in the department have been promoted as senior clerk (BPS 9) on regular basis. The appellant was required to have been promoted to BPS 9 senior clerk; hence this is against the rule of service.
- c. That since the appellant has been acquitted from the charges leveled against him by the learned Judicial Magistrate on 24-4-2007, the good governance require, that the keeping in view the acquittal of the appellant, the appellant should have been promoted to BPS 9.
- d. That in view of the timely promotion of other employees of the department, most junior employees to the appellant are enjoying senior position while the appellant has been deprived of his right which is guaranteed by the constitution of Islamic republic of Pakistan 1973.
- e. That the order dated 25-7-2009 is silent about the time period of reduction to lower stage of the appellant therefore, the same is also lacking in clarifying the status of the seniority list of the appellant.

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- f. That the appellant filed many representations and written willingness for his promotion but due to unknown reason no reply has been given so far.
- g. That the appellant seeks the permission of this hon'ble court to rely on additional grounds at the time hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the appellant may please be allowed to be promoted as senior clerk BPS 9 w.e.f from 31-5-2008 with all consequential benefits and arrears.

Appellant

Fazal Khaliq

Through

Umar Ali Shah

Advocate, Peshawar

Dated 19-8-2014

ORIGINAL COPY



31

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____ of 2014

Fazal KhaliqAppellant

V E R S U S

Government of Khyber Pakhtun Khwa and othersRespondents

AFFIDAVIT

I, Fazal Khaliq S/O Amirdullah Khan R/O village Kaju, Tehsil and District Chitral, presently serving as Junior clerk D.P.O office Chitral do hereby solemnly affirm and declare on oath that the contents of the accompanying **appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Identified by

Umar Ali Shah
Advocate, Peshawar

DEPONENT

TRUE COPY

Anne-I

32

BEFORE THE KHYBER PUKHTOON KHWA SERVICE
TRIBUNAL PESHAWAR

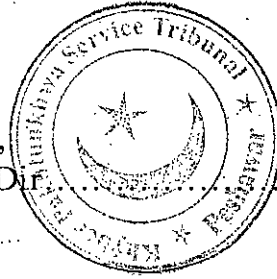
Service Appeal No 750 of 2016

Khyber Pakhtukhwa
Service Tribunal

Diary No. 640

Dated 17-6-2016

Fazal Khaliq S/O Amirdullah Khan R/O
Village Kujū, Tehsil and District Chitral,
Presently serving as Senior clerk Upper Dir



Appellant

Versus

1. Inspector General of Police, Government of Khyber,
Pukhtoon Khwa Peshawar.
2. Additional Inspector General of Police, (H.Qrs),
Government of Khyber, Pukhtoon Khwa Peshawar.
3. Provincial Police Office Government of Khyber,
Pukhtoon Khwa Peshawar.
4. District Police Officer (DPO)
Chitral..... Respondents

SERVICE APPEAL UNDER SECTION 4 OF
THE KHYBER PUKHTOON KHWA
SERVICE TRIBUNAL ACT 1974, FOR
UPDATING/REVISING THE SENIORITY
LIST OF THE APPELLANT W.E.F 31-5-2008
AND WITH ALL CONSEQUENTIAL BACK
BENEFIT AND ARREARS, FOR GRANT OF
THESE BENEFITS THE DEPARTMENTAL
REPRESENTATION/APPEAL DATED 18-2-
2016 HAS NOT BEEN REPLIED BY THE
RESPONDENTS.

Filed to day
Registrar 20-6-16

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal,
Peshawar

Respectfully Sheweth:

1. That the appellant was appointed as junior clerk (BPS 5)
by the Deputy. Inspector General of police Peshawar Vide
office order No 18725 dated 5-11-1989. (Copy of the
appointment order is attached as Annexure "A").

Registrar
21/7/16

2. That on 31-01-2005 a criminal complaint was lodged against the appellant with the allegation that he has taken out the medical injury sheet and other important documents to facilitate the main accused so that bail could be granted to them. An FIR No. 42 dated 02.02.2005 U/S 419/420/204/217 PPC at Police Station Chitral was registered against the appellant.
3. That the departmental proceedings were initiated against the appellant and ultimately he was declared guilty of the offences mentioned above by the department and major penalty of reduction to a time scale junior Clerk was awarded to him. (Copies of the charge sheet, Punishment order dated 08.10.2005 and final order rejecting the representation passed by the department are attached as Annexure B, C and D).
4. That it is pertinent to mention here that proper trial before the Judicial Magistrate Chitral was conducted against the appellant and he was acquitted from the charges leveled against him. (Copy of the judgment is attached as Annexure E).
5. That the appellant preferred an appeal against the final order dated 16.04.2007 before this Hon'able Tribunal which was finally heard on 25.02.2009 and consequently the same was dismissed. This Hon'able Tribunal observed that the appellant has been awarded major penalty of reduction to time scale Junior Clerk BPS-5 and Rule 4 of the NWFP Government (Efficiency & Discipline) Rules 1973 provides the major penalty "Reduction to a lower post, Grade or time scale or to a lower stage in a time scale" since the appellant has not been posted in a lower post, in fact he could be reduced to a lower time scale or to the next lower stage in a time scale. This Hon'able Tribunal observed that there is nothing on record to show that there was any lower time scale for the junior clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale hence the respondents were directed to correct the impugned order dated 08.10.2005 to this extant. (Copy of the judgment dated 25.02.2009 is attached as Annexure F).
6. That the respondent No. 2 when received the judgment of this Hon'able Tribunal and the direction therein corrected the punishment order dated 08.10.2005 and the appellant was reduced to lower stage in his existing pay scale from the date of issuing that order dated 08.10.2005. The appellant submitted an application/representation to the respondents against the amended order dated 25.07.2009 but no response was given to that representation. (Copies of the amended order dated 25.07.2009 and the representation against the same are attached as Annexure G and H).

7.

That the appellant time and again filed several representations before the competent authorities to the effect that he has been acquitted from the charges leveled against him in FIR and most of the Juniors Clerks have been promoted as Senior Clerks BPS-14 but in vain and finally the appellant submitted a representation against the seniority list dated 09.04.2014 which too was not replied by the respondents and against that the appellant preferred appeal No. 1102/2014 before this Hon'able Tribunal for promotion as Senior Clerk with all consequential benefits and arrears. (Copies of the willingness reports, information letter regarding the seniority list dated 31.03.2014, representation filed by the appellant and the service appeal No. 1102/2014 are attached as Annexure J, J-1 to J-3, K and L).

8. That during the pendency of the above noted Service Appeal No. 1102/2014 the respondents promoted the appellant to the post of the Senior Clerk BPS-14. The appellant produced the promotion notification dated 13.07.2015 before this Hon'able Tribunal and consequently the appeal was dismissed as withdrawn and the appellant was directed to approach the competent authority for the back benefits and arrears in prescribed manner as this remedy was sought by appellant from this Hon'able Tribunal. (Copies of the notification and order of this Hon'able Tribunal dated 09.02.2016 are attached as Annexure M and N).

9. That the appellant approached the respondents by making a representation dated 18.02.2016 to the effect that since he has already been promoted as Senior Clerk BPS-14 but the seniority and consequential back benefits and arrears have not been given to the appellant but no response has been given to that representation. (Copy of the representation dated 18.02.2016 is attached as Annexure O).

10. That the appellant approaches this Hon'able Tribunal for updating/revising the seniority list of the Senior Clerks and the grant of all the back benefits on the following grounds amongst others.

GROUND:

A. That the appellant has not been treated in accordance with law, Rules and his rights guaranteed under the law therefore, this conduct of the respondents tantamount to naked violation of the provisions of the Civil Servants laws.

- B. That not updating the seniority list of the Senior Clerks and allowing the back benefits to the appellant is against the principles governing the civil servants, because most of the Junior Clerks are enjoying the higher position in the seniority list therefore, this discriminatory conduct of the respondents should be discouraged.
- C. That even otherwise the punishment order dated 25.07.2009 was also illegal as no period for which it was to be effected was mentioned therefore, on this score alone it clearly shows the malafide on the part of the respondents.
- D. That the appellant has been acquitted on 24.04.2007 and since then he has made several representations before the respondents but not even a single representation has been decided by the respondents to give the reason as to why the appellants has been deprived of his rights guaranteed under the law.
- E. That the conduct of the respondents is a clear violation of the Article 4 of the Constitution of Islamic Republic of Pakistan 1973 which provides for treatment of every citizen in accordance with law.
- F. That on one hand the respondents promoted the appellant to Senior Clerk BPS-14 vide notification dated 13.07.2015 therefore admitting his rights to seniority, but at the same time not allowing his consequential back benefits and updating/revising the seniority list for the same purpose amounts to grave miscarriage of the settled principles of justice.
- G. That the notification dated 13.07.2015 promoting the appellant along with other Clerks is illegal to the extent that the period of the promotion of the appellant should have been counted from 31.05.2008 but instead it was given effect from 2015 which is against law, facts and material on record.
- H. That the appellant has an excellent service record through out and there is nothing irregular against him on record which could be used as a pretext or reason for not updating his seniority list as per the rules and

the respondents severely affects the service record of the appellants.

- I. That the actions of the respondents not redressing the grievances of the appellant in accordance with law is against the established principles of good governance and rules laid down by the Superior Courts of the country.
- J. That the appellant seeks the permission of this Hon'able Tribunal to rely on any additional ground if any at the time of the arguments.

It is, therefore, respectfully prayed that on acceptance of this appeal this Hon'able Tribunal may be pleased to direct the respondents to update the seniority list of the appellant w.e.f 31.05.2008 and to grant all the consequential back benefits and arrears to which he is entitled under the law.

Umar
Umar
Appellant

Through

DATED: 17-06-2016

Umar Ali Shan
Umar Ali Shan Utmankhel

Muhammad Haroon
shinwari
Muhammad Haroon shinwari
Advocates Peshawar.

37

**BEFORE THE KHYBER PUKHTOON KHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No _____ of 2016

Fazal KhaliqAppellant

Versus

Inspector General of Police, Peshawar and othersRespondents

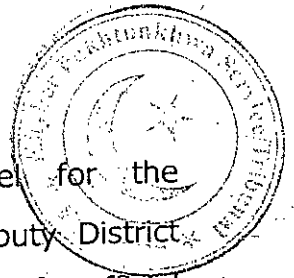
Affidavit

I, Fazal Khaliq S/O Amirdullah Khan R/O Village Kuju, Tehsil and District Chitral, Presently serving as Senior clerk Upper Dir, do hereby solemnly affirmed and declare on oath that the contents of this **Appeal** are true and correct to the best of knowledge and belief and nothing has been concealed from this Hon'ble Court.



[Signature]
Deponent

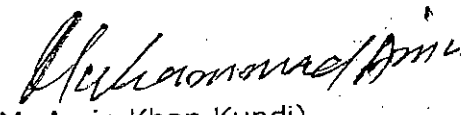
38



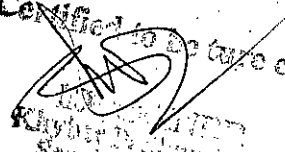
22.10.2019

Taimoor Khan Advocate, learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Sher Muhsin ul Mulk Inspector for official respondents present. Learned counsel for the appellant submitted an application for withdrawal of the instant appeal with the permission to file fresh one on the ground mentioned in the application. The application is placed on record accordingly. The application is accepted. The present service appeal is ^{dismissed} withdrawn with the permission to institute fresh appeal subject to all legal objections. File be consigned to the record room.


(Hussain Shah)
Member

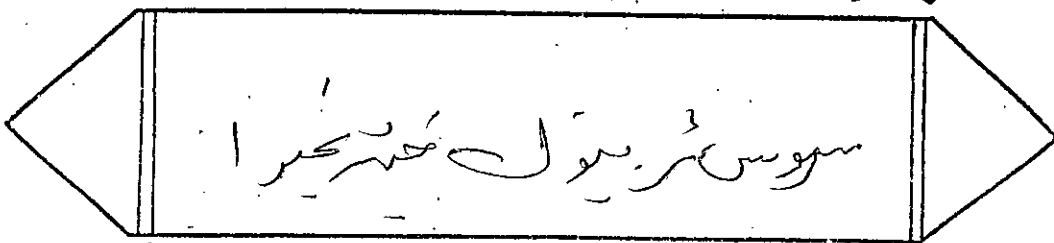

(M. Amin Khan Kundi)
Member

ANNOUNCED.
22.10.2019


Certified to be true copy
Secretary to Government
Peshawar

Date of Presentation 04-11-19
Number of Words 800
Copying Fee 10-00
Urgent
Total 10-00
Name of Clerk
Date of Completion of Copy 09-12-19
Date of Delivery of Copy 09-12-19

بعد الت



سوسٹریٹریول عدتہ بحیرا

2 مخجاب

صا - منظر خالق بنام 1518 کے لیے

اپریل 2020 / 6334

مورثہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنک

ادو کسب
شہزاد ملک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
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 و تقرر حالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ کر مندر ہے۔

alleged

المرقوم 28 ماہ صفر 2020

وہ العیب
بمقام
کے لئے منظور ہے۔

منظر خالق ولد انسیم الدوس خان
28-20-2020

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. *SR*

No.

Appeal No. 6334 of 20 20

Fazal Khattak Appellant/Petitioner

Repd

1. G. P. K. P. Peshawar Respondent

Respondent No. 3

Notice to:

Distt. Police Officer (DPO)
Chitral

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 29/3/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 11th

Day of Feb 20 21



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

No. 27

RGL53927307

6334/20

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

Rs. 105 Ps.

Received a registered* addressed to _____

Date-Stamp

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

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

| | | | | | |
|----------|---|-----------------------------------|-----------------|-------------|--|
| Insured. | } | Insurance fee Rs. _____ Ps. _____ | Weight _____ | Kilo _____ | |
| | | | (in words) | Grams _____ | |
| | } | Name and address of sender | <i>Christal</i> | | |
| | | | | | |

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. SB

No.

Appeal No. 6334 of 20 20

Fazal Khaliq Appellant/Petitioner

Versus

Inspector General of Police Peshawar Respondent

Respondent No. 1

Notice to:

Inspector General of Police KPK
Peshawar.

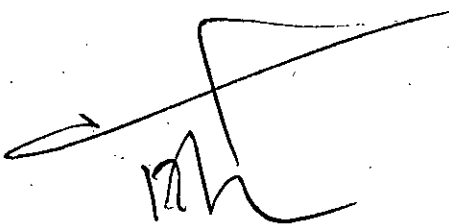
WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 29/3/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 1st

Day of Feb 20 21



Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. SB

No.

Appeal No. 6334 of 20 20

Fazal Khalid Appellant/Petitioner

I, G, P, KPK Peshawar. Respondent

Respondent No. 2

Notice to:

Additional Inspector General of Police KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 29/3/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

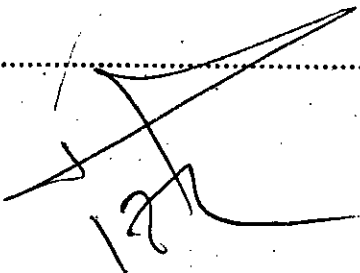
Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this~~

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 11/5

Day of Feb 20 21



**Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.**

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

Acknowledgment

I on behalf of my Senior Syed Ghupar Ullah
Shah, counsel for the appellants received
Rs. 5000/- from the representative of Police
department Mr. Wasim Abbas (Focal Person)
on 06-09-2022.

Assistant S. Ghupar Ullah
Shah

Chagan
Ullah
06-09-2022

Seen
A.
06/9/22.

38/A



**DISTRICT POLICE OFFICER
CHITRAL**

Khyber Pakhtunkhwa

Email: dpo-chitral@gmail.com

Ph. No: 0943-412077 Fax No: 0943-412228

No. 8467 /EB, Dated 30/10/2019

To,


The Regional Police Officer,
Malakand at Saidu Sharif, Swat

Subject: **Departmental Appeal/Representation**

Memo:

Enclosed please find herewith Departmental Appeal/
Representation submitted by Fazal Khaliq Senior Clerk of this District Police for
onward submission to quarter concerned please.

Encl: 2 pages


✓ District Police Officer,
Chitral

To,

The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

Through: **Proper Channel**

Subject: **Departmental Appeal/Representation in light of the order of KPK Service Tribunal dated 22-10-2019; against the initial impugned vide order dated 08-10-2005 "award him major punishment of reduction to time scale Junior Clerk BPS-05" followed by impugned order dated 04-06-2008 for withdrawal of his promotion order dated 31-05-2008, amended impugned order dated-25-07-2009 as miss interpretation of the order of KPK Service Tribunal dated 25-02-2009 and finally the impugned promotion order from Junior clerk (BPS-05) to senior clerk (BPS-07) dated 13-07-2015; whereby his Seniority and service benefits from his earlier day of promotion i.e. 31-05-2008; has been denied.**

Respected Sir;

1. That initially the appellant was appointed as junior clerk (BPS-05) on 05-11-1989 and was posted at the office of District Police Officer, Chitral.
2. That in the year, 2005 a baseless complaint was made against him consequently he was prosecuted through case FIR No .42 dated 02-02-2005 U/S 419/420/204/217/PPC at PS Chitral and was awarded major punishment of reduction to time scale junior clerk BPS-05 vide impugned order dated 08-10-2005, the appellant filed departmental appeal on 28-10-2005, which remained under de novo Enquiry and finally rejected on 16-04-2007.
3. That on 24-04-2007 the appellant was acquitted from the competent Criminal Court, the appellant submitted Departmental Appeal etc before the competent authority, and consequently the same was impugned before the KP Service Tribunal vide Service Appeal No.939/2008.
4. That in the meanwhile the appellant was promoted to the post of Senior Clerk on 31-05-2008 and was withdrawn on 06-04-2008 due to the subject mentioned case/ Enquiry.
5. That on 25-02-2009 the learned KP Service Tribunal disposed the appeal and it was held that "there is nothing on record to show that

there was any lower time scale for the junior clerk and there was not only one time scale. He could be reduced to a lower stage in the same time scale, the respondents, therefore have to correct the impugned order to this extent from the date of its issue.

6. That vide impugned amended order dated 25-07-2009 the same has been so called corrected but despite several representation neither Seniority of the appellant was revised nor his promotion order dated 31-05-2008 was restored, Till issuance of the time specification.
7. That the appellant filed Service Appeal No.1102/2014 before the KP Service Tribunal for his promotion etc but during the pendency of the same the appellant was promoted to senior clerk (BPS-15) on 13-07-2015 and the same was withdrawn to avail the remedy in post promotion scenario.
8. That consequently Service Appeal No.750/2016 was filed before the KP Service Tribunal challenging the prospective effect of the promotion order dated 13-07-2019, hence the instant representation.
9. That the appellant has been admittedly acquitted from the criminal case and reduction to lower stage in the same time scale is firstly not for indefinite period and secondly having no adverse effect on the earlier promotion of the appellant dated 31-05-2008.

It is therefore acceptance of the instant Departmental Appeal the impugned promotion Order dated 13-07-2015 be modified and the appellant be granted promotion with effect from his earlier date of promotion i.e. 31-05-2008 instead of immediate effect, with all consequential back Service benefits including Seniority and arrears etc Any other relief deems just and proper in the circumstances of the case may also granted to the appellant.

Appellant



(FAZAL KHALIQ)

Senior Clerk DPO Office Chitral

Dated: 27/10/2019

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.6334 of 2020.

Fazal Khaliq

Senior Clerk DPO-Office Chitral

R/O Kaju, P/O Chitral

Tehsil Chitral, District ChitralAppellant

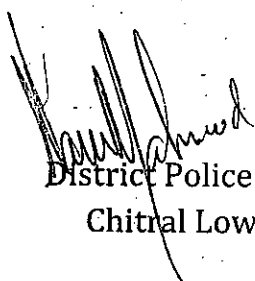
Versus

1. Inspector General of Police, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
3. District Police Officer (DPO) Chitral Lower.

.....Respondents

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District Police Officer,
Chitral Lower.

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.Service Appeal No.6334 of 2020.

Fazal Khaliq

Senior Clerk DPO-Office Chitral

R/O Kaju, P/O Chitral

Tehsil Chitral, District ChitralAppellant

Versus

1. Inspector General of Police, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
3. District Police Officer (DPO) Chitral Lower.

.....Respondents

Parawise Comments on behalf of Respondents**Preliminary objections:-**

- (1) That the appellant has got no locus standi to institute the present appeal.
- (2) That the appellant has not come to this honorable Tribunal with clean hands.
- (3) That the appeal is bad in the eye of Law due to misjoinder/ nonjoinder of necessary parties as the appellant has not made party his other colleagues granted seniority.
- (4) That the appeal is badly time barred.

On facts:-

- (1) That Para No.1 being related to Service record needs no comments.
- (2) That Para No.2 is admitted as correct to the extent that the appellant was proceeded against for involving himself in case vide FIR No.42 dated 02.20.2005 u/s 419/420/204/217 PPC PS Chitral, consequently awarded major punishment on conclusion of departmental enquiry. The criminal case against the appellant was based on cogent and convincing evidence, the trial Court acquitted the appellant on the basis of "benefit of doubt" and not honorably on 24.04.2007.... (Copy of Court Order attached as annexure "A 1-3"), his departmental appeal was rejected on 16.04.2007 by the Inspector General of Police Khyber Pakhtunkhwa.
- (3) That para No.3 is admitted as correct to the extent that the appellant was acquitted but on the basis of benefit of doubt and not honorably by the Trial Court on 24.04.2007, prior to this his departmental appeal was rejected by the Inspector General of Police Khyber Pakhtunkhwa on 16.04.2007.
- (4) That Para No.4 is admitted as correct, to the extent that the appellant was promoted to the post of Senior Clerk on 31.05.2008. ...(Copy attached as annexure "B").
- (5) That Para No.5 is admitted as correct.
- (6) That Para No.6 is denied. The Respondent No.1 in compliance with the Order of the Service Tribunal has amended the impugned order through proper official order vide No.18784-86/E-III, dated 25.07.2009.... (Copy attached as annexure "C"), pertinent to mention here that the honorable Service Tribunal vide its Order dated 25.02.2009 has dismissed the appeal, operational portion of the order is reproduced as "the Respondents have to correct the impugned Order to this extent from the date of its issuance. Finding no other merit in the present appeal, We dismiss the same". From the wording of the Order of the honorable Tribunal it is crystal clear that the conviction of the appellant in the departmental proceeding has been endorsed by this honorable Tribunal (Copy attached as annexure "D 1-4"). Therefore the appellant was promoted on his turn as per law.

(2)

- (7) That Para NO.7 is admitted as correct to the extent of promotion of the appellant during pendency of the Service Appeal No.1102/2014. As his grievance stood redressed and further proceeding was a futile exercise, therefore the appellant withdrew his appeal and the honorable Tribunal dismissed his appeal as withdrawn on 09.02.2016.
- (8) That Para No.8 pertains to record of Service Tribunal.
- (9) That Para No.9 is denied as the grievances of the appellant had already been redressed.

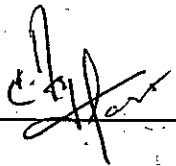
On grounds:-

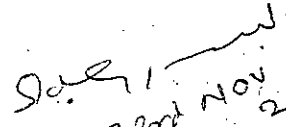
- A. Incorrect, the appellant has been dealt with in accordance of law, Rule and justice.
- B. Incorrect, it is evident from the Order of this honorable Tribunal dated 25.02.2009 that the impugned Order was not illegal on void as only direction/order for correction of the same was issued, meaning thereby that the impugned order issued by the Respondents have been endorsed by this honorable Tribunal, in addition to that the appeal of the appellant has been dismissed being meritless. Therefore the Order of the Respondent is legal and sustainable in the eyes of law.
- C. Incorrect, Seniority list of Senior Clerks have been properly maintained.
- D. Incorrect, the Order dated 25.07.2009 clearly expresses the date i.e. 08.10.2005.... (Copy already attached as annexure "C").
- E. Incorrect, the appellant filed Several Service appeals before this honorable Tribunal but being his grievances redressed he withdrew the same, which speaks that his grievances have been redressed.
- F. Incorrect, the appellant has been treated in accordance with law and constitution.
- G. Incorrect, the appellant has been promoted to the rank of Senior Clerk as per law and the consequential benefits have also been extended to him.
- H. Incorrect, the appellant has been promoted duly considering the order of this departmental conviction, which is guaranteed by law.
- I. Incorrect, as replied above.
- J. Incorrect, the act of the Respondent is guaranteed by law, Rule and justice.
- K. The appellant has got no cause of action to file instant appeal.
- L. That the respondents seek leave to raise additional grounds at the time of arguments.

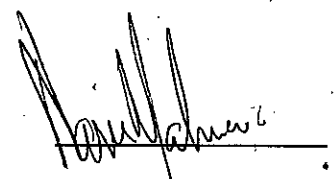
Prayer:

In light of these facts it is prayed that the appeal may be dismissed with cost.

1. Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police,
Head Quarter, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
3. District Police Officer (DPO) Chitral Lower


C. P. Khan


S. J. Khan
23rd NOV 22


M. Khan

.....Respondents

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.6334 of 2020.

Fazal Khaliq
Senior Clerk DPO-Office Chitral
R/O Kuju, P/O Chitral
Tehsil Chitral, District ChitralAppellant

Versus

2. Inspector General of Police, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
4. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
5. District Police Officer (DPO) Chitral Lower.

.....Respondents

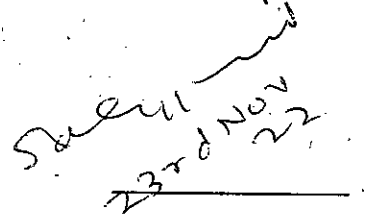
Certificate

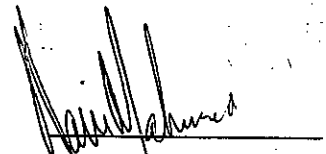
It is to certify that the appellant has given wrong address of the respondent no 1 and 2, as inspector general of Police and Additional Inspector General of Police have their offices at central Police Office Peshawar.

Furthermore the appellant has mentioned respondent no 2 as Additional Inspector General of Police, as the case is related to seniority of clerical staff (senior clerk) which comes under the jurisdiction of Additional Inspector General of Police Headquarters.

1. Inspector General of Police,
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3. District Police Officer (DPO) Chitral Lower







.....Respondents

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.Service Appeal No.6334 of 2020.

Fazal Khaliq

Senior Clerk DPO-Office Chitral

R/O Kuju, P/O Chitral

Tehsil Chitral, District ChitralAppellant

Versus

1. Inspector General of Police, Central Police Office,
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2. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
3. District Police Officer (DPO) Chitral Lower.

.....:Respondents

Authority Letter.

Mr. Sher Muhsin ul Mulk Inspector Legal of District Police Chitral Lower is hereby authorized/deputed to proceed to the office of Govt: Pleader, Service Tribunal, KPK, Peshawar in connection with the vetting of Service Appeal No.6334 of 2020 titled Fazal Khaliq Senior Clerk DPO Officer Chitral R/O-Kuju, P/O Chitral Tehsil Chitral District Chitral VS Inspector General of Police Khyber Pakhtunkhwa and others.

1. Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police,
Head Quarter, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
3. District Police Officer (DPO) Chitral Lower

.....:Respondents

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.6334 of 2020.

Fazal Khaliq
Senior Clerk DPO-Office Chitral
R/O Kuju, P/O Chitral
Tehsil Chitral; District ChitralAppellant

Versus

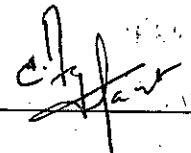
1. Inspector General of Police, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
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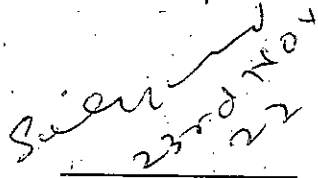
.....Respondents

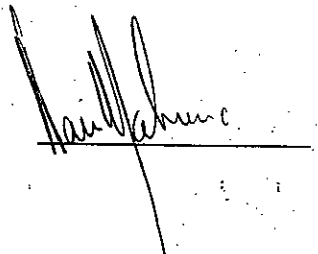
Affidavit

We the following respondents do hereby solemnly affirm that the contents of Parawise comments are true to the best of our knowledge and belief and nothing has been concealed from the Honorable Tribunal.

1. Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police,
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.....Respondents

BEFORE THE KHYBER PUKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.6334 of 2020.

Fazal Khaliq
Senior Clerk DPO-Office Chitral
R/O Kuju, P/O Chitral
Tehsil Chitral, District Chitral

Appellant

Versus

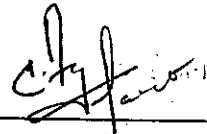
1. Inspector General of Police, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police, Head Quarter,
Central Police Office, Khyber Pakhtunkhwa Peshawar.
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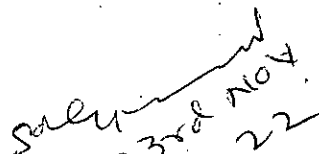
.....Respondents

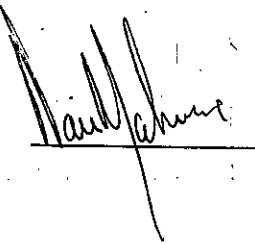
Counter Affidavit.

Verified that the contents of Parawise comments/ reply are true and correct and noting have been concealed from the tribunal.

1. Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police,
Head Quarter, Central Police Office,
Khyber Pakhtunkhwa Peshawar.
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.....


.....

.....Respondents

یہ بلہ مذکورہ بالا کلرک پابند ضمانت بھی ہو چکا ہے۔ یہ کہ مذکورہ بالا اشخاص کے خلاف دعوے دیئے اور فراڈ سے سرکاری ریکارڈ غائب کرنے اور اپنی فرائض منصبی میں غفلت برتنے کے جرم میں تعزیرات پاکستان کے تحت قانونی کارروائی عمل میں لانے کا حکم صادر فرما کر مشکور فرمائیں۔ درخواست مذکورہ تھانہ چترال بھیجے پر برخلاف ملزم و ڈسپینچر اسم نامعلوم دفتر PI چترال مقدمہ بنا بروئے علت نمبر 42 مورخہ 02/02/2005 مجرم 02/02/2005 جرم 02/02/2005/17/34 PPC419/420/204/217/34 قائم کیا جا کر موقع پر رسی و قانونی کارروائی کی تشکیل پر چالان مکمل برخلاف ملزم فضل خالق مورخہ 13/04/2005 کو داخل عدالت کیا گیا۔

سے انکاری ہوا تو شہادت استغاثہ کو طلب کیا جا کر بیان عنایت اللہ انسپیکٹر کو بطور 1-PW، میر آدم خان DHC تھانہ چترال کو بطور 2-PW، میرصوات خان سب انسپیکٹر تھانہ چترال کو بطور 3-PW، کنشیل محمود غزنوی نمبر 584 دفتر DPO چترال کو بطور 4-PW، کنشیل آ میر علی شاہ نمبر 183 چوکی کشتیت کو بطور 5-PW، کنشیل فیض الرحمن نمبر 332 ریڈرنو PI چترال کو بطور 6-PW، فضل نبی میر الدین ولد یوسف خان سکناہ کچو کو بطور 7-PW، محراب علی خان ولد تاج محمد خان سکناہ کچو کو بطور 8-PW، بطور 10-PW قلمبند کیا گیا۔ جبکہ وکیل سرکار نے گواہان محمد رحیم بیگ، رحمت خان اور شیر احمد کو غیر ضروری قرار دے کر ترک کئے اور گواہان استغاثہ کی تکمیل پر بیان ملزم زیر دفعہ 342 ضف قلمبند کیا گیا۔ ملزم نے بیان برحلف اور صفائی پیش نہ کرنے کا عندیہ دیا۔

ملاحظہ کیا گیا۔ ملاحظہ مثل سے عیاں ہے کہ ملزم کے خلاف مقدمہ ہذا بدین وجہ دائر کیا گیا کہ ملزم نے مثل مقدمہ علت نمبر 315 مورخہ 22/08/2004 مجرم (i) 337/147/324/148/149 PPC تھانہ چترال کو عدالت پشاور ہائی کورٹ پشاور مرسل کرتے ہوئے مثل مذکور سے نقشہ ضرر و دیگر اہم

دستاویزات اس نیت کے ساتھ غائب کئے تاکہ ملزم ذوالفقار کا ضمانت پشاور ہائی کورٹ پشاور سے ہوا سکے۔ مقدمہ ہذا کو ثابت کرنے کیلئے استغاثہ کی طرف سے کم و بیش دس گواہان پیش ہوئے لیکن کسی گواہ نے یہ ذکر نہیں کیا کہ اس نے ملزم کو مثل مذکور سے نقشہ ضرر وغیرہ نکالتے ہوئے دیکھا ہے۔ بیان کنشیل فیض الرحمن نمبر 332 ریڈرنو PI (6-PW) سے عیاں ہے مثل مذکور علت نمبر 315 مورخہ 23/11/2004 کو PI آفیس میں موصول ہوا اور مورخہ 07/12/2004 تک اسکے پاس

P کے میز پر پڑا اور مورخہ 07/12/2004 کو پشاور ہائی کورٹ پشاور سے مثل مذکور کی طلبی کی۔ تو PI نے کوریگ ایئر دستخط کر کے اس نے ریکارڈ برانچ سے اس پر محمد غزنوی سے ڈسپینچ نمبر لگا

TRUE COPY

کر داپس کیا۔ ڈیپٹی رجسٹر کی بابت تفتیشی آفیسر (PW-3) نے بیان کیا کہ اس نے ڈیپٹی رجسٹر کا متعلقہ صفحہ کی فوٹو کاپی برائے فریڈم فونڈیشن پر موجود ہے اور نہ ہی اس کا ذکر انڈکس میں کیا گیا ہے۔ مزید یہ درست تسلیم کیا کہ نہ تو مذکورہ صفحہ منسلک ہے اور نہ ہی اس کا ذکر انڈکس میں کیا گیا ہے۔ مزید یہ کہ گواہ فضل نبی چیز اسی دفتر DPO چترال نے اپنے بیان زیر دفتہ 164 ض ف

محررہ 17/02/2005 میں کہا ہے کہ ملزم نے اس کو ایک لفافہ برائے کارگو کرنے کیلئے دیا تھا۔ لیکن بطور PW-7 گواہ فضل نبی نے کہا کہ ملزم فضل خالق کلرک نے ذوالفقار علی شاہ کے منسلک کو لا کر لفافہ میں بند کر کے کارگو کرنے کیلئے اس کو حوالہ کیا اور دوران جرح گواہ فضل نبی نے یہ بھی درست قرار دیا کہ اس کے بیان 164 ض ف محررہ 17/2/2005 اور اراج کے بیان میں واضح فرق ہے۔ اس طرح مستغنیث امیر الدین (PW-9) نے دوران جرح یہ درست تسلیم کیا کہ اس کا پیش کردہ درخواست

Ex PW-1/1 اور اراج کے بیان میں فرق ہے اور از خود کہا کہ حالات و واقعات کی روشنی میں اس نے اپنا آج کا بیان Develop کیا ہے۔ مزید یہ کہ نہ تو ملزم متعلقہ اہلکار تھا اور نہ ہی اس کی یہ ذمہ داری تھی کہ وہ عدالتوں کو ریکارڈ وغیرہ مرسل کرے۔ علاوہ ازیں تین یوم حراست پولیس کے باوجود نہ تو ملزم سے دستاویزات مذکورہ کی برآمدگی ہوئی اور نہ ہی ملزم نے اقبال جرم کیا۔

مذکورہ بلا حالات سے روز روشن کی طرح نمایاں ہو چکا ہے کہ استغنیث ملزم کے خلاف مقدمہ ہذا بلا شک و شبہ ثابت کرنے میں ناکام ہوا ہے۔ لہذا ملزم کو شک کا فائدہ دیا جا کر بری کیا جاتا ہے اور اسکے ضامن کو بھی ضمانت نامے کی پابندیوں سے مخلص دی جاتی ہیں۔ منسل بعد از ترتیب دستخط کے داخل دفتر ہونے فصلہ سنا گیا۔

24/04/2007

اجمل خان وزیر
سینئر سول جج رجسٹریشنل مجسٹریٹ چترال

تصدیق دی جاتی ہے کہ حکم ہذا مشتملہ تین (3) صفحات ہے۔ ہر صفحہ بعد از درستی میرا دستخط کردہ ہے۔

اجمل خان وزیر
سینئر سول جج رجسٹریشنل مجسٹریٹ چترال

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M-11/1/08

Annex B

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1857/5
31/5/08

P. 01

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IN THE POLICE GAZETTE PART-II ORDERS BY
GENERAL POLICE HEADQUARTERS NWFP.

NOTIFICATION

Dated: 31/5/2008.

PROMOTIONS OFFICE SENIOR CLERKS (BS-09):

Notification No. 1074-III dated: 16.01.2008, the Senior Clerks (BS-07) are hereby promoted to Offg. Senior Clerk (BS-09) with effect from 16/1/08.

NAME

- Mr. Abdul Kader of FRP/Abbottabad
- Mr. Abdul Kader of M. Area Region
- Mr. Abdul Hameed of M. Area Region
- Mr. Abdul Kader of M. Area Region
- Mr. Abdul Kader of M. Area Region
- Mr. Abdul Kader of M. Area Region
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- Mr. Abdul Kader of M. Area Region
- Mr. Abdul Kader of M. Area Region

M. Area Region
District Police Officer
CENTRAL
2/6/08

to their present Region their colleagues.

Office of the Superintendent of Police
No. 1616
D/- 2-6-08
CENTRAL

MURRAY MAD SINGH
D/- 2-6-08
Police Officer,
Peshawar

12/2-28

Inspector General of Police
M. Area Region
Abbottabad



FOR PUBLICATION IN THE NWFP POLICE GAZETTE PART-II ORDERS BY
THE DY. INSPECTOR GENERAL OF POLICE HEADQUARTERS NWFP.

NOTIFICATION

Dated: 31/5/2008

No.1923/E-III PROMOTION AS OFFIC: SENIOR CLERKS (BS-09):

This office notification No. (sick) 1107/E-III dated: 16.01.2008, the following Junior Clerks (BS-07) are hereby promoted as Offg: Senior Clerk (BS-09) with their colleagues.

NAME

1. Inamullah of FRP/Abbottabad
2. Muhammad Farooq of Malakand Region
3. Muhammad Hamayun of Malakand Region
4. Fazl-e-Khaliq Malakand Region
5. Ubaid-u-Rehman-I Malakand Region
6. Abdul Aziz of Malakand Region
7. Ishtiaq Hussain of Malakand Region

The above named persons are posted to their present Region with their colleagues.

Sd/-

(MUHAMMAD SULAMAN KHAN)
DIG/Headquarters
Provincial Police Officer,
NWFP, Peshawar.

No.1924-29/E-III Dated Peshawar the 31/5/2008

Copy of the above forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police, Mardan Region Mardan.
2. Deputy Inspector General of Police, Malakand Region Swat.
3. Commandant FRP/HQ, NWFP Peshawar.
4. SP/FRP Abbottabad.
5. Registrar CPO.
6. Assistant Secret CPO.

P-10 (24)

Annex (C)

ORDER

... appeal preferred by Junior Clerk Fazal Khaliq against the order of punishment of reduction to a time scale issued vide this office Encl: 31-53/E-III dated 08.10.2005 was dismissed by the Service Tribunal finding no other any merit. The Court observed that there is nothing on record to show that any lower time scale for the junior clerk & there was not only one time scale for the respondents therefore have to correct the impugned order to this extent from the date of issue.

Therefore the above order is amended and the Junior Clerk is reduced to the grade of his existing pay scale from the date of issuing of the order date 08.10.2005.

(Signature)
(ABDUL MAJEED KHAN MARWAT)
PSP
Addl. IGP/IGS
For Provincial Police Officer
NWFP, Peshawar
25/10/2009

8784-86

Copy of above is forwarded for information and necessary action.

- Deputy Inspector General Police Malakand Region III Swat
- District Police Officer Chitral alongwith a copy of Court decision.
- Office Supdt: Secy: CPZ.

Current Decision

For information
(Signature)
DISTRICT POLICE OFFICER
CHITRAL
11/8

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(Signature)

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Annex "G"

ORDER

Appeal preferred by Junior Clerks Fazal Khaliq against the order of Punishment of reduction to a time scale issued vide this office Endst: No.17731-33/E-III dated 08.10.2005 was dismissed by the Service Tribunal for finding no other any-merit. The court observed that there is nothing on record to show that any lower time scale for the junior clerk & there was not only one time Scale for him. The respondents therefore have to correct the impugned order to this extent from the date of its issue.

Therefore the above order is amended and the Junior Clerk is reduced to the lower stage of his existing pay scale from the date of issuing of the order date 08.10.2005.

Sd/-
(ABDUL MAJEED KHAN MARWAT)
PSP

Add: IGP/11Qrs
For Provincial Police Officer,
NWFP, Peshawar

No.18784-86/E-III, dated Peshawar (25/7/2009)

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Inspector General of Police, Malakand Region-III Swat.
2. District Police Officer Chitral-alongwith a copy of Court-decision.
3. Office Supdt: Secret CPO.

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

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APPEAL NO.939/2008

Date of institution ... 09.07.2008
Date of decision ... 25.02.2009

Fazli Khaliq Junior Clerk,
Office of the D.P.O Chitral.

(Appellant)

VERSUS

1. The Govt. of NWFP through Secretary, Home & Tribal Affairs Department, Peshawar.
 2. The Provincial Police Officer, NWFP, Peshawar.
 3. Additional Inspector General of Police (H.Qrs) NWFP, Peshawar.
 4. The District Police Officer, Chitral.
- (Respondents)

Service Appeal U/S 4 of the NWFP Service Tribunals Act, 1974 against the order bearing Encls: No.17731-33-III dated 8.10.2005 passed by respondent No.3, whereby major penalty of reduction to a time scale of Junior Clerk (BPS-5) was imposed on the appellant and the departmental appeal dated 28.10.2005 by the appellant to respondent No.2 was declined on 16.4.2007 on acquittal of the appellant of the false charge by Judicial Magistrate Chitral on 24.4.2007, the appeal dated 11.5.2007 to respondent No.2 on fresh grounds was moved which is as yet unactioned meaning thereby that the same has been declined.

Mr. Naqibullah Khan Khattak,
Advocate,
Mr. Zahid Karim Khalil,
Addl. Govt. Pleader

For appellant

For respondents

Mr. Justice (R) Salim Khan,
Mr. Bismillah Shah

Chairman
Member

JUDGMENT

JUSTICE(R) SALIM KHAN, CHAIRMAN:- The appellant was a Junior Clerk (BPS-5) in the office of the District Police Officer, Chitral. A complaint dated 31.1.2005 was submitted against the appellant for allegation that the appellant had malafidely and with ulterior motive taken out medical injury sheet and other important documents from the Police file to the benefit of the accused so that bail could be granted to them. F.I.R No.42 dated 2.2.2005 was registered against the appellant. A charge sheet and statement of allegations was served against him on 12.2.2005. Atta-ur-Rehman D.S.P, Inquiry

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Officer, asked for the defence reply on 28.3.2005 which was complied with on 7.4.2005. Further reply was asked for from the appellant which was submitted. The report dated 1.4.2005 was submitted wherein it was mentioned that the action against the appellant be subjected to the decision of the Court conducting criminal trial.

2. Respondent No.3 appointed Mir Qalam Khan, D.S.P Chitral for conducting denovo inquiry proceedings vide order dated 14.5.2005. It was on 25.6.2005 that the representative of the department and the appellant submitted separate replies wherein they did not want to produce fresh evidence and they relied on the statements already recorded. The new Inquiry Officer held the appellant guilty of the offence and proposed major penalty against the appellant. A show cause notice was given to the appellant on 15.8.2005, and major penalty of reduction to time scale Junior Clerk BPS-5 was passed against the appellant on 8.10.2005 with immediate effect. The appellant submitted departmental appeal dated 28.10.2005 which was declined on 16.4.2007.

3. The learned Judicial Magistrate Chitral acquitted the appellant on 24.4.2007. The appellant filed fresh departmental appeal on 1.5.2007. But no reply was given to him till the filing of this appeal on 9.7.2008.

4. The respondents contested the appeal on the ground of limitation as well as other grounds. They were of the view that thorough probe and impartial proceedings were conducted by the Inquiry Officer.

5. We heard the arguments and perused the record.

6. The learned counsel for the appellant contended that the inquiry proceedings were not proper because the appellant was not given chance of cross-examining the witnesses and that the inquiry proceedings were

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concluded by Mr. Iqbal Khan DSP on the basis of the previously recorded evidence. The appeal by itself shows that the appellant had agreed that he did not want to produce fresh evidence and he relied on the previously recorded statements recorded before the Inquiry Officer. The appellant cannot step back from his own commission at this stage.

7. The learned counsel for the appellant further contended that the present appeal and the departmental appeal dated 11.5.2007 were well within time from the judgment of the learned Judicial Magistrate dated 24.4.2007. It has been admitted by the appellant that he had previously filed departmental appeal on 28.10.2005 which was declined on 16.4.2007. The learned counsel contended that fresh cause of action arose for the appellant when he was acquitted after the criminal trial. It has repeatedly been held by the Courts of competent jurisdiction that criminal proceedings are altogether different from the departmental proceedings, and both the sets of proceedings can run simultaneously and, even, one after the other. The appellant had not filed any Service Appeal when his previous departmental appeal was declined. No fresh cause of action has arisen to the appellant regarding the same departmental proceedings.

8. The only question which needs consideration in this case is that the major penalty granted to the appellant is reduction to time scale Junior Clerk (BPS-5). Rule 4 of the N.W.F.P Government Servants (Efficiency & Discipline) Rules 1973, provides the major penalty "reduction to a lower post, grade or time scale, or to a lower stage in a time scale." The appellant has not been posted to a lower post. He has been appointed as time scale Junior Clerk. In fact he could be reduced to a lower time scale or to the next lower stage in a time scale. There is

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nothing on record to show that there was any lower time scale for the Junior Clerk and there was ^{just} only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

9. Finding no other merit in the present appeal, we dismiss the same but leave the parties to bear their own costs.

ANNOUNCED
25.02.2009

[Handwritten signature]

*sd/- Justice (2) Gopinath
A. Biswas
sd/- Biswas
Member*

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District...
Date...

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nothing on record to show that there was any lower time scale for the Junior Clerk and there was ^{only} one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

9. Finding no other merit in the present appeal, we dismiss the same but leave the parties to bear their own costs.

ANNOUNCED
25.02.2009

sd/- Justice (L) Kalishankar
a fair man
sd/- Bismita K. Behera
Member

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Officer, asked for the defence reply on 28.3.2005 which was complied with on 7.4.2005. Further reply was asked for from the appellant which was submitted. The report dated 13.4.2005 was submitted wherein it was mentioned that the action against the appellant he subjected to the decision of the Court conducting criminal trial.

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4. The respondents contested the appeal on the ground of limitation as well as other grounds. They were of the view that thorough probe and impartial proceedings were conducted by the Inquiry Officer.

5. We heard the arguments and perused the record.

6. The learned counsel for the appellant contended that the inquiry proceedings were not proper because the appellant was not given chance of cross-examining the witnesses and that the inquiry proceedings were

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concluded by Mir Qalam Khan DSP on the basis of the previously recorded evidence only. The appeal by itself shows that the appellant had agreed that he did not want to produce fresh evidence and be relied on the previously recorded statements recorded before the Inquiry Officer. The appellant cannot step back from his own commission at this stage.

7. The learned counsel for the appellant further contended that the present appeal and the departmental appeal dated 11.5.2007 were well within time from the judgment of the learned Judicial Magistrate dated 24.4.2007. It has been admitted by the appellant that he had previously filed departmental appeal on 28.10.2005 which was declined on 16.4.2007. The learned counsel contended that fresh cause of action arose for the appellant when he was acquitted after the criminal trial. It has repeatedly been held by the Courts of competent jurisdiction that criminal proceedings are altogether different from the departmental proceedings, and both the sets of proceedings can run simultaneously and, even, one after the other. The appellant had not filed any Service Appeal when his previous departmental appeal was declined. No fresh cause of action has arisen to the appellant regarding the same departmental proceedings.

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nothing on record to show that there was any lower time scale for the Junior Clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

9. Finding no other merit in the present appeal, we dismiss the same but leave the parties to bear their own costs.

ANNOUNCED
25.02.2009

Sd/- Justice(R) Salim Khan
Chairman

Sd/- Bismillah Shah
Member

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