

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEALS NO. 1067/2014

Date of institution ... 25.07.2014

Date of judgment ... 25.7.2016

Kamran Gul Ex-Constable No. 3390 Police Station
Pushtakhara District Peshawar.

... (Appellant)

VERSUS

1. S.P Cantt Peshawar.
2. SSP Operation Peshawar.
3. SP Headquarter Peshawar.
4. CCPO Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974, AGAINST OFFICE ORDER DATED 4.3.2014
PASSED BY RESPONDENT NO. 1, WHEREBY THE APPELLANT WAS
DISMISSED FROM SERVICE AND THE DEPARTMENTAL APPEAL OF THE
APPELLANT REJECTED ON 4.7.2014.

Mr. Muhammad Bashir Naveed, Advocate.

.. For appellant.

Mr. Kabirullah Khan Khattak, Assistant AG

.. For respondents

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant has preferred instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 4.3.2014 passed by respondent no. 1 where-under the appellant was dismissed from service and departmental appeal of appellant was rejected on 4.7.2014.

2. Brief facts of the case as narrated in the contents of appeal are that the appellant was appointed as Constable in Police Department in 2009. The appellant remained absent from duty w.e.f 4.10.2012 to 21.11.2012 and 22.12.2012 to 25.2.2014. Disciplinary proceedings were initiated under Police Rules 1975 and appellant was

dismissed from service vide impugned order dated 4.3.2014. Departmental appeal was filed by the appellant, was rejected on 4.7.2014. Hence, the instant service appeal.

3. Arguments heard and record perused.

4. Learned counsel for the appellant argued that attendance of the appellant was recorded in Police Station Pishtakhara on 17.8.2014, while he received salary up-to 30.4.2014. The appellant was not only condemned unheard but also not associated with the inquiry proceedings. Inquiry was not conducted in the prescribed manner, as charge sheet/statement of allegations were not served on the appellant. Show cause notice, opportunity for defense and personal hearing were not afforded to appellant. Moreover, he was awarded major punishment of dismissal from service with retrospective effect in violation of rules. He further contended that two separate inquiries were conducted by the respondents against the appellant. First inquiry was conducted by Mr. Muzamil Shah, Deputy Superintendent of Police, CCP Peshawar and the second by ASP Town. Subject of first inquiry read as *de-novo* inquiry which raises doubts, whether another inquiry was conducted by respondents prior to this. Reliance was also placed on 1988 PLC (C.S) 264 and 1990 PLC (C.S) 145. Learned counsel for the appellant also contended that impugned order dated 04.07.2014 may be set aside and appellant be reinstated in service.

5. Learned Government Pleader while opposing the appeal argued that impugned order passed on 4.3.2014 while the departmental appeal was filed on 25.7.2014, while appeal in Service Tribunal was filed on 5.5.2014. As such appeal is barred by time. Counsel for the appellant has not submitted application for condonation of delay. Reliance was placed on SCMR 210, 1564 and SCMR 2011, 689 delay in submission of appeal will have to be justified. Moreover, appellant has not given any justification/reasons for willful absence from duty. Learned Government Pleader against that despite serving of charge sheet/statement of allegations, reply was not submitted by the appellant. He further contended that appeal being devoid of any merit be dismissed with cost.

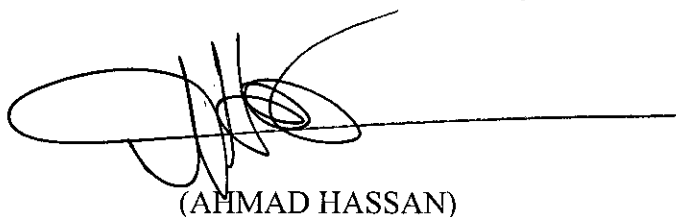
6. Having examined pros and cons of the case, this Tribunal is of the considered view that inquiry proceedings were not conducted in the prescribed manner. Neither departmental inquiry was conducted in the presence of the appellant nor opportunity to cross-examine the witnesses was afforded to him. Ex-parte proceedings were conducted against the appellant and respondents failed to meet the ends of justice. It goes against the principles of natural justice and falls in the ambit of miscarriage of justice. In the inquiry report submitted by Mr. Muzamil Shah, D.S.P CCP, Peshawar the subject shows *de-novo* inquiry, which transpired that prior to this another inquiry was conducted against the appellant. In this inquiry only minor penalty was recommended, to be imposed on the appellant. Imposition of major penalty of dismissal from service with retrospective is nullity in the eyes of law.

7. In view of the foregoing, this Tribunal is left with no option but to reinstate the appellant in service from the date of dismissal. The case is remanded back to the respondents to conduct *de-novo* inquiry in the prescribed manner by associating the appellant with inquiry proceedings and affording him full opportunity of proper defense. Proceedings must be finalized within two months of the receipt of the judgment. The issue of back benefits will be subject to the outcome of the *de-novo* proceedings and be decided by the respondent-department as per rules. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.7.2016



(ABDUL LATIF)
MEMBER



(AHMAD HASSAN)
MEMBER

04.05.2016

Appellant in person and Mr. Usman Ghani, Sr. GP for respondents present. Arguments could not be heard due to leaned Member (Judicial) is on leave, therefore, the case is adjourned to 25.07.2016 for arguments ~~along with connected appeals.~~


Member

27.07.2016

Counsel for the appellant and Assistant AG for respondents present.

Vide our detailed judgment of today consists of three pages placed on file, this Tribunal is left with no option but to reinstate the appellant in service from the date of dismissal. The case is remanded back to the respondents to conduct *de-novo* inquiry in the prescribed manner by associating the appellant with inquiry proceedings and affording him full opportunity of proper defense. Proceedings must be finalized within two months of the receipt of the judgment. The issue of back benefits will be subject to the outcome of the de-novo proceedings and be decided by the respondent-department as per rules. Parties are, however, left to bear their own costs. File be consigned to the record.

Announced
25.07.2016



(ABDUL LATIF)
MEMBER



(AHMAD HASSAIN)
MEMBER

6

11.05.2015

Appellant in person and Mr. Hayat Muhammad, Reader to DSP alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 29.7.2015 before S.B.


Chairman

7

29.07.2015

Appellant with counsel and Mr. Hayat Muhammad, Reader to DSP alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 26.11.2015.


Chairman

26.11.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to learned Member (Executive) is on leave. Therefore, the case is adjourned to 9/2/16 for arguments.


Member

09.02.2016

Appellant in person and Asst: AG for respondents present. Counsel for the appellant is not available. Case is adjourned to 4.5.16 for arguments.


MEMBER


MEMBER

3-

Reader Note:

17.11.2014

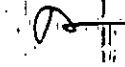
Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 29.01.2015 for the same.


Reader

4.

29.01.2015

Appellant in person present, and requested for adjournment due to pre-occupation of his counsel in the Peshawar High Court Peshawar. Request accepted. To come up for preliminary hearing on 11.02.2015.


Member

5

11.02.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as Constable since 2009 and was dismissed from service vide order dated 25.2.2014 against which against which departmental appeal preferred on 21.3.2014 which was dismissed on 4.7.2014 and hence the present appeal on 25.07.2014. That the appellant was neither absent from duty nor the inquiry was conducted in the prescribed manners nor the appellant was associated with the inquiry.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 11.05.2015 before S.B.

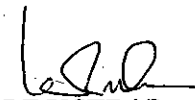
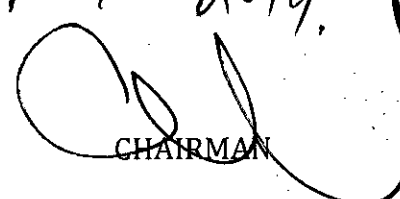

Chairman

*Appellant deposited process fee
& Security*

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1067/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/08/2014	<p>The appeal of Mr. Kamran Gul resubmitted today by Mr. Bashar Naveed Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	25-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 17-11-2014.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Kamran Gul Ex-Constable No. 3390 Police Satation Pushtakhara Peshawar received today i.e. on 25.07.2014 is incomplete on the following score which is returned to the counsel for the appelliant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appelliant.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Two more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1150 /S.T,

Dt. 25/7 /2014.

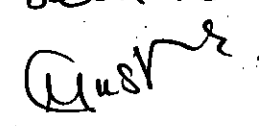

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Bashar Naveed Adv. Pesh.

Sir,

Resubmitted with the request that
no showcause notice, inquiry report has
been received, Hence the application moved
by the appelliant for obtaining the serial copy
but the respondents denied. Copy of the application
is attached.

Hence the others objections has been removed


M. Bashar Naveed

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1067 of 2014

Kamran Gul

.... Appellant



VERSUS

S.P Cantt Peshawar. and others

..... Respondents.

INDEX

S.No	Description of Documents	Annexure	Pages
1	Memo of appeal alongwith affidavit		1-5
2	Order dated 25/02/2014	A	6
3	Order dared 04/07/2014	B	7
4	Dairy dated 16/04/2014	C	8
5	Pay slip dated 30/04/2014	D	9-10
6	Wakalat Nama		11


Petitioner
Through 
M. BASHIR NAVEED
Advocate, High Court,
Peshawar.
Mobile No. 0300-5990975.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1067 of 2014

1029
25/7/14

Kamran Gul Ex Constable No. 3390 Police Station Pushtakhara
District Peshawar.

.... Appellant

VERSUS

1. S.P. Cantt Peshawar.
2. SSP Operation Peshawar
3. SP Head Quarter Peshawar
4. CCPO Peshawar

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST OFFICE ORDER DATED
04/03/2014 PASSED BY RESPONDENT NO. 1,
WHEREBY THE APPELLANT SERVICE
DISMISSED AND THE DEPARTMENTAL
APPEAL OF APPELLANT REJECTED ON
04/07/2014.

[Signature]
25/7/14

so-submitted to
and filed.

[Signature]
27/8/14

PRAYER IN APPEAL:-

**ON ACCEPTANCE OF THIS APPEAL THE
IMPUGNED ORDER DATED 04/03/2014 AND
04/07/2014 MAY BE SET ASIDE AND THE
APPELLANT MAY PLEASE BE RE-INSTATED
BACK TO HIM SERVICE WITH ALL
CONSERGUENTED BACK BENEFITS.**

RESPECTFULLY SHEWETH,

Facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as constable in the Police Department Peshawar in the year 2009, being eligible and fit for the service in Police Department.
2. That the appellant has unblemished service record at his credit and performed his duties in various police stations and post, with the entire satisfaction of high ups.
3. That no adverse entry / complaint has been recorded against the appellant during whole tenure of his service.
4. That the respondent No. 2 is the Superintendent Police Cantt astonishingly issued on order dated 04/03/2014, whereby the appellant was on order major punishment of dismissal from service on the recommendation of so-called inquiry officer, unlawful and illegally as. (Annexure A).
5. That being aggrieved of the impugned order the appellant preferred a Department Representation before the competent

authority and requested that the appellant may be reinstated to his service.

6. That the department^{al} appeal of the appellant was rejected on 04/07/2014 on no good reasons / grounds. (Annexure B).
7. That appellant was condemned unheard. The appellant was dismissed from service without conducting any proper inquiry, without issuance of show cause notice, no statement of allegation was served upon the appellant. Moreover, no chance of self defense and personal hearing was provided to the appellant.
8. That appellant never remained absent as alleged in the impugned order dated 04/03/2014. That attendance at Pishtakhara Police Station recorded on 17/08/2014 copy of the dairy dated 16/04/2014 in attached as Annexure "C" while the monthly salary dated 30/04/2014 while reveals that the appellant performed his duty properly annexure D.
9. That being aggrieved of the order of the respondents dated 04/03/2014 and order No. 1376-81/PA dated Peshawar the 04/07/2014 the appellant requested the respondents time and again to re-instate the appellant back into his service, but all in vain.
10. That the appellant has no other officious way for redressal of grievances hence, knocked at the door of this Honourable Tribunal to seek justice inter alia on following grounds:-

GROUND:-

- A. That the appellant was not treated according to law, rules on the subject and his rights recurred and guaranteed under the law and constitution has been violated.
- B. That the impugned orders dated 04/03/2014 and 04/07/2014 are highly arbitrary, malafide, direiminator right of the appellant hence intenable in the by of law.
- C. That all proceedings conducted against the appellant partied violative of law and against the mandatory statuary provisions of Khyber Pakhtunkhwa, Govt. servant efficiency and discipline rule 2011.
- D. That no proper enquiry was conducted against the appellant in accordance with the law, rules on the subject.
- E. That so-called inquiry report an mentioned in impugned order is also false and manufactured one.
- F. That penalty an imposed on appellant is too harsh keeping in view that there is nothing wrong on the party of appellant. The so-called inquiry officer has made / after the appellant as escaped goat for the fault of others.
- G. That the appellants seeks the permission of this Honourable Tribunal to advance more grounds and proofs at the time of arguments.

15

In view of the above facts and submission, it is most humbly requested that on acceptance of this appeal the impugned order dated 04/03/2014 and 04/07/2014 issued by the respondents may be set aside and the appellant may be re instated in service with full back benefits of the service and any other relief as deemed fit and proper may be awarded / directed.

KD

Appellant

Through

M

M. BASHAR NAVEED

Advocate, Peshawar.

AFFIDAVIT:-

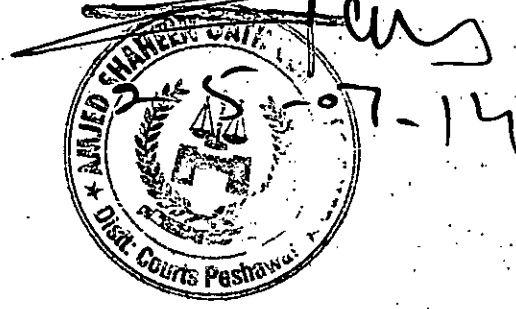
I, Kamran Gul Ex Constable No. 3390 Police Station Pushtakhara District Peshawar, do hereby solemnly affirm and declare on oath that the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Kamran Gul

M - [Signature]

DEPONENT

ATTESTED



ORDER

This office order will dispose of the departmental proceedings against **Constable Kamran No. 3390** who while posted at Police Station Pishtakhara, remained absent from his lawful duty w.e.f 22.12.2012 to date without any leave or permission from his senior.

Under Police 1975 proper charge sheet alongwith summary of allegation were issued against Constable Kamran No.3390 and SDPO Town was appointed as enquiry officer to scrutinize the conduct of Constable Kamran No. 3390 vide this office endorsement No. 67/E/PA dated 20.04.2013.

The enquiry officer submitted findings against Constable Kamran No. 3390 that an ex-parte decision regarding awarding of punishment may be taken.

Subsequently, he was issued Final Show Cause Notice (FSCN) to be served upon him through SHO Pishtakhara. On 20.11.2013 MM PS Pishtakhara reply that Constable Kamran No. 3390 is absented from 22.12.2012 vide DD No. 37. On 27.01.2014 FSCN to be served upon him through his home address through SHO PS Badaber. On 27.01.2014 DFC Badaber reported that Constable Kamran No. 3390 was not present in home and his brother namely Waqar Ahmad s/o Bad Shah Gul received the FSCN. The above Constable is still absented from his lawful duty from 22.12.2012 to date.

Keeping in view of the above and recommendation of Enquiry Officer, I being a competent authority, agree with the recommendation of the enquiry officer. Therefore, under Police Rules 1975, Constable Kamran No. 3390 is hereby awarded major punishment of dismissal from service from the date of his absence.

O.B No: 639

Date 25-2-2014

26-72

No. _____/SP/Cantt: dated Peshawar, the 04/03/2014.


SUPERINTENDENT OF POLICE,
CANTT: PESHAWAR.

Copy for information and necessary action to the:-

- 0. The SSP, Operation, Peshawar.
- 0. The SP HQs: Peshawar.
- 0. SDPO/Town (E.O).
- 0. Pay Officer.
- 0. CRC,
- 0. OASI branch.
- 0. Fauji Missal branch with enquiry file for record.
- 0. Official concerned.


ATTESTED

ORDER

(Annexes "B") (7)

This order will dispose off departmental appeal of ex-constable **Kamran No. 3390** who was awarded the major punishment of **Dismissal** from service under PR 1975 vide OB No. 639 dated 25.2.2014 by SP/Cantt; Peshawar, on the charge of deliberate absence for a long time from lawful duty w.e.f. 4.10.12 to 21.11.12 & 22.12.12 to 25.2.14 (**Total 1-year, 3-months and 20-days**) from Police Lines and PS, Pish takhara.

Two separate departmental proceedings were initiated against him and DSP-HQ and ASP-Town were appointed as L.Os. The appellant failed to appear before the E.Os. He also failed to submit his reply to the SCN. As such the competent authority awarded him above major punishment.


The relevant record was perused along with his explanation. He was also heard in person in OR on 2/7/2014. He admitted his guilt and the allegations stand proved against him. He deserves no leniency. The order of SP-Cantt: is upheld and his appeal for re-instatement in service is rejected/filed.


CAPITAL CITY POLICE OFFICER,
PESHAWAR. 3.7.14

No. 1376-81/PA dated Peshawar the 4-7- 14

Copies for information and n/a to the :-

- 1/ SP-Cantt: Peshawar
- 2/ IO/ OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMC along with FM.
- 5/ Official concerned.


ATTESTED

Amnathure ⁴ D²

PAYMENT	Prev Pers No: AMOUNT	Design: CONSTABLE DEDUCTIONS	(00600394) Gr AMOUNT
0081 Basic Pay	3,440.00	3095 GPF Subscription - Rs	450.00-
1001 House Rent Allowance	1,500.00	3511 Adal Group Insurance	7.00-
1210 Convey Allowance: 20	1,040.00	3609 Group Insurance	67.00-
1309 Medical Allowance	1,000.00		
1547 Ration Allowance	681.00		
1567 Washing Allowance	100.00		
1595 Constabulary Allowance	300.00		
1901 Risk Allowance (F&I)	5,010.00		
1902 Special Incentive Al	775.00		
1970 Adhoc Relief Allow 2	501.00		
2118 Adhoc Relief Allow (1,288.00		
2148 15% Adhoc Relief All	966.00		
2168 Fixed Daily Allowance	2,730.00		
PAYMENTS	23,134.00	DEDUCTIONS	539.00-
Branch Code:		Payment through DDD	

(Signature)
ATTESTED

13
17

کامیابی کے لئے جانے والے آج کے دن = 15 : 00
26/09/13
کامیابی کے لئے جانے والے آج کے دن = 15 : 00
26/09/13

نوٹ:
تعمیراتی کاموں کے لئے
اموال صرف ہے

Amnathure
"C"

(Signature)
ATTESTED

صالح علی
16/11/14

محفوظ رہا C.C.P.O صاحب سوم چند درخواستوں کے لئے لیسٹر

(۱۶)

درخواست برآں کینل کرنے آڈر
۱۳/۲۰۱۴ و بحال کرنے سائیل بر ملازمت

صاحب عالی! سائیل صاحب ذیل عرض پیش کرتا ہے۔

۱۔ یہ کہ سائیل کو محکمہ پولیس میں سال سے میں بھرتی کیا گیا

۲۔ یہ کہ سائیل اپنے فرائض ادا کرنے کے لئے سے ایام دے رہا تھا۔

۳۔ یہ کہ سائیل کو کسی قسم کا نہ تو شوکار ٹوٹس ملا ہے۔ اور

نہ رٹلو (پیری کی ٹی)۔ کینل رہنے باوجود سائیل کو ٹوڑی

سے درخواست کیا گیا۔

۴۔ یہ کہ سائیل کبھی بھی اپنی ٹوڑی سے غیر حاضر نہیں رہا ہے

کینل باوجود اس کے سائیل کو ٹوڑی سے درخواست بر خاستگی

۵۔ یہ کہ سائیل اپنی خرید، ترغیرز گھرانے سے تعلق رکھتا ہے۔

(۱۷)

ATTESTED

لیدر اس کے لئے ہے۔ کہ سائیل و ملازمت پر بحال

کرتے آڈر ۱۳/۲۰۱۴ کو سائیل کرنے کا

علم صادر رہا جس کے مطابق ۱۵/۲۰۱۴

کا عزان عمل x سائیل غیر 3390 لیسٹر

(Handwritten signature)

جناب عالی ا

گزارش حکیمہ سائل محکمہ پولیس لٹ ور میں بطور کنیشن مللازم تھا
 بہ وجہ غیر طاعتی سائل کو محکمہ سے برخواست کیا گیا ہے
 سائل اپنی بحالی فوری کیلئے سروس ٹریبیونل KPK لٹ ور میں
 میں اپیل جمع کرانا چاہتا ہے۔ جس کیلئے سائل کو برخواستگی
 آرڈر۔ شوکار فونٹس۔ چارج شیٹ وغیرہ کے نقولات درکار ہے
 بزرگہ درخواست استدعا حکیمہ سائل کو متذکرہ بالا نقولات
 دینے کا حکم ہمارا درخماویں۔

2099

R/HQ's No. 12-8-14
Date.....

تحریر 08.08.2014

الحارثی

کاہران گل سابقہ کنیشن نمبر 3390 خلیج لٹ ور

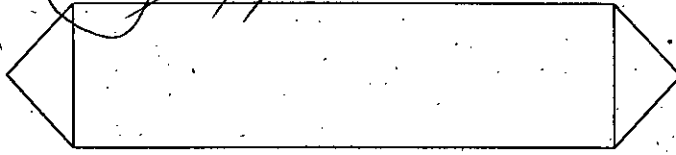
F.M.C
For N/A under Rules

Dsl/Legale
For inaction

18

Dy. Supd. of Police
Legal, CCP/Peshawar
18/08/2014

Superintendent of Police
HQs: CCP Peshawar.
8/8/14



2 منجانب
کا سرانجام بنام CCPD وغیر

مورخہ
مقدمہ
دعویٰ
جرم

سروسز پرائیویٹ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام سرانجام کیلئے محمد سید زبیر و سید
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک ذریعہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں 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 مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی 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 پر داخہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہوگا۔ 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 لکھد یا کہ سندر ہے۔

20/14

جولائی

ماہ

25

المرقوم

العبد گداہ العبد

کے لئے منظور ہے۔

سرانجام

مقام

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1067/2014.

Ex-Constable Kamran Gul No 3390 Police Station Pishtakhara Peshawar.Appellant.

VERSUS.

1. SP Cantt. Peshawar.
2. Senior Superintendent of Police, Operations, Peshawar.
3. Superintendent of Police HQrs:, Peshawar.
4. Capital City Police Officer, PeshawarRespondents.

PRELIMINARY OBJECTIONS.

- 1 That the appellant has no cause of action
- 2 That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 3 That the appellant has not come to this Honorable Tribunal with clean hands.
- 4 That the appeal is badly time barred.
- 5 That the appellant has been estopped by his own conduct to file the instant appeal.
- 6 That the appellant has concealed the material facts from this Honorable Tribunal.
- 7 That the appellant has got no locus standi.
- 8 That the appeal is not maintainable in its present form.

Facts:-

- (1) Para No 1 pertains to record, hence needs no comments.
- (2) Para No 2 is totally incorrect and is denied on the ground that the appellant is a habitual absentee, from his lawful duty.
- (3) Para No 3 is incorrect, hence denied. In fact the appellant is not interested in his duties , which is proved from his conduct as he remained absent from time to time.
- (4) Para No 4 is correct to the extent that the appellant willfully absented himself from his lawful duty w-e-f 04.10.2012 to 21.11.2012 and 22.12.2012 till 25.02.2014 (total one year 03 months and 20 days) from police lines and PS Pistakhara. In this regard two separate proceedings were initiated against him and DSP Hqrs, and ASP town were appointed as E.Os. the appellant was issued charge sheet and summary of allegations were issued in both

the inquires . But he failed to submit his reply to the same. Thus the appellant showed gross misconduct hence was awarded major punishment of dismissal from service vide OB NO 639 dated 25.02.2014 (punishment orders are annexed as "A"). Later on in another absence period , the appellant's absence period was included in his dismissal order vide OB NO 2047 dated 23.06.2014.

- (5) Para no. 5 is correct to the extent that the appellant preferred a departmental appeal before the appellate authority but as the charges leveled against him were stand proved; hence the appellate authority being agreed with the competent authority rejected /filed his departmental appeal after fulfilling all codal formalities. It is worth to mention here that his appeal is time barred for about 01 month.
- (6) Para no 6 is incorrect, hence denied. The departmental appeal of appellant was rejected after fulfilling all codal formalities and per the law/rules.
- (7) Para no 7 is totally incorrect and denied .In fact the appellant was issued a charge sheet alongwith summary of allegation. He was also informed through written perwanas repeatedly but he did not bother to attend the enquiry proceedings, hence was awarded the major punishment in accordance with law and rules after issuing final show cause notice.(copies annexed)
- (8) Para no 8 is totally incorrect and denied .In fact the appellant absented himself willfully from his lawful duties w.e.f 04.10.2012 to 21.11.2012 and 22.12.2012 to 25.02.2014 (total one year 03 months and 20 days)from police lines and PS Pistakhara.
- (9) Para no. 9 is correct to the extent that the appellant was awarded major punishment of dismissal from sevice vide OB NO 639 dt .25.02.2014 after conducting a proper departmental enquiry .As the appellant is not interested in performing his lawful duties, so he does not deserve any leniency.
- (10) The punishment orders passed by the competent authority are in accordance with law/rules. Hence appeal of appellant being devoid of merits may kindly be dismissed.

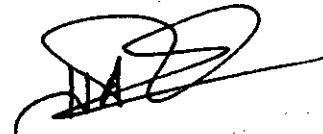
Grounds :-

- (a) Incorrect. The appellant was treated as par law and rules.
- (b) Incorrect. The punishment orders passed by the competent authority are lawful, genuine and in accordance with law/rules.

- (c) Incorrect. The appellant was treated as per rules of Police Disciplinary Rules 1975. No violation of law has been done by the replying respondents.
- (d) Incorrect. two separate proper departmental enquires were conducted by DSP Hqrs and ASP town in order to dig out the real facts, regarding his absence.
- (e) Incorrect. as above.
- (f) Incorrect. The appellant was proceeded departmentally as per law and rules. The allegations of willful absence were stand proved against him; hence he was awarded major punishment of dismissal from service.
- (g) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYERS:-

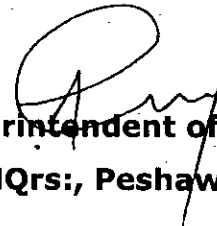
It is therefore most humbly prayed that in light of above facts, submissions the appeal of the appellant devoid of merits, legal footing may be set aside/ dismissed.



**Capital City Police Officer,
Peshawar.**



**Senior Superintendent of Police,
Operations, Peshawar.**



**Superintendent of Police
HQrs:, Peshawar.**



**Superintendent of Police Cantt.
Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1067/2014.

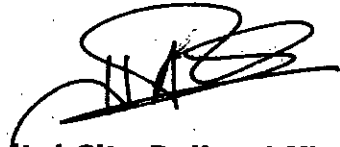
Ex-Constable Kamran Gul No 3390 Police Station Pishtakhara Peshawar.. **Appellant.**

VERSUS.

1. SP Cantt. Peshawar.
2. Senior Superintendent of Police, Operations, Peshawar.
3. Superintendent of Police HQrs:, Peshawar.
4. Capital City Police Officer, Peshawar **Respondents.**

AFFIDAVIT.

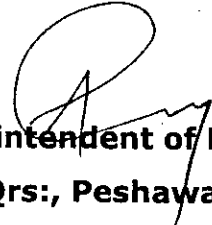
We respondents 1 to 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.




**Capital City Police Officer,
Peshawar.**



**Senior Superintendent of Police,
Operations, Peshawar.**



**Superintendent of Police
HQrs:, Peshawar.**



**Superintendent of Police Cantt.
Peshawar.**

1127
3

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Kamran No.3390 the final show cause notice.

The Enquiry Officer, Mr. Muzzamil Shah, after completion of enquiry proceedings, has recommended for dealt departmentally for you Constable Kamran No.3390 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

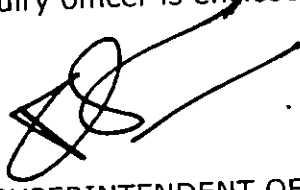
And whereas the undersigned is satisfied that you Constable Kamran No.3390 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 688 /PA, SP/HQrs: dated Peshawar the 24/1 /2014.

Copy to official concerned

ORDER

2

This office order will dispose of the departmental proceedings against **Constable Kamran No. 3390** who while posted at Police Station Pishtakhara, remained absent from his lawful duty w.e.f 22.12.2012 to date without any leave or permission from his senior.

Under Police 1975 proper charge sheet alongwith summary of allegation were issued against Constable Kamran No.3390 and SDPO Town was appointed as enquiry officer to scrutinize the conduct of Constable Kamran No. 3390 vide this office endorsement No. 67/E/PA dated 20.04.2013.

The enquiry officer submitted findings against Constable Kamran No. 3390 that an ex-parte decision regarding awarding of punishment may be taken.


Subsequently, he was issued Final Show Cause Notice (FSCN) to be served upon him through SHO Pishtakhara. On 20.11.2013 MM PS Pishtakhara reply that Constable Kamran No. 3390 is absented from 22.12.2012 vide DD No. 37. On 22.01.2014 FSCN to be served upon him through his home address through SHO PS Badaber. On 27.01.2014 DFC Badaber reported that Constable Kamran No. 3390 was not present in home and his brother namely Waqar Ahmad s/o Bad Shah Gul received the FSCN. The above Constable is still absented from his lawful duty from 22.12.2012 to date.

Keeping in view of the above and recommendation of Enquiry Officer, I being a competent authority, agree with the recommendation of the enquiry officer. Therefore, **under Police Rules 1975, Constable Kamran No. 3390 is hereby awarded major punishment of dismissal from service from the date of his absence.**

O. B No: 639

Dat: 25-2-2014

216-72


**SUPERINTENDENT OF POLICE,
CANTT: PESHAWAR.**

No. _____/SP/Cantt: dated Peshawar, the 04/03/2014.

Copy for information and necessary action to the:-

- 0. The SSP, Operation, Peshawar.
- 0. The SP HQrs: Peshawar.
- 0. SDPO/Town (E.O).
- 0. Pay Officer.
- 0. CRC,
- 0. OASI branch.
- 0. Fauji Missal branch with enquiry file for record.
- 0. Official concerned.

5915BBK

SHO

آرڈر میں پی ایچ ڈی کارڈ

22-8-13

بطرف:

عنوان: محکمہ کاروائی۔

3390 ولہ باڈی کنسٹراکشن

حسب حکم SP صاحب ایچ ڈی کارڈ، ایک عدد لفٹ شوہر شوکارڈس کنسٹیبل

پر تقسیم کر کے دوسرے پر وصولی کے دستخط کر لیں اور ساتھ ہی علاقہ ناظم یا اس کے

کے بھی تصدیق کر کے دفتر بڈا میں کریں تاکہ محکمہ کاروائی کی بروقت تکمیل ہو سکے۔

نوٹ: پرلوانہ بعد از تکمیل بغرض تکمیل ریکارڈ دفتر بڈا میں کریں۔

(62)

(پی ایچ ڈی) نوٹس پی ایچ ڈی کارڈ

1127
19/8/13

کمیٹی میں پی ایچ ڈی
پی ایچ ڈی علاقہ ناظم یا اس کے

(2)

(2)

بادشاہی

28/08/13

سویڈن - 9069175-0321

والد بادشاہی

سویڈن
28/08/13

17301-3708314-1

ساحر خان کزن
والد بادشاہی



Imran
**OFFICE OF THE
ASSISTANT SUPERINTENDENT OF POLICE,
TOWN SUB-DIVISION, PESHAWAR**

No. 39-E/Steno, dated Pesh: the 4 / 6 /2013.

To: The Superintendent of Police,
Cantt, Peshawar.

Subject: **DISCIPLINARY ACTION AGAINST CONSTABLE
KAMRAN NO. 3390 OF PS PISHTAKHARA.**

Memo:

Please refer to your endorsement No. 67/E/PA, dated 20-04-2013 on the subject cited above.

ALLEGATIONS:-

"**Constable Kamran NO. 3390** while posted at PS Pishtakhara, Peshawar remained absent from lawful duty with effect from **22-12-2012 till date**. His act amounts to gross misconduct and is against the discipline of the force".

On the basis of the above allegations he was charged sheet and summary of allegations by the Worthy Superintendent of Police, Cantt, Peshawar is attached. The undersigned was appointed as enquiry officer.

FINDING:-

With reference to the allegations leveled against him, he was called through summons/parwanas (copies attached) to attend the office of the undersigned, but he did not appear before the undersigned. **Furthermore as per the report of MM PS Pishtakhara, Peshawar the said Constable is absent from his duty vide DD No. 37, dated 22-12-2012 till date (report is also attached).** This shows a total lack of interest in the duty and shows slackness. Being a person of the disciplined force, his act of non-appearance before the undersigned is condemnable and amounts to gross misconduct on his part.

RECOMMENDATION:-

Keeping in view of the above-mentioned circumstances, the undersigned is of the opinion that an ex-parte decision regarding awarding of punishment may be taken.

Submitted please,

ISSUE Final Show Cause No Hca

[Signature]
SPL Cantt

[Signature]

(RANA UMAR FAROOQ)PSP
Enquiry Officer,
Assistant Superintendent of Police.



Imran

OFFICE OF THE
ASSISTANT SUPERINTENDENT OF POLICE,
TOWN SUB-DIVISION, PESHAWAR

No. 38-E/Steno, dated Pesh: the 4 / 6 /2013.

To: The Superintendent of Police,
Cantt, Peshawar.

Subject: DISCIPLINARY ACTION AGAINST CONSTABLE
KAMRAN NO. 3390 OF PS PISHTAKHARA.

Memo:

Please refer to your endorsement No. 67/E/PA, dated 20-04-2013 on the subject cited above.

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RECOMMENDATION:-

Keeping in view of the above-mentioned circumstances, the undersigned is of the opinion that an ex-parte decision regarding awarding of punishment may be taken.

Submitted please,

ISSUE Final Show Cause Ab Ha

[Signature]
SPL Cantt

[Signature]

(RANA UMAR FAROOQ)PSP
Enquiry Officer,
Assistant Superintendent of Police.

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001---Civil servants seemingly had accepted their appointment on officiating basis---Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. [pp. 169, 170, 171] A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 distinguished.

(d) Service Tribunals Act (LXX of 1973)

---S. 4---Departmental representation, filing of--- limitation period--- Appeal filed before Service Tribunal--- Limitation period and competency---When a departmental representation was barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent. [p. 171] G

Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad and others 1998 SCMR 882 and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (in all cases).

Respondents in person.

Mudassir Khalid Abbasi, A.A.-G. for Government of Punjab.

Date of hearing: 13th November, 2014.

JUDGMENT

IAZ AHMED CHAUDHRY, J.---These appeals by leave of the Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants who were possessing B.Sc. Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the year 1995 to 1998 whereas the respondents who were holding B.Tech (Hons.) Degree were promoted in the year 2001 to the same post on regular basis. Appellants filed Constitution petitions before the High Court and challenged the promotion of the respondents. The learned High Court while dismissing the writ petitions directed the Department to decide the controversy in accordance with law after hearing both the parties.

SCMR

Appellants challenged the said order in Intra Court Appeal as also before this Court but remained unsuccessful. Thereafter, the Secretary, Communication and Works Department, Government of Punjab, took up the matter and vide the order dated 18-12-2002 he regularized the appointment of the appellants on the advice of the Regulating Wing of S&GAD and on the ground that regular posts were available in the year 1995-1998 at the time of promotion of the appellants on officiating basis. Consequently, the promotion of the respondents was converted as officiating. The respondents assailed this order before the learned Punjab Service Tribunal by filing Appeals. The learned Service Tribunal vide the order dated 10-12-2003 accepted the appeals and set aside the order dated 18-12-2002 of the Competent Authority and directed fresh hearing of the matter after hearing all concerned within a period of 60 days. Pursuant to the direction of the learned Service Tribunal, the Department again took up the matter and vide the order dated 27-7-2005 the Competent Authority decided that officiating promotion of the appellants could not be treated as regular. Feeling aggrieved, the appellants filed departmental appeals but as the same were not decided within the statutory period of 90 days, therefore, they filed the impugned appeals before the Punjab Service Tribunal. During the pendency of appeals before the Service Tribunal, it came to the notice of the learned Tribunal that one Section Officer in the office of Secretary C&W Department, Lahore, instead of putting departmental appeals before the Appellate Authority/Chief Secretary Punjab opted to decide these appeals of his own on 28-12-2005. On this, the learned Tribunal directed the Appellate Authority to decide the departmental appeals of the appellants within 60 days. Pursuant to this direction of the Tribunal, the Chief Secretary/Appellate Authority finally decided the matter and rejected the departmental appeals of the appellants. The learned Service Tribunal vide the impugned judgment also dismissed the appeals filed by the appellants. Thereafter, the appellants filed Civil Petitions Nos. 164 to 172, 230 to 236 and 240 of 2012 before this Court, out of which have arisen the instant appeals, in which leave was granted on 15-3-2012, which reads as under:--

"Leave to appeal is granted in all these listed petitions, inter alia, to examine if an official/officer has been authorized to be competent authority to hold a post against a clear vacancy in officiating capacity, whether it would tantamount to his promotion because an employee cannot be allowed to continue on officiating position for an indefinite period; subject to all just exceptions, keeping in view the case of Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan (PLD 1970 Quetta 115), wherein the identical issue regarding a Superintendent in the Geological Survey of Pakistan has been discussed."

SCMR

Handwritten notes and signatures on the right margin, including "J.K." and "Respondent".

3. Learned counsel for the appellants has contended that appointment of a duly qualified person against a permanent vacancy could not be described as officiating as the same could be deemed regular under section 2(2) of the Punjab Civil Servants Act, 1974; that the learned Service Tribunal while dismissing the appeals of the appellants has not taken into consideration the law laid down by this Court; that the learned Service Tribunal has wrongly relied upon the judgments of this Court reported at Tariq Aziz ud Din and others (2010 SCMR 1301) and Dr. S.M. Inkisar Ali v. Government of Sindh (2011 SCMR 121) and the unreported judgment passed in Civil Petition No.1583-L of 1998; that even if the case is not covered by Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, even then an appointment made in the prescribed manner could not be treated, as officiating; that during the period 1995-1998 the relevant qualification of the respondents for promotion was lacking; that long temporary service was to be considered as regular due to flux of time and that the competent authority had passed a detailed order on 18-12-2002, therefore, the same provided valid and legal basis for declaring the promotion of appellants as regular. Learned counsel in support of the contentions has relied on Jafar Ali Akhtar v. Islamic Republic of Pakistan (PLD 1970 Quetta 115), Muhammad Tahir v. Secretary, Communication and Works Department, Government of Punjab etc., (2009 PLC(C.S.) 527), Khalil ur Rehman Khan, SP, Khanewal v. Muhammad Ali Mirza (1992 SCMR 989), Luqman Zareen and others v. Secretary Education N.-W.F.P. etc. (2006 SCMR 1938), Irfan Majeed v. University of Karachi etc. (2010 PLC (C.S.) 1118) and Muhammad Amjad v. Dr. Israr Ahmed etc. (2010 PLC (CS) 760).

4. Respondent Muhammad Farooq Malik, who appeared in person, submits that the appellants had accepted their promotion on officiating basis and never challenged the same before any forum for about 6 years; that there was no question of ineligibility or lack of qualification on the part of the respondents because the matter stood finally decided by the competent authority that B.Tech. (Hons.) Degree be treated at par with B.Sc. (Engineering) Degree; that in view of Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, officiating promotion neither confers any right of promotion on regular basis nor any such promotee could claim the same as regular; that since 1995 to 2002 three seniority lists have been issued and in all these lists, appellants were shown as officiating SDOs but they never challenged the same; that in the presence of express provisions of Rule 13 of the ibid Rules, 1974, the provisions of section 2(2) of the Rules being deeming clause could not be given effect to and that as the appellants were admittedly junior to the

respondents and were not eligible for such promotion on regular basis, they were rightly ignored and their promotion was rightly treated as on officiating basis.

5. Learned Assistant Advocate-General, who appeared on behalf of the Government of Punjab has supported the impugned judgment.

6. We have heard learned counsel for the appellants, respondent in person, as also learned Assistant Advocate General at some length and have perused the record.

7. The questions involved in these appeals are three fold; (i) whether the appointment of appellants on officiating basis was valid; (ii) whether the respondents were rightly promoted on regular basis in the year 2001; and (iii) Whether the appeals before the Service Tribunal were time-barred?

8. After the enforcement of Punjab Civil Servants Act, 1974, as well as Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the legal position is clear, the Punjab Civil Servants Rules were framed by the Government pursuant to the powers conferred under section 23 of the Punjab Civil Servants Act, 1974. In terms of section 13 of the Rules, the Government conferred power on the appointing authority to make appointment by promotion against such post on officiating basis. It would be relevant to reproduce the said Rule, which is as under:--

13. Appointment on officiating basis.---(i) Where a post falls vacant as a result of deputation, posting outside cadre, leave, suspension or appointment on acting-charge basis of the (regular) incumbent or is reserved under the rules to be filled by transfer, if none is available for transfer, the appointing authority may make appointment by promotion against such post on officiating basis:

Provided that a post reserved for regular promotion; on deferment of a civil servant due to any reason, may be filled by promotion on officiating basis.

(ii) No person shall be promoted on officiating basis unless he possesses the qualifications and experience prescribed for the post and his promotion as such is approved by the chairman of the appropriate selection authority.

(iii) An officiating promotion shall not confer any right of promotion on regular basis but shall be liable to be terminated as soon as a person becomes available for promotion on regular basis.

(iv) Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion.

9. From the bare perusal of the above provisions, it is clear that the appointing authority is empowered to make appointments on officiating basis. This leads us to the question as to whether at the time of promotion of the appellants on officiating basis, were there permanent posts available or not? We have found that regarding this matter, three inquiries have been held in order to resolve the issue. First was held on 10-9-2002 and vide the order dated 18-12-2002, the appellants were declared to be promoted on regular basis. Second was dated 27-7-2005 whereby it was mainly held that there is no ground for considering the officiating promotion of appellants as on regular basis on the ground that promotion cannot be granted with effect from an early date. Third inquiry was carried out by a committee headed by Additional Chief Secretary on the direction of the Chief Secretary. The Committee after detailed deliberation on 27-10-2010 held that the prayer of the appellants for promotion on regular basis is not legally tenable and is liable to be rejected and that there were no permanent posts available at the time of appointment of the appellants on officiating basis. Except the order dated 18-12-2002 which was passed without hearing some of the parties, it is the consistent stand of the Department that the appellants could not have been promoted on regular basis. Whether at that time permanent posts were available or not is also a question of fact, which cannot be gone into in these proceedings. This Court in Tariq Aziz-ud-Din case reported at 2010 SCMR 1301 has specifically cleared that appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointments, Promotion and Transfer) Rules, 1973. It is important to note here that the said Rule 8-B is *pari materia* to Rule 13 of the Punjab Civil Servant (Appointment and Conditions of Service) Rules, 1974. It is also noteworthy that the appellants never challenged the condition of 'officiating' for a long period of about 6 years. It was for the first time in the year 2001 when they agitated the matter before the learned High Court when the respondents were promoted as Assistant Engineers/SDOs on regular basis. Besides, since 1995 three seniority lists were issued showing the appellants not only junior to the respondents but also on officiating basis but they kept mum and never challenged the said lists. Learned counsel tried to argue that the effect of order of remand dated 24-1-2002 passed by the learned High Court was that the entire controversy stood revived, therefore, no question of limitation can be raised. We have noted that the learned High Court had merely remanded the matter to decide the controversy afresh in accordance with law and had not condoned the delay. If we keep in mind the words 'in accordance

with law', then the question of limitation is also a question of law. The appellants after their appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. It seems they had accepted their appointment on officiating basis. It is by now a well-settled principle of law that if a departmental representation is barred by time, then without disclosing any sufficient reason for delay, no subsequent, order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed by the civil servant before the Tribunal would be incompetent. Reliance in this regard has been placed on Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad etc. (1998 SCMR 882) and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah (2006 SCMR 453). The question of limitation being basic requirement has to be strictly dealt with. So far as the eligibility of respondents is concerned, we find that the Federal Government had issued a policy letter dated 26-10-1973 holding that B.Tech (Ions) degree be treated at par with B.Sc. (Engineering) degree. Pursuant to this decision, the Government of Punjab also issued a notification on 1-2-1981 declaring B.Tech. (Hons.) degree in particular specialization equivalent to corresponding B.Sc. (Engineering) degree. The Government of Punjab also amended the Rules of (i) Communication and Works Department, (ii) Irrigation and Power Department, and (iii) Housing Physical and Environmental Planning Department for promotion of Sub-Engineers. As a result several persons were promoted. Despite the above said amendment, several employees of Physical and Environmental Planning Department were not allowed promotion on the ground that B.Tech (Hons) degree is not equivalent to B.Sc. (Engineering) degree. Pakistan Engineering Council also refused to recognize B.Tech. (Hons.) degree equivalent to B.Sc. (Engineering) degree. The matter ultimately then came up before this Court in Civil Petition No.216 of 1991 but this Court dismissed the same on 5-12-1992. However, this Court in Suo Motu Review Petition No. 52 of 1993 reopened the matter and while recalling its earlier order directed the competent authority to consider the case of B.Tech (Hons) degree holders for promotion to BS-17. Pursuant to this Direction of this Court the service rules of Assistant Engineers were amended on 16-12-2000 whereby B.Tech. (Hons.) degree holders also became eligible for their promotion as Assistant Engineers/SDO. Even otherwise, it has been brought to our notice through C.M.A. No.4341 of 2012 that on humanitarian grounds, the Chief Minister has allowed 27 reverted officiating Assistant Engineers/SDOs including the present appellants to continue on officiating basis as a special dispensation in relaxation of Rule 13 till their regular promotion on seniority cum fitness basis vide the order dated 22-2-2011 that a meeting of Departmental Promotion Committee was convened on 16-12-2011 in which six appellants/officiating AEs/SDOs were also considered, out of which three have

basis of inferences, only such circumstances as are "well-authenticated."

Where there are indications of design, in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference."

5. By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end its noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge. As was held in the case of Fazal Elahi (ibid) and in view of the changed social norms and standard of ethics of the society, to which the witnesses belong and also the questionable credibility of the investigating agency and its incompetency to professionally investigate such blind crimes, by now, the Courts have to exercise more and more cautions before accepting and resting its opinion of being guilty on a circumstantial evidence collected apparently in a dishonest, dubious and rough manner.

6. Therefore, we are left with no option but to adopt the same care and caution, keeping in view the peculiar facts and circumstances of this case, which cannot be put apart from the one, cited above.

7. With all respects to the Bench of the learned Federal Shariat Court, these precautions and judicial care so required, was not observed and view of the trial Judge with regard to the guilt of the appellant was endorsed by it. Thus, the approach to the evidence in the case was not in accord with the principle since long well settled.

8. Accordingly, while extending benefit of doubt to the appellant, this appeal is allowed and the appellant Imran @ Dully is acquitted of all the charges, levelled against him by setting aside his conviction and all sentences awarded to him. He be set free forthwith if not required in any other case.

9. In view of our above findings, Criminal Shariat Appeal No.26(S)/09 titled Farzand Ali v. Imran @ Dulli etc. has become infructuous and is dismissed.

MWA/I-19/SC

Order accordingly.

2015 S C M R 165

[Supreme Court of Pakistan]

Present: Ijaz Ahmed Chaudhry and
Umar Ata Bandial, JJ

MUHAMMAD ASIF CHATTA and others---Appellants

versus

CHIEF SECRETARY, GOVERNMENT OF PUNJAB,
LAHORE and others---Respondents

Civil Appeals Nos.222 to 238 of 2012, decided on 25th November, 2014.

(On appeal against the judgment dated 25-11-2011 passed by Punjab Service Tribunal, Lahore in Appeals Nos.2933 to 2936, 2939 to 2943, 2951 of 2005, 4416 of 2006, 500 to 505 and 591 of 2006)

(a) Constitution of Pakistan---

---Art. 212(3)---Civil service---Appeal against judgment of Service Tribunal filed before the Supreme Court---Question of fact---Such question could not be gone into in appeal proceedings before the Supreme Court under Art. 212(3) of the Constitution. [p. 170] B

(b) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 8-B---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 13--- Appointment on acting charge/officiating basis---Promotion---Scope---Appointment on acting charge/officiating basis did not confer any vested right for regular promotion. [p. 170] C

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(c) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

---R. 13---Promotion to higher post on officiating basis---Civil servants seeking regularization of such promotion--- Limitation--- Delay of 6 years in raising issue of regularization of promotion---Effect---Three seniority lists were issued, during the period when civil servants remained promoted on officiating basis, showing them not only junior to other civil servants but also on officiating basis but they kept mum and never challenged the said lists---Civil servants after their

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been promoted on regular basis vide order dated 27-12-2011 whereas cases of three have been deferred due to their incomplete service; that since the last DPC, four more posts against 15% quota have fallen vacant and the appellants will be considered on their turn in the forthcoming meetings of Departmental Promotion Committee. The case reported as Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan (PLD 1970 Quetta 115) on the basis of which leave was granted is distinguishable as it relates to the period before the enforcement of Punjab Civil Servants Act, 1974 and the Rules framed thereunder. The learned Punjab Service Tribunal has passed a well-reasoned judgment, which is unexceptionable.

10. For what has been discussed above, we do not find any merit in these appeals, which are accordingly dismissed.

MWA/M-52/SC

Appeal dismissed.

2015 S C M R 172

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali,
Iqbal Hameedur Rahman and Qazi Faez Isa. JJ

The CHAIRMAN, NATIONAL ACCOUNTABILITY
BUREAU---Appellant

versus

FEHMIDA BEGUM and others---Respondents

Civil Appeal No. 1038 of 2000, decided on 25th November, 2014.

(On appeal from judgment of Lahore High Court, Lahore, dated 30-6-2000, passed in Writ Petition No: 914 of 2000)

National Accountability Ordinance (XVIII of 1999)---

---S. 5(o)---"Person"---Definition---Person standing as guarantor for a loan obtained by the company---Company defaulting in payment of loan---Such person/guarantor liable for prosecution before Accountability Court---Scope---Any person may be a director or employee of the company while at the same time be a guarantor as well---Employee/director in question was the surety or guarantor of the loan facilities etc., availed by the company---According to the terms of the guarantee, employee/director's responsibility under the guarantee was that of a principal debtor and he was liable under

the guarantee until all moneys due from the company had been paid, therefore, once the company defaulted in its liability to repay the loan amount, it was the obligation of the said employee/director to repay the loan amount---High Court was not right in holding that said employee/director, despite being a guarantor, was not liable for prosecution before the Accountability Court---Judgment of High Court was set aside in circumstances---Appeal was allowed accordingly. [p. 176] A, B & C.

Raja M. Ibrahim Satti, Senior Advocate Supreme Court and Fauzi Zaffar, Additional DPG NAB for Appellant.

M. A. Siddiqui, Advocate Supreme Court for Respondents Nos. 1 and 2.

Ex parte Respondents Nos. 3 to 8.

Date of hearing: 10th November, 2014.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---This civil appeal with leave of the Court in terms of the order dated 16-8-2000, is directed against the judgment dated 30-6-2000, passed by a five member Bench of the Lahore High Court, in Writ Petition No.914 of 2000, whereby the said petition filed by respondent No.1 was allowed and consequently the pending proceedings in Reference No.8 of 2000, against respondent No.2, Mukhtar Hussain, the husband of the petitioner, were quashed with a majority of three to two.

2. The controversy involved in the said petition revolved around the interpretation of "person" as defined in subsection (o) of section 5 of the National Accountability Bureau Ordinance, 1999 (in short "the NAB Ordinance"), which at the relevant time read as under:--

"(o) "Person" includes in the case of a corporate body, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or any one exercising direction or control of the affairs of such corporate body, but will not include employees appointed and designated as Director or Chief Executive; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having interest in the said firm, partnership or proprietorship concern or direction or control thereof."

3. As per the majority view of the Lahore High Court, respondent No.2, being employee of the Company, despite being a guarantor, was

Irshad Muhammad Khan and
Government Authority,
Islamabad v. Javed Iqbal
Abdullah

20. More to that when the appellant has not applied through proper channel the new posting, how he can get benefit of the office. Memorandum dated 8-6-2010, which cannot be pressed in service in favour of those, who did not apply for the post through proper channel.

the record.

21. No any such policy or rules of any of the autonomous body either leaving or joining is discussed by the appellant through such scheme of law, he is entitled to seek relief, failure thereof totally disentitle the appellant from seeking such a relief.

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22. In the light of above discussion, this Infra Court Appeal is devoid of any force, the impugned order dated 30-6-2009 passed by the learned Single Judge of this Court does not suffer from any illegality or infirmity, therefore, the instant ICA is dismissed and order passed by the learned Single Judge of this Court in Chamber, is upheld. Parties are left to bear their own costs.

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Intra Court Appeal dismissed.

2012 P L C (C.S.) 939

[Supreme Court of Pakistan]

Present: Javed Iqbal and Nasir-ul-Mulk, JJ

IRSHAD MUHAMMAD SHAH

versus

HESCO and another

Civil Petition No. 1114 of 2010, decided on 14th June, 2011.

(On appeal from the order dated 6-4-2010 passed by the Federal Service Tribunal, Islamabad in Appeal No. 1336(R) of 2009).

Service Tribunals Act (LXX of 1973)---

**---S.4---Constitution of Pakistan, Art. 212(3)---Departmental appeal---
Limitation---Appeal filed by civil servant was dismissed by Service
Tribunal as his departmental appeal was time barred---Validity---
Service Tribunal had rightly dismissed the appeal as his departmental
appeal was time barred---No irregularity or illegality was pointed out
warranting interference by Supreme Court in the judgment passed by
Service Tribunal---Leave to appeal was refused. [p. 941] A**

Muhammad Aslam v. WAPDA 2007 SCMR 513 rel.

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Petitioner in person.

Nemo for Respondents.

Date of hearing: 14th June, 2011.

JUDGMENT

JAVED IQBAL, J.---This petition for leave to appeal is directed against order dated 6-4-2010 passed by learned Federal Service Tribunal Islamabad whereby the appeal preferred on behalf of petitioner has been dismissed which is reproduced hereinbelow for ready reference:--

"The appellant was awarded the penalty of compulsory retirement from service vide order dated 10-10-2006. If departmental appeal dated 30-1-2009 was time barred, the appeal, therefore, incompetent in view of 2007 SCMR 1. Dismissed in limine."

2. Heard Irshad Muhammad Shah (In person) at length who argued that major penalty could not have been imposed without having a fair, impartial and transparent departmental inquiry. It is next contended that departmental inquiry was never conducted in accordance with law but on the contrary the factual and legal aspects of the matter have been ignored without any rhyme and reason causing serious prejudice against the petitioner.

3. We have examined the above mentioned contentions in the light of relevant provisions of law and record of the case. Admittedly, the departmental appeal was barred by time which has been dismissed by learned Federal Service Tribunal in view of the law laid down by the court in Muhammad Aslam v. WAPDA (2007 SCMR 513) which is reproduced hereinbelow for ready reference:--

"Besides it is well-settled in the case Anwarul Haq (supra) that if departmental appeal is not filed within the statutory period, the appeal before the Tribunal would not be competent. Ratio decidendi is, therefore, reproduced hereinbelow:--

"The learned counsel for the petitioner frankly conceded to us that after redesignation of the post he has been performing official functions as Assistant Executive Engineer. The Tribunal was, therefore, right in holding that after a lapse of 18 years, the relief sought by the petitioner for correction of the seniority was time-barred. Reliance was also rightly placed by the learned Tribunal on the judgment of this Court in the case of Chaudhry v. PIAC v. Nasim Malik (PLD 1990 SC 951) that when an appeal is filed before the departmental authority was time-barred, the appeal before the Tribunal was also incompetent on the account."

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3. The above view was reiterated by this Court in the cases of (i) *Dr. Anwar Ali Sahto and others v. Federation of Pakistan and others* PLD 2002 SC 101 (ii) *State Bank of Pakistan v. Khyber Zaman and others* 2004 SCMR 1426 and (iii) *N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah* 2006 SCMR 459. Muhammad Aslam v. WAPDA (2007 SCMR 513).

4. In the light of what has been mentioned hereinabove the petition being barred by time has rightly been dismissed by learned Service Tribunal. No irregularity or illegality could be pointed out warranting interference in the judgment impugned. The petition being meritless is dismissed and leave refused.

M.H./I-8/SC

Petition dismissed.

2012 P L C (C.S.) 941

[Lahore High Court]

Before Umar Ata Bardial, J

FARRUKH RIAZ and 4 others

versus

GOVERNMENT OF PUNJAB through
Home Secretary, Civil Secretariat, Lahore and 2 others

Writ Petitions Nos.4741, 21080, 20085, 20127, 20361, 18096, 18968, 20009, 20075, 20222, 20461, 20736, 20985, 20850, 12221, 5972, 5449, 6242, 6205, 6187, 6182, 6151, 6119, 5880, 5772, 5758, 5729, 5593, 5572, 5550, 5536, 5471, 5468, 16228, 18343, 18471, 18453, 18497, 18842, 19022, 19023, 19024, 18830, 19160, 19219 and 19867 of 2011, heard on 28th September, 2011.

Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976---

---R. 3(v)---Police Rules, 1934, R.12.6---Police Order (22 of 2002), Arts.7(3), 112 & 185---Constitution of Pakistan, Arts.8(1)(2) & 199---Constitutional petition---Appointment of Assistant Sub-Inspectors of Police---Age limit---Relaxation of---Advertisement with regard to appointment of the post of Assistant Sub-Inspectors, had provided for all candidates to meet the "Age limit" 18 to 25 years and provided that no relaxation in age would be allowed---Candidates, who were employees of Police Department, except for meeting the age limit fixed

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case are concerned, it is not denied that the principal accused namely Baz Khan, who allegedly transported the joint pipes in question, was reinstated into service by the appellant-Department. Despite specific query, learned counsel for the appellants has not been able to point out the pecuniary loss suffered by the Company and it is not denied that the alleged pipes were recovered and were restored to the Company.

13. For what has been discussed above, we do not find any merit in these appeals as they neither raise any question of law of public importance within the meaning of Article 212 of the Constitution nor do they point out any illegality to warrant interference. The appeals having no merits are accordingly dismissed.

M.H./N/2/SC

Appeals dismissed

2010 S C M R 1564

[Supreme Court of Pakistan]

Present: Ch. Ejaz Yousaf and
Sardar Muhammad Aslam, JJ.

Mrs. ROQIAZANAKBAR and others - Petitioners

versus

SECRETARY EDUCATION (S&L), N. W.F.P.
and others - Respondents

C.P.E.A. Nos. 480-P to 483-P decided on 1st April, 2009.

On appeal from the order/judgment, dated 6-7-2007 passed by the N.W.F.P. Service Tribunal, Peshawar in Appeals Nos. 729, 731 & 733 of 2006.

North West Frontier Province Service Tribunals Act (1974)

S. 4 - Appeal - Termination of service - Dismissal of departmental appeal for being barred by time - Effect - Utilization of departmental remedy was condition precedent towards maintainability of appeal before Service Tribunal - Where appeal before departmental authority was barred by time, then appeal before Tribunal would also be incompetent - Tribunal dismissed appeal as not maintainable. (pp. 1566, 1567) A, B & C

Muhammad Alsam v. WAPDA and others 2007 SCMR 513
Muhammad Ramzan v. Inspector-General of Police 2007 SCMR 346

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					Date	BPS		
204	Ghulam Mustafa S/O Abdul Ghaffar M.A Pak Study, GPGC, Mansehra	25.06.1966 Mansehra	24.08.1995	24.08.95	16.03.2011	19	Initial Recruitment	
205	Dr.Fazlur Rehman M.A Pak Study,	16.12.1960 Bannu	11.02.1990	11.02.1990	16.03.2012	19	Initial Recruitment	
206	Dr. Lal Saïd Jan M.Sc Physics, GPGC, Mardan	20.01.1967 Peshawar	17.10.1992	17.10.1992	27.10.2010	19	Initial Recruitment	
207	Hamid Ullah Jan S/O Saïd Nawaz Khan M.Sc Comp: Sc, GPGC, Bannu	30.09.1967 FR.Bannu	01.06.1992	01.06.92		19	Initial Recruitment	
208	Muhammad Fayaz S/O Kiramat Khan M.Sc Physics, GPGC, Swabi	24.09.1967 Swabi	17.10.1992	17.10.92	27.10.2010	19	Initial Recruitment	
209	Tasbiullah S/O Muhammad Ibrahim M.A English, GPGC, Mardan	09.04.1967 Charsadda	13.10.1992	13.10.92	08.10.2010	19	Initial Recruitment	
210	Shaukat Ali S/O Zaffar Khan M.Sc Physics, GPGC, Timargara	06.03.1962 Dir	09.10.1989	09.10.89	27.10.2010	19	Initial Recruitment	
211	Muhammad Shafee S/O Shalowzen M.A Pashto, GDC, Khanpur	07.07.1970 Karak	8.12.1988	16.09.98	15.06.2010	19	Initial Recruitment	
212	Hastam Khan S/O Muhammad Shoib LLB, Law, GPGC, Nowshera.	08.06.1958 Mardan	11.11.1987	23.01.88	14.09.2010	19	Initial Recruitment	
213	Abdul Wahab S/O Juma Gul M.A Islamiyat, GC, Battagram	20.03.1964 Battagram	02.10.1989	02.10.89	28.01.2011	19	Initial Recruitment	
214	Muhammad Anwar S/O Amir Dastan M.Sc. Physics GDC, Shabqadar	18.04.1968 Karak	—	—	27.10.2010	19	Initial Recruitment	
215	Abdur Rashid S/O Ahmad Ullah M.Sc. Chemistry, GC, Dir.	15.2.1959 Dir Lower	6.02.1991(Lect.)	6.2.1991	18.02.2011	19	Initial Recruitment	
216	Fazli Nasir S/O Abdul Qadir M.A Pashto, GSSC, Peshawar	10.08.1953 Dir	07.08.1990	07.08.90	15.09.2010	19	Initial Recruitment	
217	Shujat Ali S/O Karim Dad M.Sc Physics, GC Khairabad Mardan	01.04.1972 Mardan	09.02.2002	9.2.2002	27.10.2010	19	Initial Recruitment	
218	Dr. Ashfaq Ahmad Khan S/O Abdul Qayum Khan, M.Sc Chemistry, GPGC, Haripur	01.01.1961 Haripur	12.11.1987	23.01.88	18.02.2011	19	Initial Recruitment	

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2007 SCMR 513;
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Chairman, Evacuee Trust Property Board and other v. Khawaja Shahid Nazir 2006 SCMR 1862; N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453; S.M. Afzalur-Rehmat v. Federation of Pakistan and others 2005 SCMR 1322 and The Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951 rel.

Mir Adam Khan, Advocate Supreme Court/Advocate-on-Record for Petitioners (in all cases).

Nemo for Respondents (in all cases).

Date of hearing: 1st April, 2009.

JUDGMENT

CH. EJAZ YOUSAF, J.---All these four petitions are directed against a common order/judgment dated 6-7-2007 passed by the N.-W.F.P. Service Tribunal, Peshawar, whereby Appeals Nos.729 of 2006 731 of 2006, 732 of 2006 and 733 of 2006 filed by the petitioners were dismissed. Since same question of law is involved, therefore, we propose to decide all the four petitions through this common judgment.

2. Facts of each case, in brief, are as under:--

C.P.L.A. No.480-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated from the date of her appointment vide order dated 26-11-1999, on the ground of long absence from her duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

C.P.L.A. No.481-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated from the date of her appointment vide order dated 26-11-1999, on the ground of long absence from her duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

C.P.L.A. No.482-P of 2007

Petitioner in this case was appointed as untrained PTC teacher

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	Name of Officers with Qualification	Date of Birth/ Domicile	Date of 1st Entry in to Govt. Service	Date of Regular Appointment to the service/cadre.	Regular/Promotion to the present post.		Mode of App:	Remarks
					Date	BPS		
219	Muhammad Idrees S/O Muhammad Anwar, M.A Arabic, GC, Tangi	10.04.1966 Charsadda	15.06.1992	15.06.92	31.12.2011	19	Initial Recruitment	
220	Tajud Din S/O Muhammad Din M.A Urdu, GDC, Samar Bagh (Dir Lower)	25.06.1965 Dir	05.09.1995	5.9.1995	31.03.2011	19	Initial Recruitment	
221	Shahid Hussain Abbasi S/O Gohar Rehman Abbasi, LLB (Law) GC, Abbottabad.	01.02.1964 Abbottabd	12.11.1987	23.01.88	14.09.2010	19	Initial Recruitment	
222	Mukhtair Ali S/O Sher Ali Khan M.A English, GPGC, Abbottabad	06.03.1966 Battagram	20.10.1992	20.10.92	08.10.2010	19	Initial Recruitment	
223	Umar Sharif S/O Muhammad Sharif M.A English, GPGC, Abbottabad	04.01.1963 Abbottabad	01.01.1991	01.01.91	08.10.2010	19	Initial Recruitment	
224	Mr. Nazir Ahmad S/O Noor Ahmad M.Sc Chemistry, GPGC, Lakki Marwat	27.01.1965 Lakki Marwat	03.11.1988	03.11.1988	18.02.2011	19	Initial Recruitment	
225	Dr. Shaukat Ullah S/O Inamullah M.A Islamiyat/Arabic, GC, Shabqadar	11.12.1965 Charsadda	28.07.1993	28.07.93	28.01.2011	19	Initial Recruitment	
226	Siraj Ahmad S/O Buzarg Jamhair M.Sc Botony, GPGJC, Swat.	03.05.1964 Swat	20.10.1990	20.10.90	26.02.2011	19	Initial Recruitment	
227	Muhammad Zahir Shah S/O Sarwar Shah, M.Sc Physics, GDC, Bakhshali Mardan	01.01.1965 Mardan	11.08.1993	11.08.93	27.10.2010	19	Initial Recruitment	
228	Mujahid Ali S/O Amir Nawab M.Sc Chemistry, GPGC, Nowshera.	25.03.1966 Charsadda	18.01.1993	18.01.93	18.02.2011	19	Initial Recruitment	
229	Riaz Ahmad S/O Minhajud Din M.Phil Physics, Principal GDC, Mingora Swat.	20.02.1960 Swat	11.11.1987	23.01.88	27.10.2010	19	Initial Recruitment	
230	Mr. Mumtaz Ali S/O Rehman Ullah M.Sc Chemistry, GDC, Khairabad	02.04.1958 Mardan	01.06.2001	01.05.2001	18.02.2011	19	Initial Recruitment	
231	Asghar Khan S/O Purdil Khan M.A Economics, GPGC, Swat	25.02.1960 Swat	12.11.1987	23.01.88	20.07.2011	19	Initial Recruitment	
232	Ahmad Saeed S/O Abdul Matin M.A Islamiyat/Arabic, GC, Battagram	03.05.1959 Battagram	22.08.1993	22.8.1993	01.01.2011	19	Initial Recruitment	
233	Mumtaz Hussain S/O Mian Said Qahar M.Sc Chemistry, GC, Matta.	21.05.1966 Swat	22.10.1992	22.10.92	18.02.2011	19	Initial Recruitment	

(58)

on 31-7-1999. Her services were terminated with immediate effect vide order dated 26-11-1999, on the ground of long absence from duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

C.P.L.A. No.483-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated with immediate effect vide order dated 26-11-1999, on the ground of long absence from duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

3. It has been mainly contended by the learned counsel for the petitioner that the learned Tribunal has gravely erred in dismissing appeal of the petitioners on the ground that their representations before the departmental authority were time-barred.

C.Ps. 480-P to 483-P of 2007

4. We have given our anxious consideration to the contention of the learned counsel for the petitioners and have perused the record of the case, with his assistance, minutely.

5. It may be pertinent to mention here that in two of the Petitions i.e. bearing No. 480-P and 381-P of 2007, the services of the petitioners were terminated on account of non-assumption of charge, whereas in other two Petitions i.e. bearing No. 482-P and 483-P of 2007 services of the petitioners were terminated for wilful absence from duty. Although the termination orders were passed on 26-11-1999 yet, the petitioners slept over the matter and did not bother to file appeals before the departmental authority for about six years uptill 19-5-2006, which were dismissed mainly on the ground of limitation. The petitioners then approached the Service Tribunal on 11-8-2006 and the learned Service Tribunal having found that the departmental appeals being barred by time, the appeals before the Service Tribunal too, were not competent.

6. By now it is well-settled that if appeal before the departmental authority is barred by time, then appeal before the Service Tribunal would also be incompetent because under the relevant law utilization of the departmental remedy is the condition precedent towards

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S.A.K./R-8/SC

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—S. 25-A —
Ordinance (
Termination

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S.No	Name of Officers with Qualification	Date of Birth/ Domicile	Date of 1st Entry in to Govt. Service	Date of Regular Appointment to the service/cadre.	Regular/Promotion to the present post.		Mode of App.	Remarks
					Date	BPS		
234	Muhammad Faiza Shah S/O Muhd: Nadar Shah, M.Sc Stats, Chief Planning Officer HE	15.10.1973 Charsadda	14.09.1998	14.9.1998	01.02.2011	19		Initial Recruitment
235	Muhammad F Hassan S/O Abdus Sattar M.Sc Biology, GPCC, Barnu	09.02.1962 Barnu	03.11.1988	03.11.88	26.02.2011	19		Initial Recruitment
236	Naeem-ud-Din Ahmad S/O Fazal Din M.Sc. Zoology, GSSC, Peshawar.	06.03.1964 Karak	25.04.1989	25.04.89	31.03.2011	19		Initial Recruitment
237	Muhammad Karim M.Sc Stats, GDC, Hanug	01.02.1966 Karak	01.09.1991	01.09.1991	01.02.2011	19		Initial Recruitment
238	Noor Habib S/O Mian Gul M.A Islamiyat, GDC, Oghi	02.06.1958 Mansehra	12.10.1989	12.10.89	28.01.2011	19		Initial Recruitment
239	Iftikhar Ali S/O Mamoor Khan M.A English, GDC, Toru Mardan.	04.05.1964 Swabi	01.01.1991	1.1.1991	08.10.2010	19		Initial Recruitment
240	Muhammad Anwar Khan S/O Faiz Muhammad, M.A Urdu, GC, Lakki	15.12.1954 Lakki	08.01.1991	08.01.91	31.03.2011	19		Initial Recruitment
241	Mr. Mushtaq Ahmad M.A Urdu, GDC, Pattan (Kohistan)	02.08.1960 Abbottabad	19.09.1989	19.09.1989	31.03.2011	19		Initial Recruitment
242	Muhammad Saifan S/O Abdul Ghaffar Khan, M.A Urdu.	25.12.1960 Haripur	12.11.1992	12.11.92	31.03.2011	19		Initial Recruitment
243	Muhammad Saifi S/O Payoo Khan M.A History/Civics, Chairman BISE, Peshawar	01.04.1964 FR Kohat	14.12.1988	14.12.88	05.03.2011	19		Initial Recruitment
244	Muhammad Saieem S/O Wali Mohd: M.A English, GJC, Swat	18.04.1965 Swat	01.09.1991	01.09.91	08.10.2010	19		Initial Recruitment
245	Muhammad Saeed Khan S/O Ali Badshah, M.A English, GC, Badaber.	15.04.1966 Karak	22.08.1991	22.08.91	08.10.2010	19		Initial Recruitment
246	Muhammad Tariq Jan S/O Fazal Muhammad MA Urdu GPCC, Mardan	05.04.1965 Mardan	15.09.1998	15.09.1998	31.03.2011	19		Initial Recruitment
247	Jamil Akhtar Awan S/O Sultan Muhammad, GPCC, Mandian Abbottabad	25.01.1962 Abbottabad	05.01.1991	05.01.91	31.03.2011	19		Initial Recruitment
248	Abdul Qadeer S/O Muhammad Bashir M.Sc Botany, GDC, Lachi	01.04.1957 Barnu	08.01.1987	23.01.88	26.02.2011	19		Initial Recruitment

(59)

maintainability of appeal before the Service Tribunal. In this view we are fortified by the following reported judgments:--

- (1) Muhammad Alsam v. WAPDA and others 2007 SCMR 513;
- (2) Muhammad Ramzan v. Inspector General of Police 2007 SCMR 346, (3) Chairman, Evacuee Trust Property Board & others v. Khawaja Shahid Nazir 2006 SCMR 1852, (4) N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453, (5) S.M. Afzal-ur-Rehmat v. Federation of Pakistan and others 2005 SCMR 1322, (6) The Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951.

It would be pertinent to mention here that law helps the diligent and not be delinquent/remiss. If a person has been negligent in prosecuting his remedy before the proper forum, he is not entitled to indulgence of the court.

7. Upshot of the above discussion is that these petitions being misconceived are hereby dismissed and leave declined.

S.A.K./R-8/SC

Leave declined.

2010 S C M R 1567

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J.
and Ghulam Rabbani, J

Messrs HASHMI CAN COMPANY LTD.---Appellant

versus

LIAQUAT MUHAMMAD and others---Respondents

Civil Appeals Nos.1725 to 1856, 1887 to 1943 of 2007 35 to 40 of 2008 and Civil Petitions Nos.633-K to 640-K of 2007, decided on 18th May, 2010.

(On appeals from the judgment dated 12-9-2007 passed by the High Court of Sindh of Karachi in Labour Appeals Nos.337 to 341, 473 to 633 of 2003, 6 to 201 of 2004).

(a) Industrial Relations Ordinance (XXIII of 1969)---

---S. 25-A ---Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.11-A & S.O. 12(1)(3)---Grievance petition--- termination of service of workers in pursuance of retrenchment order

S.No	Name of Officers with Qualification	Date of Birth/ Domicile	Date of 1st Entry in to Govt. Service	Date of Regular Appoimntment to the service/cadre.	Regular/Promotion to the present post.		Mode of App:
					Date	BPS	
249	Manzoor Hussain S/O Faujoon Khan M.Sc Biology, GPGC, No. 1 Abbottabad.	10.06.1960 Mansehra	08.12.1988	08.12.88	26.02.2011	19	Initial Recruitment
250	Syed Safdar Ali Shah S/O Abdur Rauf Shah M.Sc Zoology, GPGC, Hangu	11.11.1962 Kohat	11.11.1987	23.01.88	31.03.2011	19	Initial Recruitment
251	Irfan Ullah S/O Mohibullah Khan M.Sc Stats, GPGC, Nowshera.	01.03.1963 Malakand	03.11.1988	03.11.88	01.02.2011	19	Initial Recruitment
252	Mr. Izaz Ali M.Sc Maths, GPGC, Mardan	01.12.1964 Mardan	17.06.1990	17.06.1990	29.10.2010	19	Initial Recruitment
253	Muhammad Tariq S/O Kachkol M.A Pol.Sc: GPGC, Nowshera.	27.07.1963 Nowshera	10.12.1988	10.12.88	05.03.2011	19	Initial Recruitment
254	Mujahid Hassan S/O Sher Hassan M.A History Director FEF Peshawar	10.09.1964 Peshawar	09.02.1991	09.02.91	20.10.2010	19	Initial Recruitment
255	Nazem Akhtar S/O Muhammad Ajab M.Sc Maths, GDC, Havelian	12.04.1968 Abbottabad	28.10.1992	28.10.92	29.10.2010	19	Initial Recruitment
256	Mr. Azhar Mahmood S/O Muhammad Siddique, M.Sc Botony, GPGC No1. Abbottabad	06.06.1971 Abbottabad	27.04.1998	27.04.98	25.02.2011	19	Initial Recruitment
257	M. Ishaq S/O Ziarat Gul M.Sc. Maths GDC, Ghazi	2/15/1972 Charsadda	9/10/1998	10.09.1998	29.10.2010	19	Initial Recruitment
258	Saeed Ahmad S/O Abdul Aziz M.Sc Zoology, GPGC, Nowshera	24.02.1960 Peshawar	21.03.1988	21.03.88	31.03.2011	19	Initial Recruitment
259	Abdul Aziz S/O Younas Khan M.Sc Zoology, GC No.2 Mardan	03.03.1961 Mardan	21.08.1991	21.08.91	31.03.2011	19	Initial Recruitment
260	Malqais Khan S/O Mir Sahib Khan M.Sc Zoology, GC, Parachinar.	01.05.1966 Karak	22.08.1991	22.08.91	31.03.2011	19	Initial Recruitment
261	Muhammad Ayaz M.A Pol: Science, Principal GDC, Mingora Swat.	24.02.1958 Dir	26.06.1985	26.06.1985	05.03.2011	19	Initial Recruitment
262	Faridullah Jan S/O Ghulam Baqi Jan M.A Economics, Principal GC, No.3 D.I.Khan	15.02.1965 Lakki Marwat	03.11.1988	03.11.88	20.07.2010	19	Initial Recruitment
263	Mohammad Ibrar S/O Mohammad Ikram (M.Sc. Stats) Principal GDC, Bakhsali Mardan	26.5.1972 Mardan.	7.3.2005	7.3.2005	01.03.2011	19	Initial R

It may be observed that penal liability was quite distinct from the fiscal liability, which could not be intermingled.

8. In view of the factual and legal position obtaining in the matter, we are left with no doubt whatsoever that neither the Trial Court nor the Appellate Court was called upon to make observations which had no direct relevancy or nexus with the matter before them. The appellants were facing criminal charge the only decision possibly was about their guilt or otherwise. Since they were acquitted by the trial Court and the appeal their against filed by the respondent was dismissed by the learned High Court maintaining the acquittal order nothing more was necessary to be done by the Courts. We are, therefore, unable to subscribe to the view expressed by the learned High Court in recording observations in its judgment particularly paragraph 23 thereof and would set aside that part of the judgment.

Reference by the learned counsel for the respondent to the judgment dated 10-12-1989 in C.P. No. D.49 of 1982 is of no avail in these proceedings as in that judgment the competency of the Government to revise rates of fee was in issue, which has no relevancy in the context of the subject matter before us.

9. In view of the above the appeals are accepted to the extent mentioned above with no order as to costs.

N.H.Q./A-38/SC

Appeals allowed

2011 S C M R 693

[Supreme Court of Pakistan]

Present: *Ifkhar Muhammad Chaudhry, C.J.*
Raja Fayyaz Ahmed, and Ch. Jaz Ahmed, JJ

SOHAIL BIJTT---Petitioner

versus

DEPUTY INSPECTOR-GENERAL OF POLICE (NORTH)
NATIONAL HIGHWAY AND MOTORWAY POLICE
and others---Respondents

Civil Petition No. 396 of 2009, decided on 20th May, 2009.

(Against the judgment dated 31-12-2008 passed by the Federal Service Tribunal, Islamabad, in Appeal No. 707(R)/CS of 2007.)

SCMR

(a) Service Tri.

—S. 4—Dismissal
Effect—Appeal
Illustration. [pp.

Anwarul
PLD 1990 SC 9
Khyber Zaman's
case 2006 SCMR

(b) Constitution

—Art. 212(3)—
being findings
Court. [p. 703]

(c) Removal J
of 2000)---

—Ss. 3, 5(1)
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288	006/12 MUSHIHI KHAN VS PSC	14-05-2015	200/-
289	609/12 Waheed Gul Vs PSC	14-05-2015	200/-
290	610/12 Taj Wali Vs PSC	14-05-2015	200/-
291	1044/13 Bahadar Khan Vs Police	14-05-2015	200/-
292	06/13 Tauseef Alam Vs Education (1 Connected)	14-05-2015	200/-
293	07/13 Naveed Gul	14-05-2015	200/-
294	785/14 Mohammad Humayun Vs Admin. (1 Connected)	14-05-2015	200/-
295	786/14 Abdullah Khan	14-05-2015	200/-
296	94/10 Syed Mudasar Shah Vs Education	14-05-2015	200/-
297	30/11 Hukam Khan Vs Education	14-05-2015	200/-
298	185/12 Mst. Niaz Parwar Vs Education	14-05-2015	200/-
299	120/14 Miss Tehmina Aslam Vs Govt.	14-05-2015	200/-
Bench-II			
300	306/12 Ijaz Khan vs Education	18-05-2015	200/-
301	1207/11 Saeed Naeem Vs Prosecution (21 Connected)	18-05-2015	200/-
302	1215/11 Kamran	18-05-2015	200/-
303	1219/11 Fazle Noorani sz	18-05-2015	200/-
304	1213/11 Shehzad Iqbal	18-05-2015	200/-
305	1210/11 Sibghatullah	18-05-2015	200/-
306	1214/11 Mohammad jehanzaib	18-05-2015	200/-
307	1216/11 Zulfiqar	18-05-2015	200/-
308	1208/11 Qadir Bakhsh	18-05-2015	200/-
309	275/11 Uzair ur din	18-05-2015	200/-
310	276/11 Zulfiqar Ali	18-05-2015	200/-
311	277/11 Sibghatullah	18-05-2015	200/-
312	281/11 Jehanzaib	18-05-2015	200/-
313	280/11 Mohammad Jehanzaib	18-05-2015	200/-
314	283/11 Qadir Bakhsh	18-05-2015	200/-
315	278/11 Saeed Naeem	18-05-2015	200/-
316	279/11 Kamran Khan	18-05-2015	200/-
317	280/11 Arif Bilal	18-05-2015	200/-
318	284/11 Fazal Noorani	18-05-2015	200/-
319	282/11 Shehzad Iqbal	18-05-2015	200/-
320	283/11 Imtiaz Shah	18-05-2015	200/-
321	284/11 Raj Wali	18-05-2015	200/-
322	285/11 Safeer Ahmad	18-05-2015	200/-
323	661/11 Shoukat Malik Vs Education (26 Connected)	18-05-2015	200/-
324	686/11 Asghar Ali	18-05-2015	200/-
325	681/11 Umar Zaman	18-05-2015	200/-
326	669/11 Abdul Wali Khan	18-05-2015	200/-
327	682/11 Zahoor ur Rehman	18-05-2015	200/-
328	680/11 Niamat Shah	18-05-2015	200/-
329	673/11 Haidar Zaman	18-05-2015	200/-
330	679/11 Khaliq Dar	18-05-2015	200/-
331	687/11 Nawazish	18-05-2015	200/-
332	678/11 Iftikhar Ahmad	18-05-2015	200/-
333	685/11 Tariq Khan	18-05-2015	200/-
334	674/11 Shokat Ali	18-05-2015	200/-
335	662/11 Abdul Razaq	18-05-2015	200/-
336	684/11 Akbar Zaman	18-05-2015	200/-
337	676/11 Nazirullah	18-05-2015	200/-
338	672/11 Zia ul Islam	18-05-2015	200/-
339	663/11 Dost Mohammad	18-05-2015	200/-
340	664/11 Latifullah	18-05-2015	200/-
341	665/11 Azizul Haq	18-05-2015	200/-
342	683/11 Jafar Ali Khan	18-05-2015	200/-
343	675/11 Zia Ulla	18-05-2015	200/-
344	666/11 Attiq ur Rehman	18-05-2015	200/-
345	667/11 Inam ur Rehman	18-05-2015	200/-
346	670/11 Abdul Ali Khan	18-05-2015	200/-

81-699

(a) *Service Tribunals Act (LXX of 1973)*---

—S. 4—*Dismissal of departmental appeal for being time-barred—Effect—Appeal before Service Tribunal would not be competent—Illustration. [pp. 702, 703] A & B*

Anwarul Haq's case 1995 SCMR 1505; Chairman PIA's case PLD 1990 SC 951; Dr. Anwar Ali Sahto's case PLD 2002 SC 101; Khyber Zaman's case 2004 SCMR 1426 and Syed Ashfat Hussain Shah's case 2006 SCMR 453 rel.

(b) *Constitution of Pakistan*---

—Art. 212(3)—*Findings of Service Tribunal—Validity—Such findings being findings of fact would not call for interference by Supreme Court. [p. 703] C*

(c) *Removal from Service (Special Powers) Ordinance (XVII of 2000)*---

—Ss. 3, 5(1)(4) & 10—*Constitution of Pakistan, Art. 212(3)—Dismissal from service—Senior Patrol Officer in National Highways and Motorway Police—Charge of unauthorized absence from duty for about three months—Non-filing of reply to show cause notice by appellant—Failure of appellant to appear before Inquiry Officer inspite of repeated notices issued to him—Dismissal of departmental appeal for being time barred—Dismissal of appeal by Service Tribunal on merits as well as being time-barred—Validity—Appellant as a member of discipline force would not deserve any leniency for having absented himself from duty for such considerable period without securing permission from his high officer—No question of public importance was involved—Tribunal was justified to come to conclusion that appellant had no case even on merits—Supreme Court declined to grant leave to appeal in circumstances. [pp. 703, 704] D & J*

(d) *Constitution of Pakistan*---

—Art. 212(3)—*Word "satisfied" as used in Art. 212(3) of the Constitution—Meaning stated.*

The word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; a mind which has reached on clear conclusion. [Words and phrases]. [p. 703] E

Blyth v. Blyth {(1966) AER 524 (541)} and Angland v. Payne {1944 NZLR 610 (626)} rel.

OFFICE OF
THE ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR
NO. 1299-96/AAH

DATED: 07-07-15

To,

1. The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa,
Local Government, Election & Rural Development
Department/Chairman Local Council Board, Peshawar.

SUBJECT:- IMPLEMENTATION PROCEEDINGS TITLED Mr. ABDUL LATIF VS
LOCAL GOVERNMENT & OTHERS

Sir,

With reference to the subject noted above and to state that the above implementation proceeding was fixed for submission of report on 26/06/2015 before the Hon'ble Service Tribunal Bench-I, Peshawar but the same was not submitted on your behalf. The Hon'able Chairman Service Tribunal showed utmost displeasure over it and directed the respondents for doing the needful positively and directed to submit the above report on or before the date fixed i.e. 02-10-2015.

This is, therefore, brought in to your notice that the directions of the Court may be implemented in letter and spirit on or before 02-10-2015 positively.

(e) Constitution of Pakistan---

---Art. 212(3)—Expression "substantial question of law" as used in Art. 212(3) of the Constitution—Meaning—Such expression would mean a substantial question of law involved in the case as between parties hereof. [p. 703] F

Raghuman Prasad Singh and others v. The Deputy Commissioner of Partabgarh and others AIR 1927 P.C. 101 and Sir Chunila v. Mehta and Sons Ltd. AIR 1962 SC 1314 rel.

(f) Constitution of Pakistan---

---Art. 212(3)—Expression "public importance" as used in Art. 212(3) of the Constitution—Meaning stated.

The word "public importance" can only be defined by a process of judicial inclusion or exclusion, because the expression "public importance" is not capable of any precise definition and has not a rigid meaning therefore, each case has to be judged in the circumstances of that case as to whether the question of importance is involved. Public importance must include a purpose or aim in which general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned. [Words and phrases]. [p. 704] G

Abdul Aziz's case PLD 1982 SC (AJ&K) 16 rel.

(g) Words and phrases---

---"Grants" means permission. [p. 704] H

(h) Constitution of Pakistan---

---Art. 212(3)—Appeal to Supreme Court against order of Service Tribunal—Maintainability—Constitutional power under Art. 212(3) of the Constitution being discretionary in nature must be exercised reasonably, honestly and not arbitrarily or capriciously or in bad faith—Such appeal would be competent only on ground of law of public importance, otherwise would be barred—Principles. [p. 704] I

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH IIAZ AHMED, J.—Sohail Butt, petitioner, seeks leave to appeal against the judgment dated 31-12-2008 whereby the Federal

Service Tribunal, is time barred.

2. Detailed facts impugned judgment necessary facts out petitioner was served and Motorway Police N-5 (North II) vic himself from duty of of his seniors and himself for 31 days. absented himself from the competent authority No. 18 dated 11-3- reported back on 1 days. Petitioner did 16-5-2002. Respondent him by issuing charge and Disciplinary Petitioner raised objection initiate proceeding after the enforcement Ordinance, 2000. F statement of alleged provisions of the af reply to the charge sheet. Petitioner spite of repeated ne Superintendent of Police the said Ordinance, Ordinance as under:

"It is not n conducted d

Show cause competent authority from service w.e.f. being aggrieved file Police on 5-7-2007 time barred and the aggrieved filed App Tribunal. Islamabad barred. Hence the p

OFFICE OF
THE ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR
NO. 1292-96/AA4

DATED: 07-07-15

To,

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Local Government, Election & Rural Development Department/Chairman Local Council Board, Peshawar.

SUBJECT:- IMPLEMENTATION PROCEEDINGS TITLED Mr. ABDUL LATIF VS LOCAL GOVERNMENT & OTHERS .

Sir,

With reference to the subject noted above and to state that the above implementation proceeding was fixed for submission of report on 26/06/2015 before the Hon'ble Service Tribunal Bench-I, Peshawar but the same was not submitted on your behalf. The Hon'able Chairman Service Tribunal showed utmost displeasure over it and directed the respondents for doing the needful positively and directed to submit the above report on or before the date fixed as 02-10-2015.

This is, therefore, brought in to your notice that the directions of the Court may be implemented in letter and spirit on or before 02-10-2015 positively.

Service Tribunal, Islamabad, dismissed his appeal on merits as well as time barred.

2. Detailed facts have already been mentioned in para 1 of the impugned judgment and memo. of petition in para 2. However, necessary facts out of which the present petition arises are that the petitioner was serving as Senior Patrol Officer in the National Highways and Motorway Police when he was transferred from Islamabad to Sector N-5 (North II) vide order dated 8-2-2003. The petitioner absented himself from duty on 3-2-2003 without any information/prior permission of his seniors and reported back on duty on 11-3-2003 after absenting himself for 31 days. The petitioner on the said date, i.e. 11-3-2003 again absented himself from duty without any intimation or permission from the competent authority. Report was entered against him on daily diary No. 13 dated 11-3-2003 qua his absence from the office. Petitioner reported back on 11-4-2003 after remaining absent from duty for 31 days. Petitioner did not report for duty at his new place of posting till 16-5-2002. Respondents had initiated disciplinary proceedings against him by issuing charge sheet to him under the Punjab Police (Efficiency and Disciplinary) Rules, 1975. An Inquiry Officer was appointed. Petitioner raised objection that respondents had no lawful authority to initiate proceeding against him under Efficiency and Disciplinary Rules after the enforcement of Removal from Service (Special Powers) Ordinance, 2000. Respondents issued fresh charge sheet along with statement of allegations to the petitioner on 3-6-2004 under the provisions of the aforesaid Ordinance, 2000. The petitioner submitted reply to the charge sheet controverting the allegations levelled in the charge sheet. Petitioner had failed to appear before the inquiry officer in spite of repeated notices issued to him by the inquiry officer. Senior Superintendent of Police as competent authority under section 2(aa) of the said Ordinance, had decided in terms of section 5(1)(4) of the Ordinance as under:--

"It is not necessary to have an inquiry into the above charges conducted through an Inquiry Officer or Inquiry Committee."

Show cause notice dated 13-12-2004 was sent to him by the competent authority. Petitioner was awarded major penalty of dismissal from service w.e.f. 10-9-2004 vide order dated 9-4-2005. Petitioner being aggrieved filed appeal before the Deputy Inspector General of Police on 5-7-2007 which was dismissed vide order dated 12-7-2007 as time barred and the same could not be entertained. The petitioner being aggrieved filed Appeal No. 707(R)/CS/2007 before the Federal Service Tribunal, Islamabad, which was dismissed on merits as well as time barred. Hence the present petition.

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OFFICE OF
THE ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

NO. _____

Date: / 07 /2015

To,

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The C.C.P.O, Peshawar.

**SUBJECT: - SUBMISSION OF WRITTEN REPLY IN APPEAL NO. 1591/2015,
TITLE. MR. TAJ MUHAMMAD VS POLICE.**

Sir,

Reference to the subject noted above and to state that the above mentioned appeal was fixed for reply on 13/07/2015 before the Hon'ble Service Tribunal Bench-I Peshawar. You have been duly served but neither parawise comments have been submitted nor any one attended the Tribunal on your behalf. On the request of undersigned, last chance was given with direction to contact you and submit parawise comments on dated 24-08-2015 positively.

It is, therefore, requested that reply in the subject cases duly vetted by this office may please be submitted and also well conversant departmental representative not below the rank of BPS-17 be deputed on next date 24-08-2015 to pursue the appeal properly.


(KABIR ULLAH KHATTAK)
ASSISTANT ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR.

NO. 1353-58/AAG

Dated: 15 / 07 /2015

Copy forwarded to:

1. The Registrar Khyber Pakhtunkhwa, Service Tribunal Peshawar.
2. The Deputy Solicitor, Law Parliamentary Affairs & Human Rights Department, Peshawar for necessary action.
3. Appeal File.


ASSISTANT ADVOCATE GENERAL
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR

3. Learned counsel for the petitioner submits that learned Service Tribunal erred in law to dismiss the appeal of the petitioner as time barred without adverting to the facts and circumstances of the case of the petitioner as the impugned order of dismissal was passed by an incompetent authority, i.e., Senior Superintendent of Police whereas Chief Executive vide Notification dated 27-5-2000 through S.R.O. No.208(I) of 2000 has authorized the head of the department/subordinate office to exercise the power of competent authority for the class of persons holding posts in BPS-16-19 while exercising power conferred by section 2(a) of the Ordinance. He further urges that petitioner met with an accident and got fractured in his left feet and was admitted in Tehsil Headquarter Hospital Gujar Khan. Medical certificate was also submitted to the Sr. Superintendent of Police concerned when petitioner appeared before him. The petitioner could not attend office on account of his illness and the medical certificates were also submitted before the Senior Superintendent of Police who did not consider the same at the time of awarding major penalty to the petitioner. Learned Service Tribunal also erred in law to decide the appeal of the petitioner without judicial application of mind.

4. We have given our consideration to the contentions of the learned counsel of the petitioner and also perused the record. It is proper and appropriate to reproduce the basic facts in chronological order to resolve the controversy between the parties:--

- (i) Show cause notice was issued to the petitioner on 13-12-2004.
- (ii) The petitioner was removed from service on 9-4-2005.
- (iii) The petitioner filed appeal before the departmental authority on 5-7-2007.
- (iv) The departmental appeal of the petitioner was dismissed as time barred on 12-7-2007.

Mere reading of the aforesaid facts it is crystal clear that the departmental appeal of the petitioner was barred by limitation for more than two years. It is settled proposition of law that if departmental appeal is not filed within the statutory period, the appeal before the Tribunal would not be competent meaning thereby where departmental appeal is time-barred, then the appeal before the Tribunal is also time-barred. The appeal before the Tribunal was also incompetent on that account. There are series of judgments of this Court in support of the aforesaid proposition of law. See Anwarul Haq case (1995 SCMR 1505), Chairman PIA's case (PLD 1990 SC 951). The above view was reaffirmed in the following judgments:--

- (i) Dr. Anwar Ali Sahto's case (PLD 2002 SC 101).

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(ii) Khyber.

(iii) Syed As

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GOVERNMENT OF KHYBER PAKHTUNKHWA,
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

NO.Slt/12-23(26)Revenue/2015/17677-79 Dated Peshawar, the 16/07/2015

To,

The Additional Advocate General
Service Tribunal
Khyber Pakhtunkhwa Peshawar.

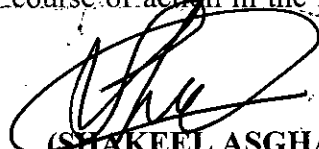
Subject: - **SERVICE APPEAL NO.1336/2014, FILED BY MR. FARMAN ALI NAIB TEHSILDAR REVENUE ACADEMY KARAK KHYBER PAKHTUNKHWA VS SENIOR MEMBER BOARD OF REVENUE KHYBER PAKHTUNKHWA AND OTHERS.**

Reference:- Letter/Memo/Ends:No.Esst:V/S.A/1336/Farman Ali/154424-26 dated 01.07.2015 together with its enclosures in original received from the Deputy Secretary Revenue Department Khyber Pakhtunkhwa.

You are requested to undertake defense of above noted case fixed for hearing on the date ascertained to be obtained in the court of Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of Government of Khyber Pakhtunkhwa.

Any further information that may be required can be obtained from the Deputy Secretary Revenue Department Khyber Pakhtunkhwa direct.

The final decision in the case may be intimated at once and certified copy of the Judgment/Decree/Order/Memo, of the Cost, if any may be obtained and forwarded before expiry of period of limitation. In case the decision is adverse to Government. You are also requested to intimate your views as to further course of action in the matter clearly indicating the last date for appeal, revision.


(SHAKEEL ASGHAR)
DEPUTY SOLICITOR

Ends. No & date even.

Copy forwarded to the Secretary to Government of Khyber Pakhtunkhwa Revenue & Estate Department with reference to his No. and date as above.

Any officer of the Department fully conversant with facts of the case should please be deputed to assist the law Officer representing the Government in the court on each date of hearing. The Officer so deputed should also prepare a detailed report of proceedings on every date of hearing and result thereof intimated to this Department regularly. Necessary Administrative Approval to defend the case at public expense may also be accorded and conveyed to this Department at an early date. Copy of the plaint Appeal Para-wise comments there on and brief history of the case may be given to the Law Officer and one set to this department for scrutiny and record.

(SHAKEEL ASGHAR)
DEPUTY SOLICITOR

Ends no & date even.

Copy forwarded for information and necessary action with reference to letter/memo/Endorsement number quoted above to the:-

1. Deputy Secretary Revenue Department Khyber Pakhtunkhwa.

(SHAKEEL ASGHAR)
DEPUTY SOLICITOR

- (ii) Khyber Zaman's case (2004 SCMR 1426)
- (iii) Syed Ashfat Hussain Shal's case (2006 SCMR 453).

The learned Service Tribunal had taken a lot of pain to consider the case of the petitioner even on merits in spite of the fact that his appeal before the Service Tribunal was incompetent as the departmental appeal filed by the petitioner was dismissed as time barred as depicted from para 4 of the impugned judgment. It is settled principle of law that finding of Service Tribunal being findings of fact would not call for interference by this Court while exercising power under Article 212(3) of the Constitution. It is pertinent to mention here that petitioner is a member of discipline force but his conduct as evident from the narration of facts would not deserve any leniency as the petitioner had absented himself from duty without securing any permission from any higher authority for a considerable period approximately 3 months. Petitioner had also failed to file reply of the show cause notice issued to him at his given address and even when the same was published in the newspaper, therefore, learned Service Tribunal was justified to come to the conclusion that petitioner had no case even on merits. As mentioned above the learned Tribunal dismissed the appeal as time barred as well as on merits, even otherwise the learned counsel of the petitioner has failed to raise any question of public importance as contemplated under Article 212(3) of the Constitution. It is better and appropriate to reproduce Article 212 (3) of the Constitution to resolve the controversy between the parties:--

"212. Administrative Courts and Tribunals.---

- (1)
- (2)
- (3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal".

(under lines are ours)

The word 'satisfied' means 'existence of mental persuasion much higher than mere opinion meaning thereby the phrase satisfied means simply makes up its mind. See *Blyth v. Blyth* ((1966) ABR 524 (541)), also means a mind not troubled by doubt or to adopt the language of *Smith, J* a mind which has reached on clear conclusion *Angland v. Payne* {1944 NZLR 610 (626)}. The word 'substantial question of law' means a 'substantial question of law as between the parties in the case

CERTIFICATE

Muhammad Adeel Butt, Additional Advocate General, Khyber
Service Tribunal Peshawar, has appeared in the above all cases before the
Khyber Pakhtunkhwa Service Tribunal Peshawar.

**MUHAMMAD ADEEL BUTT
ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Net Amount after deduction

S.NO	Amount (In Words)	Total Amount	Income Tax Deduction (6%)	Net Amount
1	One Lac and Thirty Eight Thousand Only	138000/-	8280/-	129720/-
2	Total			129720/-

**MUHAMMAD ADEEL BUTT
ADDITIONAL ADVOCATE GENERAL
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

CERTIFICATE

It is certified that Mr. Muhammad Adeel Butt, Additional Advocate General, Khyber
Pakhtunkhwa, Service Tribunal Peshawar, has appeared in the above all cases before the
Khyber Pakhtunkhwa Service Tribunal Peshawar.

**Superintendent
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1221 /ST

Dated 1 / 8 / 2016


To

The SP Cantt,
Peshawar

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 25.7.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.