


02.11.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. A.G for the respondents present.

Copy of the order dated 26.10.2021 passed by the Government of Khyber Pakhtunkhwa Finance Department has been produced and placed on file. According to office order No. SO(Estt-I)FD/1-5/2021 of even date, the penalty of dismissal from service + recovery of Rs. 2676871/- imposed upon the petitioner namely Muhammad Ayaz, District Accounts Officer (BS-18) vide order No. SO (Estt)FD/5-14/B.Gram dated 18.01.2017 has been converted into minor penalty of stoppage of two increments for two years. He has been reinstated into service w.e.f. 18.01.2017 and shall stand retired from Government Service w.e.f. 13.12.2018 on attaining the age of superannuation as his date of birth is 14.12.1958. Notwithstanding the fact that the said order has been passed with the condition of making it subject to final decision of the august Supreme Court of Pakistan in CPLA No. 166-B/2021 against the judgment of this Tribunal, he on furnishing of Affidavit for refund of the benefits, if judgment of this Tribunal is not maintained, is held entitled to draw all benefits on account of the order dated 26.10.2021 including arrears of the salary of the intervening period till his retirement and pension and other benefits in consequence of his retirement on superannuation.

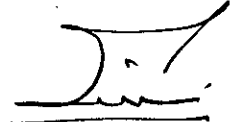
With the above observations, this Execution Petition stands disposed of with liberty to the petitioner to seek its restoration, if the said order is not implemented under this order in light of the letter and spirit of the main judgment. File be consigned to the record room.


Chairman

04.10.2021

Petitioner in person present. Mr. Muhammad Shafique, Senior Clerk alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Mr. Muhammad Shafique, stated at the bar that he will diligently pursue the case and the implementation report will positively be produced on the next date. Last opportunity given. To come up for submission of implementation report before the S.B on 02.11.2021.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

E.P.No. 80/2021
M. Ayaz vs Govt

05.08.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Naseeb Khan, S.O (Litigation) and Muhammad Sajid, Superintendent for the respondents present.

According to the copy of the summary produced today, the summary dated 23.06.2021 submitted to the Finance Minister has been signed by the Minister on 04.08.2021 for onward submission to the Chief Minister through in between channel. Keeping the concluding observations in order dated 15.07.2021 intact, let the respondents pursue the said summary for its outcome as a special case. To come up for implementation report on 08.09.2021 before S.B.


Chairman

08.09.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Naseeb Khan, S.O for the respondents present.

Implementation report has not been submitted. The above named representative assured that summary to Chief Minister will be hotly pursued and implementation report will be submitted on next date positively. On assurance of representative of the respondents another chance is given to the respondents. Case to come for implementation report on 04.10.2021 before S.B.


Chairman

EP No. 80/2021

15.07.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Nasib Khan, S.O and Muhammad Sajid, Superintendent for the respondents present.

So far the issue of implementation of the judgment of this Tribunal is concerned, the assurances given on behalf of the respondents have proved nothing more than lollypop. This was to happen because the representatives of respondents present before us hail from a lower rank who besides hide and seek tactics can't do nothing when they after carrying direction from here have got a limited access to the higher ranks whose incumbents matter in the decision making. Although they suffer from the grilling when standing before us without decisions which were to be made by their bosses at helms of the affairs in official business; but they remain clueless due to their subordinate position. Obviously, the present case may not get a solution without interest of the Secretary to the Government of Khyber Pakhtunkhwa Finance Department. Therefore, he is expected to discharge his duty towards implementation of the judgment of this Tribunal failing which he may earn an inefficiency report to be communicated to the Establishment Division of the Federal Government where his upward career and conditions in terms of his prestigious service is waiting. Registrar of this Tribunal is directed to send copy of this order to the aforementioned Secretary with copy to his Private Secretary for placing before him directly because there is likelihood that it may not reach him through usual official channels in his office. To come up for implementation report on 05.08.2021 before S.B.


Chairman

01.07.2021

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

Representative present in the court states that implementation of the judgment is in process and in this regard he submitted copy of office note sheet. At Paragraph 56 of the said note-part reveals that a summary for Chief Minister has been processed and approval of the competent authority is still awaited. Respondents are once again directed to pursue the matter for speedy outcome and furnish implementation report on 15.07.2021, positively.


Chairman

EP No. 80/2021

15.06.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Nasib Khan, S.O and Sajid Superintendent for the respondents present.

On the last date, the respondents were given opportunity for submitting suspension order passed by the Apex Court or to come up with conditional implementation report today. However, neither they have been able to place before the Tribunal suspension order nor conditional order in compliance with the judgment of this Tribunal. The respondents are directed to furnish the conditional order of reinstatement of the petitioner on 18.06.2021 before S.B


Chairman

18.06.2021

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

Although the compliance as required on previous date regarding conditional implementation is still awaited but representative of the respondents enlightened the Tribunal with movement of office file towards competent authority for compliance of the order of this Tribunal for conditional order pending decision of the CPLA before the august Supreme Court of Pakistan. The respondents are directed to pursue the matter for speedy outcome and furnish implementation report positively on 01.07.2021 before S.B.


Chairman

E.P. No. 80/2021
M. Aqaz vs Govt

07.06.2021

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

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

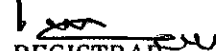
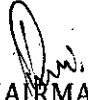
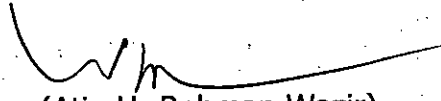


(Rozina Rehman)
Member(J)

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 80 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08.03.2021	<p>The Execution Petition submitted by Mr. Muhammad Ayaz through Mr. Masood Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This Execution Petition be put up before S. Bench on.....<u>02/4/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	01.04.2021	<p>Counsel for the petitioner present. Notice be issued to respondents for submission of implementation report on 07.06.2021 before S.B.</p> <p style="text-align: right;"> (Atiq Ur Rehman Wazir) Member (E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Muhammad Ayaz Ex District Accounts Officer Battagram

(Petitioner)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

(Respondents)

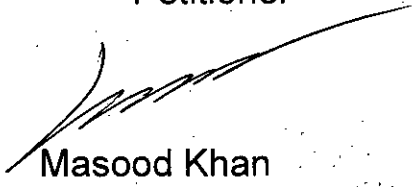
EXECUTION PETITION TOWARDS THE JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED 13.01.2021 FOR ISSUANCE OF DIRECTIONS TO THE RESPONDENTS FOR ITS EARLY IMPLEMENTATION.

INDEX

S. No	Description	Flags	Pages
1.	Memo of Execution Petition		1-2
2.	Copy of service appeal No. 473/2017	"A"	3-7
3.	Copy of the Judgment dated 13.01.2021	"B"	8-18
4.	Copy of application dated 20.01.2021	"C"	19
5.	Copy of application dated 25.02.2021	"D"	20

Petitioner

Through


Masood Khan
Advocate High Court
Room No. 4 Cooperative Building
Opposite Government College,
Peshawar

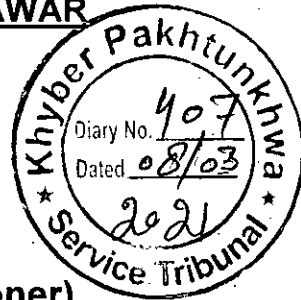
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 80 /2021

In Service Appeal No.473/2017

Muhammad Ayaz Ex District Accounts Officer Battagram

(Petitioner)



VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

(Respondents)

EXECUTION PETITION TOWARDS THE JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED 13.01.2021 FOR ISSUANCE OF DIRECTIONS TO THE RESPONDENTS FOR ITS EARLY IMPLEMENTATION.

Respectfully Sheweth,


1. That a Service Appeal No. 473/2017 was filed in this Honourable Tribunal against an impugned order dated 18.01.2017, which was set aside and appellant reinstated in service vide judgment of this honourable tribunal dated 13.01.2021(copies of the Service appeal and judgment are enclosed as Annex A & B).
2. That the above cited judgment has not been implemented by the respondents. In this connection applications dated 20.01.2021 & 25.02.2021 have also been preferred to the Respondent No. 04 but with no avail (copies of the applications are enclosed as Annex C & D).
3. That the subject judgment of the honourable tribunal is still in field and neither set aside nor any restraint order has been issued by the honourable Supreme Court of Pakistan.
4. That the respondents are legally bound for implementation of subject judgment but no response has been received so far.

5. That due to the circumstances explained above there left no other remedy except to approach this honourable tribunal to file execution petition for implementation of the judgment.

It is therefore prayed that the respondents may very graciously be directed for implementation of the judgment of this honourable tribunal dated 13.01.2021 in letter and spirit.


PETITIONER

Through


Masood Khan
Advocate High Court Peshawar


Malak Jehangir Khan
Advocate High Court Peshawar

AFFIDAVIT

I Mr. Muhammad Ayaz, Ex. District Accounts Officer, Battagram do hereby solemnly affirm and declare on oath that contents of the above noted Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.


Deponent


NOTARIZED
DISTRICT COURT PESHAWAR
ABDUL RAUF KHAN
CHIEF CLERK
15/01/2021
80

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

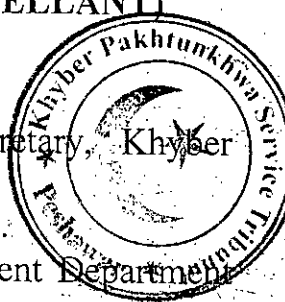
APPEAL NO. 473 / 2017.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 506

Muhammad Ayaz Ex-District Accounts Officer, Battagram, Resident of House No.15-5/J Street No. 6 Shah Zaman Colony PMA Kakool Road, District Abbottabad Cantt:..... (APPELLANT)
Dated 16-5-2017

VERSUS.

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Establishment Civil Secretariat Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa Finance Department Civil Secretariat Peshawar



(RESPONDENTS)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER NO.SO(Estt)/FD/5-14/B.Gram/ DATED 18-01-2017, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE, AGAINST WHICH THE DEPARTMENTAL REPRESENTATION/APPEAL DATED 14/02/2017 HAS ALSO BEEN REGRETTED VIDE NO.SO(ESTT)/FD/5-14/B.Gram/ DATED 17-04-2017.

PRAYER IN APPEAL.

ON ACCEPTANCE OF THIS SERVICE APPEAL THE ORDER DATED 18/01/2017 MAY GRACIOUSLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN SERVICE WITH FULL BACK BENEFITS OF SERVICE.

FACTS OF THE APPEAL:

RESPECTFULLY SHEWETH:

1. That the appellant was serving as District Accounts Officer, Battagram, and performing his duties with honesty and to the best of his abilities with no complaint whatsoever regarding his performance.
2. That on 24.06.2016 the appellant was served with a Charge Sheet and statement of allegations, containing the allegations that while posted as District Accounts Officer, Battagram involved in drawl of salaries by the ghost employees/fake appointments in District Education Office Battagram and transfer of pay of ghost employees to DAO Mansehra (Copy of Charge Sheet and statement of allegations are attached as Annexure-A & B).
3. That the appellant duly replied the Charge Sheet and denied the allegations leveled against him; however a fact finding enquiry was conducted in the matter against the appellant and certain other officials. The appellant joined the enquiry proceedings with full detail of his irrelevance/innocence with the matter however the same concluded against the appellant (Copies of reply to Charge Sheet and Enquiry Report are at Annex-C&D).
4. That on the basis of fact finding enquiry, the appellant was served with a show cause notice which was also replied in denial of all the charges but ultimately vide order dated 18/01/2017 he was awarded the major penalty of dismissal.

Filed to-day
Registrar
16/5/17.

ATTESTED

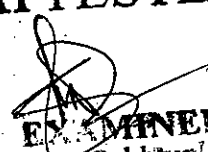
EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

from service with recovery of Rs. 2676871/- (Copies of Show Cause Notice, Reply & Dismissal Order are attached as Annex E, F & G).

- 5. That against the above stated order of penalty, the appellant submitted his Departmental Representation/Appeal on 14/02/2017 however the same was regretted without mentioning any grounds or reasons vide letter/order dated 17/04/2017 received on 11/05/2017 (Copy of the Departmental Representation/Appeal and Rejection order/ letter are attached as Annex-H & I).
- 6. That the proceedings initiating against the appellant are illegal, the charges were never proved, thus the order of dismissal from service is liable to be set aside inter alia on the following grounds:-

GROUND OF THE APPEAL.

- A. That the charges leveled against the appellant were baseless, incorrect and unfounded, he did nothing that could be termed as misconduct, therefore, the penalty imposed is legally not tenable.
- B. That the appellant has not been treated in accordance with law and hence his rights secured and guaranteed under the law and Constitution of Islamic Republic of Pakistan 1973 were badly violated.
- C. That in fact the charges against the appellant were fit in the cases of employees of Education Department and other concerned officials, but their misdeeds have been shifted to the appellant, however, the appellant has performed his duties as assigned, never associated with the alleged drawl of salaries of ghost employees.
- D. That the Charge Sheet, Show Cause and impugned order is quite silent about detail of the cases or particular places, where appellant has stated to be involved in drawl of such salaries by the ghost employees. Further the letter/order dated 17/04/2017 whereby the Departmental Representation has been regretted, has no legal status or position as it was not a speaking order and lacks necessary description/ingredients for such orders i.e. detail of charges, grounds for penalties under relevant E&D Rules 2011 and powers under which such penalties were imposed upon the appellant along with other details for regretting Review Petition /Appeal.
- E. That Interestingly the inquiry Officer in his finding also held responsible certain other employees of Accountant General Khyber Pakhtunkhwa and Education Department but contrary to that recommended the penalty of recovery of losses of Rs.8030614/- only from 3 employees i.e. Rs 2676871/- each in a casual manner without taking into account other accused or quantum of responsibility of each accused.
- F. That the whole proceedings conducted against the appellant were illegal and violative of the mandatory provision, contained in the Khyber Pakhtunkhwa

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Government servants (Efficiency & Disciplinary) Rules-2011, quite illegally the concept of authorized Officer was done away with in the instant proceedings, seriously affecting his rights of proper defense and hearing at the stage with Authorized Officer.

- G. That the enquiry procedure was defective in nature, statements were never recorded in the narrative forms, similarly neither the appellant was confronted with any prosecution witness, nor was any statement recorded in his presence.
- H. That during the inquiry proceedings, the appellant was not provided proper opportunity to defend himself as the inquiry officer acted arbitrary and gave his findings on surmises and conjecture. The penalty has been imposed upon the appellant without going through the record and ground realities as majority of the cases listed as ghost employees, were neither relevant nor entertained by the appellant. The fact has not been inquired by the Inquiry Officer from relevant record, in spite of pointing it out in the replies.
- I. That the appellant has been penalized as relevant to a total 18 cases of ghost employees, involving an amount of Rs.8030614/- but it is worth to mention that 8 out of 16 cases pertain to the period, prior to the posting of appellant as confirmed /certified by the District Accounts Officer, Battagram vide certificate dated 09/05/2017 is at Annex:-J). Similarly 2 cases have been entertained by the then ATO during my illness/leave when he was holding the charge of DAO, (certificate dated 09/05/2017 is at Annex:-K).
- J. That no any prosecution witnesses were produced or examined thus the appellant was denied the opportunity of cross examination. Similarly no any other documentary or substantial evidence was brought on record, to prove my relevance with such ghost appointments in Education Department.
- K. That no regular enquiry was conducted in the matter and all the disciplinary proceedings were carried out on the basis of facts finding enquiry, violating the relevant laws and Rules.
- L. That during enquiry proceedings, the appellant was served with a questionnaire with selected questions, as evident from Para-2 of the Enquiry Report, which is in fact denial of free and fair chance or reasonable opportunity of hearing within the meaning of Rule 7(b) of Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011. In a number of cases, the honourable superior courts/Service Tribunal held such practice against relevant sections of law.
- M. That Rule 10(1)(b) of the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011 has seriously been violated under which there must be grounds for proceedings, clearly specifying the charges along with apportionment of responsibility but in the instant case the Charge Sheet, Statement of Allegation and Show Cause are quite silent about detail and particulars of cases where there exist involvement or negligence of the appellant.

ATTESTED

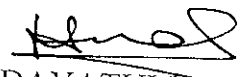
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- N. That all the salaries paid to alleged ghost employees have been duly reconciled by the Education Department with District Accounts Office Battagram, accepted as correct and no any irregularities etc were pointed out or reported (copies of some reconciled statement are at Annex-L).
- O. That the appellant has discharged all his duties strictly in accordance with the rules and laid down procedure. Responsibility of the appellant was restricted to 2% random checking of bills. The Enquiry Report also speaks about such responsibility of District Accounts Officer vide paragraph 4 of the Enquiry Report but while awarding penalty, no any distinction has been made in this respect:
- P. That no impartiality has been observed in the disciplinary proceedings as entire process of reporting, inquiry, recommendation for penalty as well as personal hearing taken place in the same Department of the appellant.
- Q. That the appellant has at his credit a long and spotless service, however, it was not considered while awarding penalty. The penalty imposed on the appellant is too harsh and is liable to be set aside. The appellant is jobless since his illegal dismissal from service.
- R. That the appellant seeks the permission of this Honourable Tribunal to reply on additional grounds at the hearing of this appeal.

It is therefore prayed that on acceptance of this service appeal, the order dated 18.01.2017 may very graciously be set aside and the appellant may please be reinstated in service with full back benefits of service and other monitory benefits.



APPELLANT

Through


 HIDAYATULLAH KHAN
 ADVOCATE HIGH COURT
 PESHAWAR.


 MASOOD KHAN
 ADVOCATE PESHAWAR


 MUHAMMAD AZAM
 ADVOCATE PESHAWAR

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

APPEAL NO. _____ 2017.

Muhammad Ayaz Ex-District Accounts Officer, Battagram, Resident of House No.15-5/J Street No. 6 Shah Zaman Colony PMA Kakool Road, District Abbottabad Cantt:.....(APPELLANT)

VERSUS.

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa Finance Department Civil Secretariat Peshawar

(RESPONDENTS)

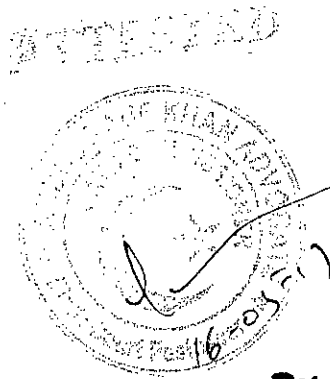
AFFIDAVIT

I Mr. Muhammad Ayaz, Ex. District Accounts Officer, Battagram do hereby solemnly affirm and declare on oath on this 16th day of May, 2017 that contents of the above noted appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal. I further declare on oath that I am jobless since the date of dismissal to the date.

[Signature]
Deponent

Identified by

[Signature]
HIDAYATULLAH KHAN
ADVOCATE HIGH COURT PESHAWAR



Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 08/02/2017

Number of Words 2000

Copying Fee 22/-

Urgent 4/-

Total 26/-

Name of Copyist _____

Date of Completion of Copy 08/02/17

Date of Delivery of Copy 08/02/17

(8)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 506

Dated 16-5-2017

District

(APPELLANT)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 473 /2017.

Muhammad Ayaz Ex-District Accounts Officer, Battagram, Resident of House No.15-5/J Street No. 6 Shah Zaman Colony PMA Kakool Road, District Abbottabad. Cantt:.....

VERSUS.

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Pakhtunkhwa Civil Secretariat Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa Finance Department Civil Secretariat Peshawar

(RESPONDENTS)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER NO.SO(Estt)/FD/5-14/B.Gram/ DATED 18-01-2017, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE. AGAINST WHICH THE DEPARTMENTAL REPRESENTATION/APPEAL DATED 14/02/2017 HAS ALSO BEEN REGRETTED VIDE NO.SO(ESTT)/FD/5-14/B.Gram/ DATED 17-04-2017.

PRAYER IN APPEAL.

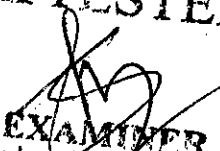
ON ACCEPTANCE OF THIS SERVICE APPEAL THE ORDER DATED 18/01/2017 MAY GRACIOUSLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN SERVICE WITH FULL BACK BENEFITS OF SERVICE.

FACTS OF THE APPEAL:

RESPECTFULLY SHEWETH:

1. That the appellant was serving as District Accounts Officer, Battagram, and performing his duties with honesty and to the best of his abilities with no complaint whatsoever regarding his performance.
2. That on 24.06.2016 the appellant was served with a Charge Sheet and statement of allegations, containing the allegations that while posted as District Accounts Officer, Battagram involved in drawl of salaries by the ghost employees/fake appointments in District Education Office Battagram and transfer of pay of ghost employees to DAO Mansehra (Copy of Charge Sheet and statement of allegations are attached as Annexure-A & B).
3. That the appellant duly replied the Charge Sheet and denied the allegations leveled against him; however a fact finding enquiry was conducted in the matter against the appellant and certain other officials. The appellant joined the enquiry proceedings with full detail of his irrelevance/innocence with the matter however the same concluded against the appellant (Copies of reply to Charge Sheet and Enquiry Report are at Annex-C&D).
4. That on the basis of fact finding enquiry, the appellant was served with a show cause notice which was also replied in denial of all the charges but ultimately vide order dated 18/01/2017 he was awarded the major penalty of dismissal.

Filed to-day
Registration No.
16/5/17.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

13.01.2021

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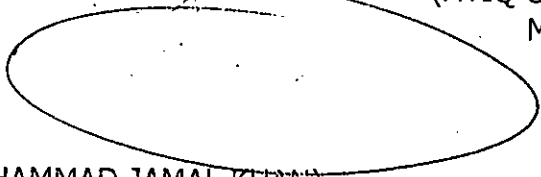


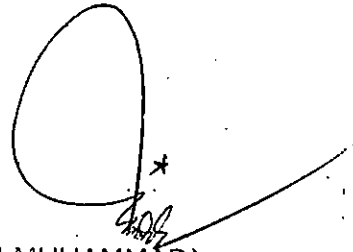
Learned counsel for the appellant and Mr. Riaz Khan Pakadakhel learned Assistant Advocate General for respondents present.

Vide detailed judgment of today of this Tribunal placed on file in Service Appeal No.474/2017 titled "Tariq Mehmood Vs- Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar and three others", the impugned order is set aside to the effect that the appellant Mr. Muhammad Ayaz and appellant Mr. Tariq Mehmood are re-instated into service by converting major penalty of dismissal and recovery into minor penalty of stoppage of two increments for two years each. Major penalty imposed upon the appellant Mr. Hamid Younas is maintained to the extent of dismissal. Respondents however are directed to conduct inquiry against District Education Office Batagram as well as the ghost employees within three months for recovery of the embezzled amount.

ANNOUNCED
13.01.2021


(ATIQ UR REHMAN WAZIR)
MEMBER (E)


(MUHAMMAD JAMAL KHAN)
MEMBER (J)


(MIAN MUHAMMAD)
MEMBER (E)

Date of Presentation of Application 18/01/2021
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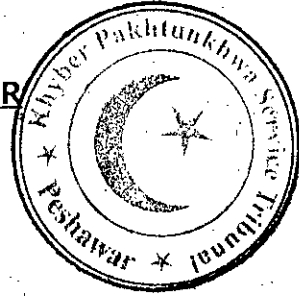
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.474/2017

Date of Institution: 16.05.2017

Date of Decision: 13.01.2021



Tariq Mehmood son of Mian Muhammad, R/o CB-29/33, Kakul Road, behind FG Girls College, Abbotabad

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary and three others

... (Respondents)

Mr. Hamayun Khan,
Advocate

Mr. Abdul Hameed,
Advocate

Mr. Masood Khan,
Advocate

... For Appellants

Mr. Riaz Ahmed Paindakhel,
Assistant Advocate General

... For Respondents

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Mr. MUHAMMAD JAMAL

...

MEMBER (J)

Mr. ATIQ UR REHMAN WAZIR

...

MEMBER (E)

Mr. MIAN MUHAMMAD

...

MEMBER (E)**JUDGEMENT: -**

Mr. ATIQ UR REHMAN WAZIR: - This judgement shall dispose of the instant service appeal as well as connected Service Appeal No. 673/2017 titled Hamid Younas and Service Appeal No 473/2017 titled Muhammad Ayaz, as similar question of law and facts are involved therein.

2. The instant service appeal was heard by a Division Bench of this Tribunal on 21-02-2019 and judgment was pronounced. The two learned Members, however, differed in their respective opinions essentially, on the point as to whether the appellants were

treated as per law or not. A larger Bench was, therefore, constituted which heard the matter on 09.12.2020.

3. The facts as laid in the memorandum of appeal in hand, suggest that appellants Muhammad Ayaz, Tariq Mehmood and Hamid Younas were posted as District Accounts Officer, Assistant Treasury Officer and Sub Accountant respectively in District Accounts Office Batagram. During the tenure, they were proceeded against on the charges of fraudulent drawl of money from government exchequer. To this effect, Finance Department as well as Accountant General Office conducted two separate preliminary inquiries each, based on which a formal inquiry was conducted and as per recommendations of the inquiry officer, all the three accused were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Separate charge sheets and statement of allegations were served upon the appellants to the effect that they were involved in drawl of Rs. 80,30,314/ on account of pay and allowances to the ghost employees/fake appointees in District Education Office Batagram w.e.f. May 2013 to February 2015 and also transfer of pay of ghost employees to District Accounts Office Mansehra. The appellants responded to the charge sheet/statement of allegations, but the inquiry officer recommended that the amount of Rs. 80,30,614/ fraudulently drawn by the appellants may be recovered from them equally as well as recommended major penalty as defined in Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 and as a consequence, appellants were dismissed from service and recovery of Rs. 26,76,871/ was also ordered to be made from each appellant vide impugned order dated 18-01-2017. The appellants filed departmental appeals but of no avail, hence the instant service appeal with prayers that impugned orders dated 18-01-2017 may be set aside and the appellants may be re-instated into service with all back benefits.

ATTESTED

4. We have heard learned counsel for the appellant as well as learned Deputy District Attorney on behalf of respondents and have thoroughly gone through the available record with their assistance.

ADJUDICATOR
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

5. Learned counsel for the appellant (Mr. Muhammad Ayaz) contended that the charges leveled against the appellant were vague, evasive and in general terms without indicating details of the cases, breakup and apportionment of responsibilities, which clearly violates Rule 10(1)(b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further added that during the course of inquiry proceedings, neither any departmental representative was appointed as required under Rule 10 (1) (c) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 nor the departmental representative performed his duties as such, as envisaged in Rule 13 of the rules *ibid*. Similarly, no copy of inquiry report along with enclosures was provided with show cause notice as was required under 14(4) of the rule *ibid*. Similarly, no departmental representative appeared along with relevant record on the date of hearing as was required under Rule 14 (4) (d) of the rule *ibid* to substantiate allegations, without which all the proceedings is nullity in the eyes of law.

Reliance was placed on 2018 PLC (CS) 997 and 2019 SCMR 640. The learned counsel further argued that the inquiry conducted by Finance Department was a fact finding inquiry, which speaks only of ten ghost employees with no mention of amount and the penalties were imposed on the basis of the stated fact finding inquiry, which is unlawful and the honorable court in case 2012 CLR 464 has turned down such practice. The learned counsel further added that there were no evidences, examination of prosecution witnesses or opportunity of cross-examination, which was illegal and unlawful and such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS)997 and 2019 SCMR 640. That both the competent and appellate authorities have awarded the penalty on the recommendations of inquiry officer, which practice is quite incorrect and turned down by the apex court in a latest judgment contained in 2020 PLC (CS) 1291. The learned counsel contended that the impugned order is not a speaking order, lacking necessary ingredients and issued in violation of Section 24-A of the General Clauses Act.

Reliance was placed on 2015 PLC (CS) 1125-D and 2015 KLR. He further added that the respondents violated Article 10-A and 4 of the constitution due to non-provision of

ATTESTED
 Examiners
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

opportunity of free and fair trial and adherence to due process of law, rather it was restricted to selected questions of his choice through questionnaire. Such process of questionnaire has been deprecated by the apex court in its judgment 1993 SCMR 1440. He further added that preliminary inquiries conducted by Finance Department (FD) and Accountant General (AG) Office are contradictory to the effect that Finance Department suggested 10 cases of alleged ghost employees, while Accountant General Office listed it as 18. Besides employee Rahim Dad is shown as appointed on March 2011 by Finance Department, whereas in Accountant General list, the same is shown as appointed on August 2014. Similarly, another employee namely Fazal Wahab in the Finance Department list is shown as appointed on July 2008, while in Accountant General list on May 2013. It was added that both Finance Department and Accountant General lists contained eight appointments prior to the date of posting of appellant i.e. 31-12-2011. Such contradictions in the inquiry reports negate its credibility. He added that neither statement of prosecution witnesses nor other officials, including the alleged ghost employees have been recorded in support of allegations/charges nor was the opportunity of cross-examination afforded to the appellants. The charges against the appellant were firmed up on the basis of suspicion and surmises, therefore not sustainable in the eyes of law. The learned counsel further added that an alleged ghost employee at Sr. No 16 namely Khais Gul has been allowed pension from 2016. Another alleged ghost employee namely Fazal Wahab has already been re-instated in service by this Tribunal vide judgement dated 30-03-2018 in Service Appeal No. 1070/2017. Still another alleged ghost employee namely Mr. Malik Hayat stands re-instated in service by this Tribunal vide judgement dated 12-04-2018 in service appeal No 572/2017, who actually was recruited back in 1996. The stance of appellant to this effect is further substantiated with issuance of a certificate by District Accounts Officer Batagram that eight alleged ghost employees were appointed prior to posting period of the appellant. The learned counsel further added that the appellants have been discriminated to the effect that recovery is to be made from only three accused officials without taking into account the other co-accused of Accountant General Office and Education department,

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ATTENDED
 BY
 Mr. Khairul
 Khan
 Director
 General
 Services
 Ministry
 of
 Education
 and
 Technical
 Education
 Government
 of
 Punjab

who were also held responsible by the inquiry officer in the same case, but no action whatsoever was taken against them inspite of clear recommendations of the inquiry officer to this effect. That responsibility of the appellant is restricted to 2% random checking of bills, as is evident from findings of the inquiry report, but the penalty so imposed does not commensurate with the offence.

6. Counsel for appellant (Mr. Tariq Mehmood) mainly relied on the arguments put forth by his fellow counsel for the appellant, Mr. Muhammad Ayaz with an addition that job description of the appellant was issuance of stamp paper from treasury and to maintain its record having no connections with fake appointments and drawl of illegal money from government exchequer. That there is no mention of the appellant in the preliminary inquiries conducted by Finance Department and Accountant General Office, but still the appellant was held responsible for an act not committed by him.

7. Learned counsel for the appellant (Hamid Younas) also relied on the arguments of his fellow counsels with an addition that Rule 10(3) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 have been violated by not affording opportunity of personal hearing to the appellant. He further argued that no opportunity of cross-examination was afforded to the appellant, which is unlawful and not sustainable in the eyes of law. Reliance was placed on 1998 PLC (CS) 1338-E, 2008 SCMR 1406, 2016 SCMR 108, 1997 SCMR 1073 and Service Appeal No. 613/2017.

8. Learned Assistant Advocate General on behalf of respondents opposed the contention of the appellants and stated that the appellants were properly proceeded against as per rule and law. Proper charge sheet/statement of allegations were served upon them, to which they responded accordingly. He further contended that proper opportunity of defense was afforded to the appellants. He further added that on the basis of fact finding inquiry, it was established that the appellants were involved in fraudulent drawl of Rs. 80,30,614/ and the charges leveled against them proved during the course of inquiry, hence after fulfilling the required formalities major penalty was awarded to the appellants.

ATTESTED
[Signature]
Member
Service Tribunal
Peshawar

572/2017. Though appeal was decided on technical grounds but gave credence to the fact that action against the appellants was against the norms of justice/fair play.

10. The formal inquiry conducted is replete with discrepancies, shortcomings, lacunae and illegalities. The inquiry officer was required to sift chaff from the grain, which could be done by following Rule 12 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, he however showed complacency and presented a cut and paste report by mostly relying on earlier fact finding inquiries. The inquiry officer failed to establish as to how in the absence of any incriminating evidence charges can be established against the accused. His findings were based on assumption/suppositions. We could not find basis of apportionment of embezzled amount to be recovered from the appellants, as no criteria, rationale and yardstick was applied by the inquiry officer in reaching the figure of Rs. 2.6 million to be recovered from each accused. The inquiry was also deficient to the effect that it was only conducted against employees of Finance Department. Had it been conducted jointly against staff of Education Department, Accountant General Office staff as well as against the ghost employees, it would have definitely helped in reaching the bottom of the fraud, but the inquiry officer, while ignoring the other co-accused, confined the inquiry only to its own staff and by doing so, apportioned the whole responsibilities pertaining to Education and Accountant General Office employees upon the appellants.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

We are conscious of the fact that main beneficiary in the fraud were employees of Education department, whether fake or genuine and action against them would have definitely helped in reaching to the bottom of the fraud committed by the concerned.

Fraudulent drawl of such a huge amount is not possible without connivance of the District Education Office Batagram, but record reveals that no action whatsoever was taken against either Employees of Accountant General Office or Office of Education in District Batagram inspite of the fact that inquiry officer recommended that Education Department and Accountant General Office may initiate action against their employees involved in the scam. It was noted that most of the activities regarding appointment of

staff and other allied issues with regard to drawl of their pay and allowances have been initiated by education department and expenditure incurred was also reconciled and accepted by the department without any complaint. All this was done by the education department in connivance with staff of Accounts Office.

12. The penalties imposed upon appellants does not commensurate with the offense committed, as the District Accounts Officer, Mr. Muhammad Ayaz was charged for 18 ghost employees, who however was not responsible for all of them as record reveals that eight of the employees entered the system before his posting period as DAO Batagram, which shows that wrong doer was already present before his arrival to this post. Furthermore, yardstick for due vigilance is that the auditor concerned would check 100% calculations as a test check whereas the Assistant Accounts would check about 10% calculation as a test check and similarly the Account Officer is to check about 2% calculation as a test check and his responsibility to this effect was negligible. Similarly, Mr. Muhammad Tariq Assistant Treasury Officer was also responsible for 10% check, which also is negligible. Moreover, as his designation indicates that he was basically a treasury officer having no apparent role in activation of salaries and allowances. Moreover, name of Mr. Muhammad Tariq was not mentioned in the preliminary inquiries, but his name appeared in the formal inquiry on the basis of doubt. They however, cannot totally be absolved of their responsibilities as they failed to properly supervise the activities as were required. The role of Mr. Hamid Younas Sub Accountant is of prime importance to the effect that he was 100% responsible for checking as well as he was dealing hand responsible for activation of pay and allowances. He was categorically held responsible by all the three inquires conducted to this effect. Record also shows that all such fraudulent activities were initiated from his user account including activation of pay and its transfer to other cost centers.

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In view of the situation, the impugned order is set aside to the effect that the appellant Mr. Muhammad Ayaz and appellant Mr. Tariq Mehmood are re-instated into service by converting major penalty of dismissal and recovery into minor penalty of


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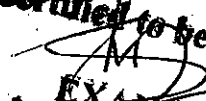
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

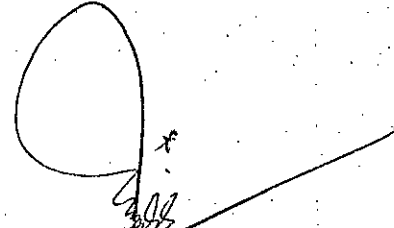
stoppage of two increments for two years each. Major penalty imposed upon the appellant Mr. Hamid Younas is maintained to the extent of dismissal. Respondents however are directed to conduct inquiry against District Education Office Batagram as well as the ghost employees within three months for recovery of the embezzled amount. No order as to costs. File be consigned to the record room.

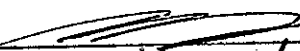
ANNOUNCED
13.01.2020


(MUHAMMAD JAMAL KHAN)
MEMBER (J)


(ATIQ UR REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(MIAN MUHAMMAD)
MEMBER (E)

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Date of Completion of Copy 19/01/2021
Date of Delivery of Copy 19/01/2021

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Finance Department, Peshawar.

Subject: ARRIVAL REPORT.

Respected Sir,

With due respect It is submitted that the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar has set as side the Impugned order Dated 18-01- 2017 regarding dismissal of the undersigned on 18-01-2017 and reinstated in Service accordingly, Copy of the Judgment dated 13-01-2021 is enclosed.

In light of the above judgment of the Honorable Tribunal I submit my arrival report for duty today on 20-01-2021(F/N).

It is further requesting that:-

- 1:- I may kindly be granted all my salaries from the date of my dismissal till 13-12-2018.
- 2:- My retirement order my kindly be issued from 14-12-2018, the date of superannuation.
- 3:- Leave Encashment for 365 days may also be allowed.
- 4:- Benevolent fund grant and other retirements benefits may kindly also be paid.

Yours faithfully,

Dated:- 20-01-2021
Encl : (II)

1616
Secretary Finance KPK Baiting No.
Date. 20/1/21

(Muhammad Ayaz)
(EX District Accounts Officer Battagram)

o/c

To

The secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar.

Subject: Implementation of Judgment of Honorable Khyber Pakhtunkhwa service tribunal dated 13-01-2021, Reinstating the undersigned into service with back benefits and grant of pension etc.

Respected Sir,

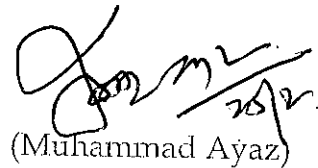
Kindly refer to my application dated 20/01/2021 already sent to your office with enclosure vide your dairy no 1616/FD/SO ESTB.

With due respect it is submitted that the honorable service tribunal Khyber Pakhtunkhwa Peshawar has set a side the impugned order dated: 18-01-2017 regarding dismissal of the undersigned on 18-01-2017 and reinstated in service with all back benefits accordingly, copy of the judgment dated 13-01-2021 is already enclosed.

In light of the above judgment of the honorable tribunal it is requested as follows :

1. The above judgment may kindly be implemented on immediate basis as per directions contained in Government of Khyber Pakhtunkhwa Establishment and Administration department Regulation wing letter no: SO6(E&AD)/1-4/2004 dated 24/08/2004, sir as I am facing great financial hardship.
2. My retirement order may kindly be issued from 14/12/2018 the date of superannuation as I reached the 60 Years of age.
3. I may kindly be granted all my salaries from the date of my dismissal till 13/12/2018.
4. Leave in Encashment for 365 days may also be allowed.
5. Benevolent fund group insurance as in BPS-18 and other retirement benefits may kindly be paid.

Your Faithfully



(Muhammad Ayaz)

EX-District Accounts Officer
Battagram

Dated: 25/02/2021

قیمت
50 روپے


78181



ایڈوکیٹ: مسو حضان محمد ابراہیم خاں ایڈووکیٹ
بار کونسل ایسوسی ایشن نمبر: 5247-86-80-10-82
رابطہ نمبر: 3005957675 / 9055695

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: خیبر پختونخواہ سروسز ٹریڈینگز لیسٹاؤر

منجانب: محمد ابراہیم خاں سہیل احمد	دعویٰ: Execution Petition
 بنام حکومت خیبر پختونخواہ	in Service Appeal No. 473/17
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام پشاور ایڈووکیٹ مسو حضان محمد ابراہیم خاں ایڈووکیٹ کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کریمے نے و تقرر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت 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 اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا ساختہ برداشتہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دومہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ مستدر ہے

المرقوم: 08-03-2021
 PESHAWAR BAR ASSOCIATION
 خیبر پختونخواہ

مقام پشاور کے لیے منظور ہے۔

MUHAMMAD ATIAZ


Accepted
Masood Khan

نوٹ: اس وکالت نامہ کی فوٹوکاپی ناقابل قبول ہوگی۔

FINANCE DEPARTMENT
KHYBER PAKHTUNKHWA

54 The case titled Mr. Muhammad Ayaz and Tariq Mehmood carrying Service Appeals No. 473/2017, and 474/2017, fixed before Chairman Service Tribunal, Khyber Pakhtunkhwa and apprised his good-self that as per judgment (order sheet) dated 15.06.2021, (duly flagged) concerned section i.e Section Officer (Establishment-I) has been requested to implement the honorable Service Tribunal Judgment went in appellants favour dated 13.01.2021 (duly flagged). Thereafter honorable Chairman accepted Finance Department view point and advised that all efforts must be utilized so judgment dated 13.01.2021 could be implemented.

55 In view of the above, aforementioned position may be brought into kind notice of high ups with request that issue may be resolved before next date of hearing i.e. 01/07/2021 so fury of the Service Tribunal could be avoided please.


SO(Lit-II)

DS(Lit) ANAY.

56 So (Lit-II)

Pawa - 54-55/N rfr.

Sir, the Service Tribunal during hearing on the above case were again directed to furnish implementation report on 01/07/2021

It is submitted that a summary for CM has been process for approval PL.

57 The file may PL be made to

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1400 /ST

Dated 23 /07 / 2021


To

The Personal Secretary to Secretary Finance Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN EXECUTION PETITION NO. 80/2021, MR. MUHAMMAD AYAZ.

I am directed to forward herewith a certified copy of order dated
15.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

SUMMARY FOR CHIEF MINISTER

Subject: GHOST EMPLOYEES / FAKE APPOINTMENTS IN
DISTRICT ACCOUNTS OFFICE BATTAGRAM.

A summary on the above subject is submitted for approval of Chief
Minister, Khyber Pakhtunkhwa.

[Signature]
23/06/21
Secretary, Finance Department.

Minister for Finance Discuss

SF Brought for discussion on August 4

[Signature]
25.8.21

Chief Secretary

4.8.21
Timur Saleem Khan Jhagra
Minister Finance / Health
Govt: of Khyber Pakhtunkhwa
Peshawar

Principal Secretary to Chief Minister

Chief Minister

Secy: Finance KPK
Dairy No. 332
Date: 23/6/21

1126 24/6/2021



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

SUMMARY FOR CHIEF MINISTER

Subject: GHOST EMPLOYEES / FAKE APPOINTMENTS IN
DISTRICT ACCOUNTS OFFICE BATTAGRAM

On receipt of a complaint against the staff of DAO, Battagram, regarding fraudulent / irregular payments to ghost employees the following employees of Treasuries & Accounts Establishment were proceeded against under E&D Rules, 2011, and a major penalty of "Dismissal from service + recovery of Rs.26,76,871/-" was imposed upon each (**Annex-I, II, III**):-

1. Muhammad Ayaz, DAO BS-18
2. Tariq Mahmood, ATO BS-17
3. Hamid Younas, Sub- Accountant BS-15.

2. Aggrieved by the orders, they filed appeals to the competent authority for re-instatement / exoneration of the charges which were rejected, therefore, they filed appeals in Khyber Pakhtunkhwa, Services Tribunal. The larger bench of the Tribunal, re-instated the accused at Sr. No. 1 & 2 by converting their penalties into minor penalty of "stoppage of two increments for two years" and maintained the penalty imposed upon the accused at Sr. No.3 (**Annex-IV**).

3. The judgment of the Tribunal was forwarded to Law Department for placement before Scrutiny Committee to determine suitability of the case for filling a CPLA or otherwise. The Scrutiny Committee, Law Department considered the case and found it fit for filling a CPLA. Accordingly Advocate General, Khyber Pakhtunkhwa was approached for filling CPLA against the two accused at Sr. No. 1 & 2 while the accused at Sr. No. 3 filed CPLA against the respondent Departments (**Annex-V**). However, the appellants has now filled an execution petition in the Khyber Pakhtunkhwa Service Tribunal and the Tribunal has issued directions to the respondents to furnish the conditional re-instatement orders of the petitioners (**Annex-VI**).

4. As the CPLA is yet to be heard by the Supreme Court, therefore, advice of & Law Department to the implementation of the judgment in light of Establishment Department instructions (**Annex-VII**) to the extent of appellant at Sr. No. 1 & 2, subject to final decision of the Supreme Court of Pakistan in the CPLA was sought, who advised that in view of absence of any suspension or stay order by Supreme Court of Pakistan, the Administrative Department may conditionally implement the judgement dated 13-01-2021 (**Annex-VIII**).

ACCT 2 IT

23/1/17

SET P.

5. keeping in view at Sr. No. 1 & 2 at Para-4 of the above, the Chief Minister, Khyber Pakhtunkhwa, being the competent authority may like to approve re-instatement of the appellant with all back benefits, and also approve conversion of major penalties of "Dismissal from service + recovery of Rs.26,76,871/-" imposed upon them into "stoppage of two increments for two years" subject to the condition that in case the CPLA is decided in favour of the department the respondents will deposit all the benefits.

6. Para 5 is submitted for approval of the Chief Minister, Khyber Pakhtunkhwa.

Atif Rahman
23/06/21

(ATIF RAHMAN)

Secretary Finance, Department

Minister for Finance

Taimur Saleem Khan Jhagra
4.8.21

Chief Secretary

Taimur Saleem Khan Jhagra
Minister Finance / Health
Govt: of Khyber Pakhtunkhwa
Peshawar

Chief Minister

20/11/17
A-23/17

eng
23/11/17

Dated 23-1-17
Govt. Pakhtunkhwa, Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

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Dated Pesh: the 26.10.2021

OFFICE ORDER.

No.SO(Estt-I)FD/1-5/2021.

In pursuance of judgment of Khyber Pakhtunkhwa, Service Tribunal in Service Appeal No. 474/2017 dated 13.01.2021 the competent authority has been pleased to convert the major penalty of "Dismissal from service + recovery of Rs. 2,676,871/-" imposed upon Mr. Muhammad Ayaz, District Accounts Officer (BS-18) vide order No. SO(Estt)FD/5-14/B.Gram dated 18/01/2017 into minor penalty of "Stoppage of two increments for two years".

2. Consequent upon the above, the officer is re-instated in service w.e.f 18.01.2017 and shall stand retired from Government Service w.e.f 13.12.2018 (A.N) on attaining the age of superannuation as his date of birth is 14.12.1958.

3. The above conversion of major penalty in to minor penalty and retirement are subject to final decision of Supreme Court of Pakistan in CPLA No. 166/B/2021 against the Khyber Pakhtunkhwa Service Tribunal decision.

WMT
22/10
SECRETARY FINANCE

Endst: No. & Date even.

Copy forwarded for information to:-

1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa.
3. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
4. PS to Secretary, Finance Department.
5. PS to Special Secretary, Finance Department.
6. PA to Additional Secretary (Admn), Finance Department.
7. PA to Provincial Coordinator (PIAC), Finance Department.
8. DAO Battagram.
9. Officer concerned.
10. Office Order file.

of
cc
Section Officer (Estt-I)