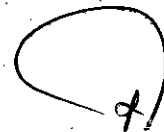


07.06.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Iqbal, Superintendent for the respondents present.

Implementation report has not been submitted. Learned AAG states that the respondents have filed CPLA before the August Supreme Court of Pakistan. He requested for one week time to furnish suspension order by the Apex Court. Respondents are directed to submit order of suspension by the Apex Court against the judgment under implementation or to issue an order towards implementation of the judgment subject to the decision of CPLA, and implementation report be submitted on next date positively. Adjourned to 15.06.2021 before the S.B.



(Rozina Rehman)
Member(J)

15.06.2021

Junior to counsel for the petitioner and Mr. Muhammad Iqbal, Superintendent for the respondents present.

Representative of the respondents has produced copy of office order dated 10.06.2021, whereby the petitioner has been reinstated conditionally till outcome of the CPLA filed by the respondents. Placed on record.

In view of the above, the present execution petition having been executed, is filed. However, petitioner may approach this Tribunal after final outcome of the august Supreme Court of Pakistan, if so advised.



Chairman

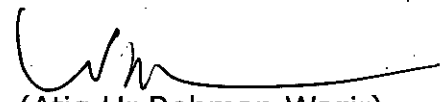
31.03.2021

Petitioner in person present.

Addl: AG alongwith Mr. Muhammad Iqbal, Supdt
for respondents present.

On previous date of hearing representative stated that a CPLA has been preferred before the Apex Court against the order/judgment under implementation, therefore, he was directed to implement judgment and submit report on next date of hearing in case the judgment of this Tribunal is neither suspended nor set aside till then. Today neither implementation report nor suspension order has been produced by the respondents. They are once again strictly directed to submit implementation report or suspension order from the apex court on the next date of hearing, otherwise coercive measure will be taken against them.

Adjourned to 07.06.2021 for further proceedings
before S.B.


(Atiq Ur Rehman Wazir)
Member(E)



Directorate General of Mines and Minerals
KHYBER PAKHTUNKHWA
Attached Departments Complex Khyber Road Peshawar

No. /3/451/DGMM/Admin:

Dated /06/2021

OFFICE ORDER

In light of the Hon'ble Service Tribunal Khyber Pakhtunkhwa, Peshawar order announced on 17.06.2020 under Service Appeal No.944/2019 and Execution Petition No.136/2020, Mr. Shaheed Ullah Ex-Mineral Guard (BPS-03) is hereby conditionally/provisionally reinstated in Government Service with immediate effect till outcome of the CPLA No.421-P/2020 filed in the Supreme Court of Pakistan, Islamabad.

Sd/-

**Director General Mines & Minerals
Khyber Pakhtunkhwa, Peshawar**

Endst: No. 15385-92/3/451/DGMM/Admin:

Dated 10/06/2021

Copy is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. P.A to Director General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
3. Dy. Director (Litigation), H/Q Office, Peshawar.
4. The Section Officer (Litigation) Minerals Development Department, Peshawar.
5. The Assistant Director (Accounts), H/Q Office, Peshawar.
6. Mr. Shaheed Ullah S/o Rizwanullah. Mineral Guard, Village Andheri Kandi Barookhel, Tehsil and District Charsadda.
7. Master File/DGMM/Admn/2021.

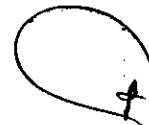
**Assistant Director (Admn)
H/Q Office, Peshawar.**

10.12.2020

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Iqbal Superintendent for respondents present.

Representative of respondents submitted reply. To come up for arguments and consideration, on 01.02.2021 before S.B.



(Rozina Rehman)
Member (J)

01.02.2021

Counsel for the appellant and Addl. AG alongwith Muhammad Iqbal, Superintendent for the respondents present.

The representative of respondents states that a CPLA has been preferred before the Apex Court against the order/judgment under implementation.

The written reply of respondents also suggests that filing of CPLA has been taken as defence for non-implementation of the judgment dated 17.06.2020. It is also confirmed by the representative that no date of hearing has been fixed with regard to the CPLA.

In the circumstances, the respondents are required to implement the judgment and submit report on next date of hearing in case the judgment of this Tribunal is neither suspended nor set aside till then.

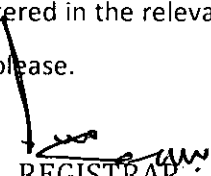


Adjourned for further proceedings to 31.03.2021 before S.B.



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 136 /2020 20

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.09.2020	<p>The execution petition of Mr. Shaheedullah submitted today by Mr. Nazir Ahmad Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>23/10/2020</u>.</p> <p> CHAIRMAN</p>
	23.10.2020	<p>Petitioner is present in person. Notice be issued to the respondents for 10.12.2020 before S.B.</p> <p> (Muhammad Jamal Khan) Member (Judicial)</p>

In the K.P.K. Service Tribunal, Pokhara

Executive Petition — 2021
10

Service Appeal No. 944/2019

Mr. Shohel Ullah vs Govt of K.P. High School, Pokhara

Index

1. Memo of Cont — 1-2
2. Memo of Appeal & Judgment — 3-12
3. Letter to Respondent — 13-14
4. Wakalatnama — —

Petitioner / Applicant

Hq.

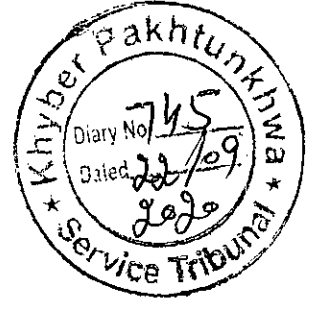
Nazim Ahmad, Advocate
High Court,

Pokhara

Cell. 0332-8545783

1

Before the KPK Service Tribunal Peshawar .



Execution Petition--- ¹³⁶...../2020
In Service Appeal No -944/2019

Mr. Shaheed Ullah S/ O Rizwan Ullah R/O Serdheri Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant/Petitioner

Versus

1. Government of KP through Hameed Ullah Shah Director General Mines & Minerals KPk Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals/ Enquiry officer, H/Q Office Peshawar.....**Respondents**

Execution Petition of the judgment dated 17.6.2020 of this Honourable Tribunal whereby the service Appeal of the Petitioner is accepted and allowed as prayed for.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Execution Petition compel and coerce the Respondents to implement the judgment in letter and spirit.

Respectfully Sheweth: The need for the instant execution Petition arises due to the following facts:

Facts:

1. That the Appellant/ Petitioner filed a Service Appeal No-944/2019 which was accepted and allowed as prayed for. (***Copy of Appeal and Judgment is attached as Annexure A).***)
2. That the copy of the Judgment is duly sent to the Respondents and has received by them without any denial even the Petitioner informed them of the judgment ...(**Copy**

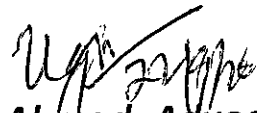
of the letter dated 6.7.2020 and of the Petitioner letter dated 30.6.20 are attached as Annexure B).

3. That the Respondents have not complied the judgment till today therefore tantamount to contempt
4. That the non compliance of the Judgment is negatively effecting the Petitioner and is against the Principle of justice.

It is therefore humbly prayed that the judgment may be execute in letter and spirit..

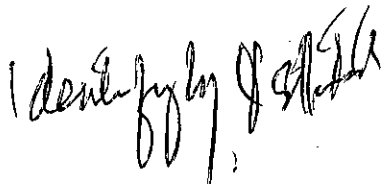

Appellant

Through


**Nazir. Ahmad. Advocate.
Peshawar. High Court.
Peshawar**

Certificate and affidavit

Certified that the appellant/ Petitioner has not filed any such execution Petition before this one in respect of the same subject matter and affirm on oath that the contents of this Petition is correct.

Petitioner.

Before the KPK Service Tribunal Peshawar .

Mr. Shaheed Ullah S/ O Rizwan Ullah R/O Serdheri Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant

Versus

1. Government of KP through Director General Mines & Minerals KPK Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals/ Enquiry officer, H/Q Office Peshawar.....Respondents

Service Appeal under Section 4 of the KPK Service Tribunal Act, against the impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. Whereby the major penalty (Compulsory Retirement from service with pension benefit) is imposed on the Appellant under Rule 4(1) (b) (II) of KPK Efficiency & Discipline Rules, 2011 and no reply of the Departmental Appeal filed by the Appellant is given so far.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Service Appeal, set aside the impugned order **No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019** by declaring it too harsh, against the Efficiency & Discipline Rules, tainted malafide and without lawful Authority, not recommended by the enquiry officer and re- instate the Appellant with all consequential benefits.

Respectfully Sheweth: The need for the instant Appeal arises due to the following facts:

Facts:

1. That the Appellant is a highly qualified person and joined the Department on 31.12.2008 as Mineral Guard BPS-1 and

Correct

①
③
A

worked under the kind control of the Respondent with full dedication, punctuality and honesty and with full satisfaction of the competent Authority with no any adverse remarks against him in the past(**Copy of appointment is attached as Annexure A**).

- 2. That the Appellant was posted and transferred from one place to another and as per direction of the competent Authority served at different places with the sole object of implementing rules, regulations and policy of the KPK Government and without any hesitation curbed the illegal mining, exploration, transportation of mines and many time was even threatened of dire consequences but the appellant did his duty as per his conscious and in accordance with the direction of the authorities...(**All The posting/transfer orders of the Appellant till compulsory retirement are attached as Annexure B**).
- 3. That the Appellant has a sufficient knowledge of computer, and his skill and service was utilized as computer operator for some time which testifies the caliber of the Appellant and his interest in office work rather to work for any illegal gains in the field and never demand to be posted in field. (**Copy of order dated 2.10.2014 is attached as annexure C**).
- 4. That where ever the Appellant is posted, he irrespective of any reward and without any fear and favour took legal action against the defaulters as per rules and sent murasalas against them to the police concerned with reporting the matter to the concerned Assistant Director Mineral development head quarter office Peshawar. (**Copy of the detail of such murasalas is attached as Annexure D and shall be considered part and parcel of this Appeal**).
- 5. That on 13th August 2018 the Appellant with 5 others through order No 14614-20/DGMM/MM/PR/misc/Office order were posted in District Peshawar to curb unauthorized mining/ transportation of major & minor minerals and was assigned the duty on 1473.73 acres area near village Badhber/ Janni Khawar, District Peshawar, Block 2 and surrounding areas and in continuation of this order the appellant was ordered to perform duty at Jalla Bella Peshawar(Special Task) and lodged FIR against the offenders of illegal mining and transportation and even on

(3)
(4)

✓
28.11.2018 through another order was assigned duty to curb such activities in the 837.67 acres near village Naguman/ Bhattani, District Peshawar (Block6) and surrounding areas. Needless to mention that the Appellant with other 30 Royal sub- Inspector and Minerals Guard was transferred from Head quarter Office Peshawar to HQ office Mardan where he was assigned duties at different places to check all major and minor minerals bearing areas mentioned in the order..... (**Copies of such are attached as Annexure E and be considered part of this appeal**).

6. That through office order No- 19785/DGMM/Amin dated 22.11.2018 the appellant was informed that a lease holder **Mr. Qadir Shah S/O Haji Arab Shah Jehan of Jani Khawar Badhber Tehsil & District Peshawar** has filed a complaint against me and the Competent Authority has appointed Mohsin Ali Khan Assistant Director (**Respondent No- 4**) as an enquiry officer who asked the Appellant to appear before him on 22.11.2018 at 11.00 A.M for recording statement with no charge sheet and statement of allegation and also asked the complainant a lease holder to appear before him on the same date at 10.00.A.M(One hour before) me with no chance given to me to confront him any question and judge the veracity of his complaint. Appellant submitted a statement on affidavit..(**Copy is attached as Annexure F**).

7. That a letter No 20723 DGMM/ Admin, dated 05.12.2018 as sent to the appellant by the **Respondent no 5** and it was revealed that he is appointed an enquiry Officer and asked him to appear for personal hearing on 10.12.2018 and recording written defense statement which the appellant did accordingly whereas the **Respondent No-1** issued disciplinary action on 3.12.2018..... (**Documents are attached as Annexure G**).

8. That the enquiry officer submitted an enquiry report to the **Respondent No1** on 20.12.2018 without providing any copy of such enquiry or of finding of fact report to the appellant and recommended the major penalty under Rule 4(b)(iii) of KPK Efficiency and discipline Rules 2011 .(**Copy is attached as annexure H**).

✓

9. That on 27.2.2019 the Respondent issued a show cause notice which the Appellant replied accordingly in the light of law and fact. (Copy is attached as annexure I). (4)
(5)

10. That the Respondent awarded the major penalty of compulsory retirement to the appellant through impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. (Impugned order is attached as annexure J).

11. That the Appellant filed a department appeal as per rule within time but is not respondent at all till today (Copy is attached as Annexure K)

Being aggrieved hence this Appeal is preferred on the following grounds:

Grounds

- A. That the enquiry officer and the competent Authority without personal hearing, cross examining the complainant and even not providing a copy of the complaint of the complainant to the appellant with no final show cause notice imposed a major Penalty of compulsory retirement on the Appellant through impugned order dated 21.3 2019 which is illegal, against the rules, is unjust and is against the Principle of fair trial.
- B. That the impugned order is a blatant violation of Efficiency and Discipline Rules and the punishment so imposed is too harsh and is not proportionate to the crime even if proved properly consequent thereof is without jurisdiction.
- C. That the Guards like the appellant deals with the defaulters and in many serious cases the competent authority has taken the lenient view with his own employee which is on record but for unknown reasons the competent authority want to get rid of the appellant considering the complaint of Qadir shah a conclusive evidence against him with no analysis of the video.
- D. That such kind of action against the honest Guards may discourage them which may result in a chain of

irregularities as well as bad governance in the department.

- E. That the Appellant is hesitant to involve the department in litigation and wish to solve the matter within the department as litigation in his opinion is bringing bad name to the department, hence preferred a departmental Appeal.
- F. That he appellant is too young and this kind of punishment is stigma on his personality which is due to unknown reasons and just on the complainant of a person against whom the appellant has filed an FIR.
- D. That the appellant is ready for oath that I has never demanded any illegal gratification during his service from any one and what the complainant Qadir shah has reported is false, fabricated and is manifestation of with the connivance of unseen hands as the Appellant have registered a lot of reports against the defaulters which is on record. The complainant was bound to prove the guilt of the Appellant not the appellant to prove his innocence which is against the basic principle of criminal law.

It is therefore humbly prayed that on acceptance of this Appeal the relief may be granted as prayed above.

Through **Appellant**
Nazir 1877119
NAZIR AHMAD
M.A., LL.B. LL.M.
Nazir. Ahmad. Advocate.
Peshawar. High Court.
Peshawar

Certificate and affidavit

Certified that the appellant has not filed any such appeal before this one in respect of the same subject matter and affirm on oath that the contents of this Appeal are correct.

Nazir
NAZIR AHMAD
Advocate
M.A., LL.B. LL.M.

Appellant.

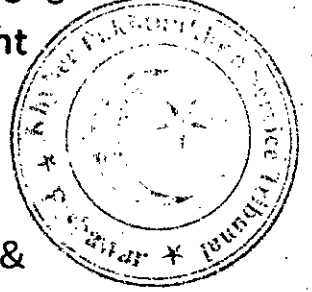
Before the KPK Service Tribunal Peshawar .

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1011

Dated 18-7-19

Mr. Shaheed Ullah S/O Rizwan Ullah R/O Serdheri Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant



Versus

1. Government of KP through Director General Mines & Minerals KPK Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals, Enquiry officer, H/Q Office Peshawar.....**Respondents**

Filed to-day

Registrar

18/7/19

Service Appeal under Section 4 of the KPK Service Tribunal Act, against the impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. Whereby the major penalty (Compulsory Retirement from service with pension benefit) is imposed on the Appellant under Rule 4(1) (b) (II) of KPK Efficiency & Discipline Rules, 2011 and no reply of the Departmental Appeal filed by the Appellant is given so far.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Service Appeal, set aside the impugned order **No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019** by declaring too harsh, against the Efficiency & Discipline Rules, tainted malafide and without lawful Authority, not recommended by the enquiry officer and re-instate the Appellant with all consequential benefits.

ATTESTED

REGISTERED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Respectfully Sheweth: The need for the instant Appeal arises due to the following facts:

Facts:

1. That the Appellant is a highly qualified person and joined the Department on 31.12.2008 as Mineral Guard BPS-1 and

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service appeal No. 944/2019

Date of institution ... 18.07.2019

Date of decision 17.06.2020



Mr. Shahzad Ullah S/O Rizwan Ullah R/O Serdheri Kandi Barookhel Tehsil & District Charsadda Mineral Guard BPS-03 H/Q office Peshawar

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Director General Mines & Minerals Peshawar and four (04) others

(Respondents)

Present

Mr. Nazir Ahmad
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. HAMID FAROOQ DURRANI,
MRS. ROZINA REHMAN,

CHAIRMAN
MEMBER(1)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Instant appeal has been preferred questioning the order dated 21.03.2019, whereby, the appellant was imposed upon major penalty in terms of compulsory retirement from service with pension benefits. His departmental appeal remained un-responded.

2. The relevant facts, as gatherable from record, are that the appellant was proceeded against departmentally and was ultimately issued a Show Cause Notice containing the allegations in terms of misconduct and

(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Signature)


corruption on his part. In the Charge Sheet dated 03.12.2018 it was laid that the appellant was posted as a Mineral Guard at Jala Bela district Peshawar, through order dated 17.09.2018, for the purpose of lying hands on persons involved in illegal mining/ transportation of Mineral and report the cases accordingly. However, the appellant was found performing duty at jani Khawar Badhber without the permission of In-charge. Further, he was found involved in malpractice and collection of illegal money from the lease holders.

As another allegation, it was contended in the Charge Sheet that one Mr. Qadir Shah, lease holder of Minerals at jani Khawar Bahhber had filed a complaint against the appellant that he had received illegal money from the complainant and that he was involved in corruption. These allegations were made basis of impugned order dated 21.03.2019.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney on behalf of respondents and have also gone through the available record with their assistance.

Learned counsel for the appellant vehemently argued that the proceedings conducted against the appellant were in clear violation of Government of Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011. More particularly, in contravention of Rules 10/11/13/14 & 15, therefore, were nullity in the eye of law. The respondents did not care to conduct a proper/regular inquiry against the appellant hence he was deprived of valuable rights in terms of defense and production of contra evidence. It was also the argument of learned counsel that the complaint

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

against the appellant was based on malafid  as he had previously detected the high handedness of the complainant and in that regard also lodged an FIR on 21.09.2015. The proceedings against the appellant was, therefore, liable to be dislodged. In support of his arguments learned counsel relied on judgments reported as 2004 SCMR 294 and 2006 SCMR 443.

On the other hand, learned DDA attempted to argue that the proceedings against the appellant were taken in accordance with rules. The appellant could not set forth any satisfactory response to the allegations, therefore, was rightly awarded the impugned penalty. He referred to a statement dated 19.11.2018 purportedly submitted by the appellant and stated that he had tacitly admitted the receipt of tainted money.

4. By now it is well settled through various judgments of Apex court that in cases where major penalty/punishment is imposed upon a Civil Servant a regular inquiry is all the more necessitated. Seen in the perspective we find from the record that a preliminary inquiry was conducted by Assistant Director Mineral (Complaint Cell) which was followed by another inquiry conducted by Deputy Director (Tech) H/Q

office Peshawar, wherein, imposition of major penalty upon the appellant was recommended. It is, however, interesting to note that the preliminary inquiry having been superseded by the subsequent inquiry through order on 03.12.2018, reliance was placed by inquiry officer on the proceedings of preliminary inquiry. The statement of accused procured in the preliminary inquiry was also rested upon. It is very pertinent to note that

ATTESTED

CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Handwritten signature]

11

the alleged complaint against the appellant or statement of the complainant was never made part of record before us. The allegations against the appellant, therefore, were not substantiated.


5. The record is further suggestive of the fact that during preliminary inquiry an office order dated 22.11.2018 was issued by respondent No.4 wherein the appellant was required to appear before the inquiry officer on 22.11.2018 at 11:00 AM for recording of his statement. In the same office order the complainant was asked to attend the office of the inquiry officer on 22.11.2018 at 10:00 AM for discussion. The contents of office order clearly suggest that the appellant was given little reaction time to do the needful on one hand and, on the other, the complainant was not exposed to the appellant. This act on the part of respondent clearly smacked of malafide. In the same context the attempted counter blast by the complainant against the appellant, due to lodging of FIR against the former, could not be ruled out.

ATTESTED

6. There is yet another important aspect of the case in hand.

Throughout the record the respondents remained at loss in bringing forth date of incidence noted in both the allegation. So much so, that the amount of money which the appellant was alleged to have obtained as illegal gratification, was no-where mentioned. The allegations against the appellant could, therefore, not be established by any standards of proof.

7. It is also worth noting that the impugned order was based on ground that the appellant could not forward any legal reasons to prove himself innocent. On one hand, it was obligatory upon the


ATTESTED
 Khayrullah
 Service Tribunal,
 Peshawar



12

complainant/respondents to have satisfactorily proved the charges against the appellant, and on the other, basing the impugned order on such flimsy ground as in blatant violation of principles of natural justice. It is also found that the statement of appellant has been treated as a piece of evidence against him by the inquiry officer as well as competent authority but the same was not appreciated as a whole. Needless to note that no witness to the occurrence was ever examined during the proceedings.

Parawise comments submitted by respondents before this Tribunal suggest that the same were not only evasive but also contained allegation against the appellant pertaining to the year 2011, much before the alleged occurrence in the year 2018, and totally extraneous to the matter under the issue. It is also mentioned in the comments that the appellant failed to prove himself innocent.

8. For what has been discussed above we consider that the appeal in hand merits acceptance. It is, therefore, accordingly allowed as prayed for.

Parties are left to bear their respective costs. File be consigned to the record room.

(Hamid Farooq Durrani)
Chairman

(Rozina Rehman)
Member (J)

ANNOUNCED
17.06.2020

Certified true copy
Secretary
Tribunal
Peshawar

Date of Presentation 23/06/2020
Number of file 2000
Carrying Fee 2200
Urgent 400
Total 2600
Name of Copyist
Date of Completion of Copy 23/06/2020
Date of Delivery of Copy 23/06/2020

PKHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1375 /ST.

Dated 06.10.20 2020

(12)
Aman
(13)

To

The Director General, Mines & Minerals Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 944/2019, MR. SHAHEED ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 17.06.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

14

To

The Director General,
Mines & Minerals,
Khyber Pakhtunkhwa Peshawar.

Subject:- **JUDGMENT PASSED BY SERVICE TRIBUNAL REGARDING RE-
INSTATEMENT**

R/Sir

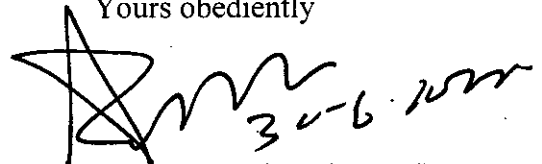
With due respect it is stated that the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar vide order dated 17.06.2020 (Copy enclosed) has been accepted my appeal.

Therefore, it is requested to reinstate me for office duty as per Order of Service Tribunal Khyber Pakhtunkhwa Peshawar.

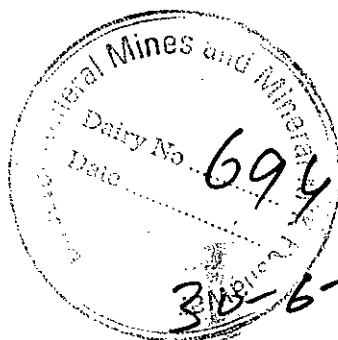
Thanking you.

Dated 30.06.2020

Yours obediently


30-6-2020

Shaheed Ullah (Ex-Mineral Guard)
Mohallah Baro Khel, Village Sardheri
District Charsadda



Received.

وکالت نامہ

بعدالت پشاور ہائی کورٹ پشاور

	S No	5692
	BC No	
	Sign	

22-9-2020 مورخہ
 Execution / اس مقدمہ
 دعویٰ
 جرم

باعت تحریر آنکے
 منجانب اسلئے
 بنام حکومت
 محمد
 دہلوی

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب دہی وکل کاروائی، متعلقہ
 آن مقام کے لئے مندرجہ بالا کے لئے مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا۔
 نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہو
 گانیز وکیل صاحب بصورت ڈگری برخلاف من اختیار دہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء
 تا عدالت انتہا یعنی سپریم کورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم پیروی
 کاروائی یکطرفہ یا ڈگری یکطرفہ کیخلاف درخواست دائر کر سکتا ہے اور وکیل موصوف میری جانب
 سے مقدمہ میں بصورت ڈگری چیک یا نقد روپیہ کی شکل میں وصولی کر سکے گا اور مزید یہ کہ وکیل
 موصوف مقدمہ متذکرہ کی کل یا جزوی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا
 ہے جس کو بھی وہ جملہ اختیار حاصل ہونگے جو کہ وکیل موصوف کو حاصل ہیں مجھے اس صورت میں
 تمام ساختہ پرداختہ منظور و قبول ہوگا لہذا میں نے وکالت نامہ ہذا تحریر کر کے اس پر دستخط نشان
 انگشت ثبت کر دیا ہے تاکہ سند رہے۔

20-22-2020
 22-9-2020
 20-22-2020



کے لئے منظور ہے
 محمد
 دہلوی

بمقام



DIRECTORATE GENERAL OF MINES AND MINERALS
KHYBER PAKHTUNKHWA

Attached Departments Complex Khyber Road Peshawar

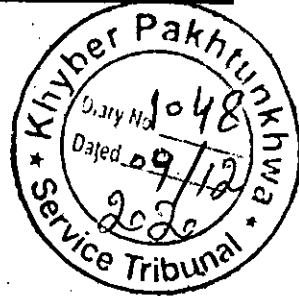
Phone: & Fax # 091-9210236

No. 2006 / 3/451/DGMM/Admin

Dated. 09 /12/2020

To

✓
The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.



Subject: E.P. 136/2020 IN SERVICE APPEAL NO. 944/2019 TITLED
MR. SHAHEED ULLAH EX-MINERAL GUARD V/S GOVT.

I am directed to refer to the subject noted above and to enclose herewith reply in the instant case for further process as the date for hearing is fixed on 10.12.2020 before Service Tribunal, Khyber Pakhtunkhwa, Peshawar please.

Encl: As Above.

Assistant Director (Admin)
H/Q Office, Peshawar.
Dated. /12/2020

Endst: No. No. / 3/451/DGMM/Admin

Copy is forwarded to:

1. PA to Director General Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Director (Litigation) H/Q Office, Peshawar.
3. Section Officer (Estt:) Minerals Development Deptt: Khyber Pakhtunkhwa, Peshawar.
4. Section Officer (Lit.) Minerals Development Deptt: Khyber Pakhtunkhwa, Peshawar.
5. Master File/DGMM/Admn/2020.

Assistant Director (Admin)
H/Q Office, Peshawar.

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

Execution Petition No. 136/2020 in Service Appeal No. 944/2019


Shaheed Ullah..... Appellant

Versus

Government of Khyber Pakhtunkhwa through
Director General Mines & Minerals & others Respondents

INDEX

S.No	Description	Annexure	Pages
1.	Affidavit	_____	01
2.	Reply of Para Wise comments	_____	02
3.	Letter (CPLA)	A	03
4.	Letter (Scrutiny committee Law Department)	B	04


Superintendent (Admin)
H/Q Office, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Execution Petition No. 136/2020 in Service Appeal No. 944/2019

Shaheed Ullah..... Appellant

Versus

Government of Khyber Pakhtunkhwa etc..... Respondents

Affidavit

I Muhammad Iqbal Superintendent (Admin), Directorate General Mines & Mineral do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from Honorable Court.

DEPONENT

*Muhammad Iqbal
Supdt. (Admin) H/Q office, Pesh.*

Identified by

1	7	3	0	1	-	1	5	7	1	3	9	0	-	3
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Execution Petition No. 136/2020 in Service Appeal No. 944/2019

Shaheed Ullah..... Appellant

Versus

Government of Khyber Pakhtunkhwa etc..... Respondents

Parawise comments on behalf of respondent No. 1 to 5

Preliminary Objections

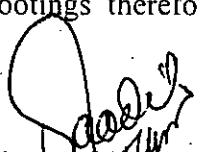
1. That the appellant has not come to this tribunal with clean hands nor the appeal is based upon legal footings and is therefore liable to be dismissed.
2. That the appellant has no cause of action or locus standi to file the instant appeal, hence this appeal is not maintainable in its present form.
3. That the appellant is not entitled to any relief and this appeal is filed just to waste the precious time of this court.
4. That the appellant has no case in his support.

Respectfully Sheweth:

PARAWISE COMMENTS

1. **Reply to Para No. 1.** In this regard, it is stated that CPLA filed in Supreme Court of Pakistan against the judgment of Honorable Service Tribunal, Khyber Pakhtunkhwa, Peshawar Dated: 17-06-2020 (**Annex-A**).
2. **Reply to Para No. 2.** As stated in Para (1) of above.
3. **Reply to Para No. 3.** It is stated that CPLA filed in Apex Court in the instant case as per decision of Scrutiny Committee of Law Department Govt. of Khyber Pakhtunkhwa (**Annex-B**). Therefore, it is not tantamount to contempt.
4. **Reply to Para No. 4.** The petitioner made bad reputation for the department due to viral of his video on Social Media, which is negatively effecting the Department too.

It is humbly prayed that the said petition has no ground footings therefore, may be dismissed please.


Assistant Director (Admin)
H/Q Office, Peshawar.
(On behalf of Respondents
No. 01 to 05)

Annex - A

3

649

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2020

Government of Khyber Pakhtunkhwa through Director General Mines & Minerals Khyber Pakhtunkhwa,, Peshawar & Others

-----PETITIONERS

VERSUS

Mr. Shaheed Ullah & Others

-----RESPONDENTS

NOTICE

To

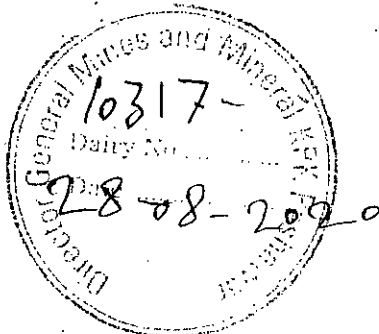
1. Mr. Shaheed Ullah S/o Rizwan Ullah R/o Serdheri Kandi Barookhel Tehsil & District Charsadda Mineral Guard BPS-3 H/Q Office, Peshawar
2. Mohsin ali Khan Assistant Director/ I(Nquiry Officer, H/Q Office Peshawar
3. Hayat ur Rehman Deputy Director Minerals/Enquiry Officer, H/Q Office, Peshawar

1284

Please take notice Registered A/D post to the effect that I am filing CPLA with stay application in the above titled case against the judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 17/06/2020 in service appeal No.944/2019 before the Supreme Court of Pakistan in its Branch Registry at Peshawar.

Dated this

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners





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

Annex-B

4

(Agenda Item No.15)

No.SO(Lit)/LD/9-17(1)Min/2020/
Dated Peshawar the 05/08/2020

To

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

SUBJECT SERVICE APPEAL NO. 944/2019 MR. SHAHEED ULLAH VERSUS
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH DIRECTOR
GENERAL MINES AND MINERALS PESHAWAR AND FOUR (04) OTHERS.

I am directed to refer to your letter No So(Lit)/MDD/Misc/2019 dated 16.07.2020, on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 05-08-2020 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of appeal / CPLA in the Supreme Court of Pakistan.

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

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please.

Yours faithfully,

Additional Secretary (Opinion)
Law Department

Endst: No & Date Even.

Copy forwarded to the.

- 1 PS to Secretary Law Department.
3. PA to Solicitor Law Department.

Additional Secretary (Opinion)

In the P.P.K. Service Tribunal, Peshawar

Executive Petition — 2020
in

Service Appeal No. 944/2019

Mr. Shahidullah vs. Govt. of P.K. Employees Welfare

Index

1. Memo of Cont. — 1-2
2. Memo of Appeal & Judgment — 3-12
3. Letter to Respondent — 13-14
4. Wakalatnama — —

Petitioner / Applicant

Hq.

Muzim Ahmad, Advocate

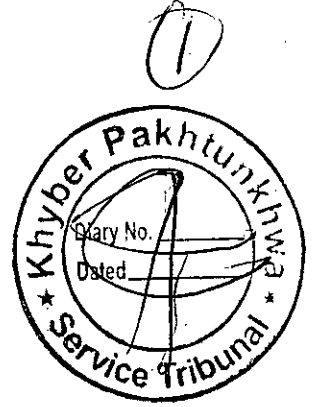
Hq. Cont.

Peshawar

Cell. 0332-8545783

Before the KPK Service Tribunal Peshawar .

Execution Petition---³⁶...../2020
In Service Appeal No -944/2019



Mr. Shaheed Ullah S/ O Rizwan Ullah R/O Serdheri Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant/Petitioner

Versus

1. Government of KP through Hameed Ullah Shah Director General Mines & Minerals KP Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals/ Enquiry officer, H/Q Office Peshawar.....**Respondents**

Execution Petition of the judgment dated 17.6.2020 of this Honourable Tribunal whereby the service Appeal of the Petitioner is accepted and allowed as prayed for.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Execution Petition compel and coerce the Respondents to implement the judgment in letter and spirit.

Respectfully Sheweth: The need for the instant execution Petition arises due to the following facts:

Facts:

1. That the Appellant/ Petitioner filed a Service Appeal No-944/2019 which was accepted and allowed as prayed for. (***Copy of Appeal and Judgment is attached as Annexure A).***)
2. That the copy of the Judgment is duly sent to the Respondents and has received by them without any denial even the Petitioner informed them of the judgment ...(**Copy**

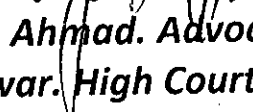
31
of the letter dated 6.7.2020 and of the Petitioner letter dated 30.6.20 are attached as Annexure B). ②

3. That the Respondents have not complied the judgment till today therefore tantamount to contempt
4. That the non compliance of the Judgment is negatively affecting the Petitioner and is against the Principle of justice.

It is therefore humbly prayed that the judgment may be execute in letter and spirit..

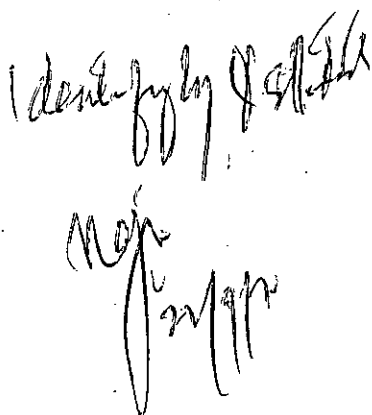
Appellant

Through


**Nazir. Ahmad. Advocate.
Peshawar. High Court.
Peshawar**

Certificate and affidavit

Certified that the appellant/ Petitioner has not filed any such execution Petition before this one in respect of the same subject matter and affirm on oath that the contents of this Petition is correct.



Petitioner.

Before the KPK Service Tribunal Peshawar .

Mr. Shaheed Ullah S/ O Rizwan Ullah R/O Serdheri. Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant

Versus

1. Government of KP through Director General Mines & Minerals KPk Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals/ Enquiry officer, H/Q Office Peshawar.....**Respondents**

Service Appeal under Section 4 of the KPK Service Tribunal Act, against the impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. Whereby the major penalty (Compulsory Retirement from service with pension benefit) is imposed on the Appellant under Rule 4(1) (b) (II) of KPK Efficiency & Discipline Rules, 2011 and no reply of the Departmental Appeal filed by the Appellant is given so far.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Service Appeal, set aside the impugned order **No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019** by declaring it too harsh, against the Efficiency & Discipline Rules, tainted malafide and without lawful Authority, not recommended by the enquiry officer and re- instate the Appellant with all consequential benefits.

Respectfully Sheweth: The need for the instant Appeal arises due to the following facts:

Facts:

1. That the Appellant is a highly qualified person and joined the Department on 31.12.2008 as Mineral Guard BPS-1 and

(7)

worked under the kind control of the Respondent with full dedication, punctuality and honesty and with full satisfaction of the competent Authority with no any adverse remarks against him in the past(**Copy of appointment is attached as Annexure A**).

2. That the Appellant was posted and transferred from one place to another and as per direction of the competent Authority served at different places with the sole object of implementing rules, regulations and policy of the KPK Government and without any hesitation curbed the illegal mining, exploration, transportation of mines and many time was even threatened of dire consequences but the appellant did his duty as per his conscious and in accordance with the direction of the authorities...(**All The posting/transfer orders of the Appellant till compulsory retirement are attached as Annexure B**).
3. That the Appellant has a sufficient knowledge of computer, and his skill and service was utilized as computer operator for some time which testifies the caliber of the Appellant and his interest in office work rather to work for any illegal gains in the field and never demand to be posted in field. **(Copy of order dated 2.10.2014 is attached as annexure C)**.
4. That where ever the Appellant is posted, he irrespective of any reward and without any fear and favour took legal action against the defaulters as per rules and sent murasalas against them to the police concerned with reporting the matter to the concerned Assistant Director Mineral development head quarter office Peshawar. (**Copy of the detail of such murasalas is attached as Annexure D and shall be considered part and parcel of this Appeal**).
5. That on 13th August 2018 the Appellant with 5 others through order No 14614-20/DGMM/MM/PR/misc/Office order were posted in District Peshawar to curb unauthorized mining/ transportation of major & minor minerals and was assigned the duty on 1473.73 acres area near village Badhber/ Janni Khawar, District Peshawar, Block 2 and surrounding areas and in continuation of this order the appellant was ordered to perform duty at Jalla Bella Peshawar(Special Task) and lodged FIR against the offenders of illegal mining and transportation and even on

(3)
(4)

28.11.2018 through another order was assigned duty to curb such activities in the 837.67 acres near village Naguman/ Bhattani, District Peshawar (Block6) and surrounding areas. Needless to mention that the Appellant with other 30 Royal sub- Inspector and Minerals Guard was transferred from Head quarter Office Peshawar to HQ office Mardan where he was assigned duties at different places to check all major and minor minerals bearing areas mentioned in the order..... **(Copies of such are attached as Annexure E and be considered part of this appeal).**

6. That through office order No- 19785/DGMM/Amin dated 22.11.2018 the appellant was informed that a lease holder **Mr. Qadir Shah S/O Haji Arab Shah Jehan of Jani Khawar Badhber Tehsil & District Peshawar** has filed a complaint against me and the Competent Authority has appointed Mohsin Ali Khan Assistant Director (**Respondent No- 4**) as an enquiry officer who asked the Appellant to appear before him on 22.11.2018 at 11.00 A.M for recording statement with no charge sheet and statement of allegation and also asked the complainant a lease holder to appear before him on the same date at 10.00.A.M(. One hour before) me with no chance given to me to confront him any question and judge the veracity of his complaint. Appellant submitted a statement on affidavit..(Copy is attached as **Annexure F**).
7. That a letter No 20723 DGMM/ Admin, dated 05.12.2018 as sent to the appellant by the **Respondent no 5** and it was revealed that he is appointed an enquiry Officer and asked him to appear for personal hearing on 10.12.2018 and recording written defense statement which the appellant did accordingly whereas the **Respondent No-1 issued** disciplinary action on 3.12.2018..... **(Documents are attached as Annexure G).**
8. That the enquiry officer submitted an enquiry report to the Respondent No1 on 20.12.2018 without providing any copy of such enquiry or of finding of fact report to the appellant and recommended the major penalty under Rule 4(b)(iii) of KPK Efficiency and discipline Rules 2011 .(**Copy is attached as annexure H**).

9. That on 27.2.2019 the Respondent issued a show cause notice which the Appellant replied accordingly in the light of law and fact. (Copy is attached as annexure I).

10. That the Respondent awarded the major penalty of compulsory retirement to the appellant through impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. (Impugned order is attached as annexure J).

11. That the Appellant filed a department appeal as per rule within time but is not respondent at all till today (Copy is attached as Annexure K)

Being aggrieved hence this Appeal is preferred on the following grounds:

Grounds

- A. That the enquiry officer and the competent Authority without personal hearing, cross examining the complainant and even not providing a copy of the complaint of the complainant to the appellant with no final show cause notice imposed a major Penalty of compulsory retirement on the Appellant through impugned order dated 21.3 2019 which is illegal, against the rules, is unjust and is against the Principle of fair trial.
- B. That the impugned order is a blatant violation of Efficiency and Discipline Rules and the punishment so imposed is too harsh and is not proportionate to the crime even if proved properly consequent thereof is without jurisdiction.
- C. That the Guards like the appellant deals with the defaulters and in many serious cases the competent authority has taken the lenient view with his own employee which is on record but for unknown reasons the competent authority want to get rid of the appellant considering the complaint of Qadir shah a conclusive evidence against him with no analysis of the video.
- D. That such kind of action against the honest Guards may discourage them which may result in a chain of

irregularities as well as bad governance in the department.

E. That the Appellant is hesitant to involve the department in litigation and wish to solve the matter within the department as litigation in his opinion is bringing bad name to the department, hence preferred a departmental Appeal.

F. That he appellant is too young and this kind of punishment is stigma on his personality which is due to unknown reasons and just on the complainant of a person against whom the appellant has filed an FIR.

D. That the appellant is ready for oath that I has never demanded any illegal gratification during his service from any one and what the complainant Qadir shah has reported is false, fabricated and is manifestation of with the connivance of unseen hands as the Appellant have registered a lot of reports against the defaulters which is on record. The complainant was bound to prove the guilt of the Appellant not the appellant to prove his innocence which is against the basic principle of criminal law.

It is therefore humbly prayed that on acceptance of this Appeal the relief may be granted as prayed above.

Through

Appellant

Nazir Ahmad
18/7/19

Nazir. Ahmad. Advocate.
Peshawar. High Court.
Peshawar

NAZIR AHMAD

W.A. LL.B.

Certificate and affidavit

Certified that the appellant has not filed any such appeal before this one in respect of the same subject matter and affirm on oath that the contents of this Appeal are correct.

Nazir Ahmad
NAZIR AHMAD
Advocate
W.A. LL.B.

Appellant.

Before the KPK Service Tribunal Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1011

Dated 18-7-19

Mr. Shaheed Ullah S/ O Rizwan Ullah R/O Serdheri Kandi
Barookhel Tehsil & District Charsadda Mineral Guard BPS -3
H/Q office Peshawar.Appellant

Versus

1. Government of KP through Director General Mines & Minerals KPK Peshawar.
2. Mineral Development Officer Nowshera.
3. Assistant Director Mineral Development/ technical Nowshera.
4. Mohsin Ali Khan Assistant Director / Inquiry Officer, H/Q Office Peshawar.
5. Hayat _ Ur- Rehman Deputy Director Minerals, Enquiry officer, H/Q Office Peshawar.....Respondents

Filed to-day

Registrar

Service Appeal under Section 4 of the KPK Service Tribunal Act, against the impugned order No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019. Whereby the major penalty (Compulsory Retirement from service with pension benefit) is imposed on the Appellant under Rule 4(1) (b) (II) of KPK Efficiency & Discipline Rules, 2011 and no reply of the Departmental Appeal filed by the Appellant is given so far.

Prayer:

That this Honourable Tribunal may graciously, on acceptance of this Service Appeal, set aside the impugned order **No- 5158-67 DGMM/Amin/3/451 dated 21.03.2019** by declaring too harsh, against the Efficiency & Discipline Rules, tainted malafide and without lawful Authority, not recommended by the enquiry officer and re-instate the Appellant with all consequential benefits.

Respectfully Sheweth: The need for the instant Appeal arises due to the following facts:

Facts:

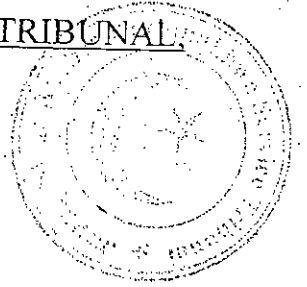
1. That the Appellant is a highly qualified person and joined the Department on 31.12.2008 as Mineral Guard BPS-1 and

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service appeal No: 944/2019

Date of institution ... 18.07.2019

Date of decision 17.06.2020



Mr. Shauheed Ullah S/O Rizwan Ullah R/O Serdheri Kandi Barookhel Tehsil & District Charsadda Mineral Guard BPS-03 H/Q office Peshawar

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Director General Mines & Minerals Peshawar and four (04) others

(Respondents)

Present

Mr. Nazir Ahmad
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. HAMID FAROOQ DURRANI,
MRS. ROZINA REHMAN,

CHAIRMAN
MEMBER(J)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Instant appeal has been preferred questioning the order dated 21.03.2019, whereby, the appellant was imposed upon major penalty in terms of compulsory retirement from service with pension benefits. His departmental appeal remained un-responded.

2. The relevant facts, as gatherable from record, are that the appellant was proceeded against departmentally and was ultimately issued a Show Cause Notice containing the allegations in terms of misconduct and


corruption on his part. In the Charge Sheet dated 03.12.2018 it was laid that the appellant was posted as a Mineral Guard at Jala Bela district Peshawar, through order dated 17.09.2018, for the purpose of lying hands on persons involved in illegal mining/ transportation of Mineral and report the cases accordingly. However, the appellant was found performing duty at jani Khawar Badhber without the permission of In-charge. Further, he was found involved in malpractice and collection of illegal money from the lease holders.

As another allegation, it was contended in the Charge Sheet that one Mr. Nadir Shah, lease holder of Minerals at jani Khawar Bahhber had filed a complaint against the appellant that he had received illegal money from the complainant and that he was involved in corruption. These allegations were made basis of impugned order dated 21.03.2019.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney on behalf of respondents and have also gone through the available record with their assistance.

Learned counsel for the appellant vehemently argued that the proceedings conducted against the appellant were in clear violation of Government of Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011. More particularly, in contravention of Rules 10/11/13/14 & 15, therefore, were nullity in the eye of law. The respondents did not care to conduct a proper/regular inquiry against the appellant hence he was deprived of valuable rights in terms of defense and production of contra evidence. It was also the argument of learned counsel that the complaint

ATTESTED



EXAMINER
Khyber Pakhtunkhwa

against the appellant was based on malafide as he had previously detected the high handedness of the complainant and in that regard also lodged an FIR on 21.09.2015. The proceedings against the appellant was, therefore, liable to be dislodged. In support of his arguments learned counsel relied on judgments reported as 2004 SCMR 294 and 2006 SCMR 443.

On the other hand, learned DDA attempted to argue that the proceedings against the appellant were taken in accordance with rules. The appellant could not set forth any satisfactory response to the allegations, therefore, was rightly awarded the impugned penalty. He referred to a statement dated 19.11.2018 purportedly submitted by the appellant and stated that he had tacitly admitted the receipt of tainted money.

4. By now it is well settled through various judgments of Apex court that in cases where major penalty/punishment is imposed upon a Civil Servant a regular inquiry is all the more necessitated. Seen in the perspective we find from the record that a preliminary inquiry was conducted by Assistant Director Mineral (Complaint Cell) which was followed by another inquiry conducted by Deputy Director (Tech) H/Q office Peshawar, wherein, imposition of major penalty upon the appellant was recommended. It is, however, interesting to note that the preliminary inquiry having been superseded by the subsequent inquiry through order on 03.12.2018, reliance was placed by inquiry officer on the proceedings of preliminary inquiry. The statement of accused procured in the preliminary inquiry was also rested upon. It is very pertinent to note that

ATTESTED


 Attestor
 Service Tribunal,
 Peshawar



(11)

the alleged complaint against the appellant or statement of the complainant was never made part of record before us. The allegations against the appellant, therefore, were not substantiated.

5. The record is further suggestive of the fact that during preliminary inquiry an office order dated 22.11.2018 was issued by respondent No.4 wherein the appellant was required to appear before the inquiry officer on 22.11.2018 at 11:00 AM for recording of his statement. In the same office order the complainant was asked to attend the office of the inquiry officer on 22.11.2018 at 10:00 AM for discussion. The contents of office order clearly suggest that the appellant was given little reaction time to do the needful on one hand and, on the other, the complainant was not exposed to the appellant. This act on the part of respondent clearly smacked of malafide. In the same context the attempted counter blast by the complainant against the appellant, due to lodging of FIR against the former, could not be ruled out.

6. There is yet another important aspect of the case in hand. Throughout the record the respondents remained at loss in bringing forth date of incidence noted in both the allegation. So much so, that the amount of money which the appellant was alleged to have obtained as illegal gratification, was no-where mentioned. The allegations against the appellant could, therefore, not be established by any standards of proof.

7. It is also worth noting that the impugned order was based on ground that the appellant could not forward any legal reasons to prove himself innocent. On one hand, it was obligatory upon the

APPEAL
 TRIBUNAL
 Peshawar

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complainant/respondents to have satisfactorily proved the charges against the appellant, and on the other, basing the impugned order on such flimsy ground as in blatant violation of principles of natural justice. It is also found that the statement of appellant has been treated as a piece of evidence against him by the inquiry officer as well as competent authority but the same was not appreciated as a whole. Needless to note that no witness to the occurrence was ever examined during the proceedings.

Parawise comments submitted by respondents before this Tribunal suggest that the same were not only evasive but also contained allegation against the appellant pertaining to the year 2011, much before the alleged occurrence in the year 2018, and totally extraneous to the matter under the issue. It is also mentioned in the comments that the appellant failed to prove himself innocent.

8. For what has been discussed above we consider that the appeal in hand merits acceptance. It is, therefore, accordingly allowed as prayed for.

Parties are left to bear their respective costs. File be consigned to the record room.

(Hamid Farooq Durrani)
Chairman

(Rozina Rehman)
Member (J)

ANNOUNCED
17.06.2020

Copy of the order is being sent to the concerned parties.
Date of completion of copy
Date of delivery of copy

Date of Completion of Copy	23/06/2020
Number of Copies	2000
Costing Per Copy	2200
Urgent	400
Total	2600
Name of Applicant	
Date of Completion of Copy	23/06/2020
Date of Delivery of Copy	23/06/2020

PKHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1375 /ST

Dated 06 /07 2020

(12)
Amen
(15)

To

The Director General, Mines & Minerals Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 944/2019, MR. SHAHEED ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 17.06.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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To

The Director General,
Mines & Minerals,
Khyber Pakhtunkhwa Peshawar.

Subject:- JUDGMENT PASSED BY SERVICE TRIBUNAL REGARDING RE-
INSTATEMENT

R/Sir

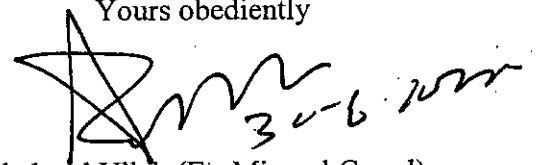
With due respect it is stated that the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar vide order dated 17.06.2020 (Copy enclosed) has been accepted my appeal.

Therefore, it is requested to reinstate me for office duty as per Order of Service Tribunal Khyber Pakhtunkhwa Peshawar.

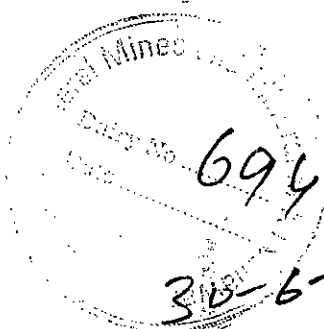
Thanking you.

Dated 30.06.2020

Yours obediently


30-6-2020

Shaheed Ullah (Ex-Mineral Guard)
Mohallah Baro Khel, Village Sardheri
District Charsadda


6942
30-6-20
Received.