

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 6347/2020

Date of Institution ... 03.07.2020

Date of Decision ... 05.01.2021

Nosheen Bibi Wife of Bakhshish Ex-Family Welfare Assistant (Female) (BS-07) FWC
 Chooee, Haripur. ... (Appellant).

VERSUS

District Population Welfare Officer, Haripur and two others. ... (Respondents)

Present.

Mr. Fazal Shah Mohmand,
 Advocate.

... For appellant

MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal contains the prayer for setting aside order dated 30.06.2017, passed by respondent No.1. Through the order the appellant was removed from service and her departmental appeal/representation there-against was not responded to till the submission of appeal in hand.

2. It is laid in the memorandum of appeal that the appellant was initially appointed as Family Welfare Assistant (Female) BPS-05 on contract basis in FWC ADP Project. The project was shifted to regular budget, therefore, the appellant and others approached the Honourable Peshawar High Court for regularization of their respective service. The petition was allowed and a CPLA against the judgment was also dismissed by the Apex Court. Consequently, the service of appellant was regularized through office order dated 05.10.2016.

On 06.06.2017, a show cause notice was issued to the appellant containing the allegations, in terms, that the appellant had secured 2nd Division in S.S.C Examination and also that she had furnished fake experience certificate for the purpose of her employment. The proceedings ended in award of major penalty of removal from service to the appellant vide impugned order. It is the claim of appellant that she preferred departmental appeal before respondent No. 2 on 28.07.2017, which was not responded to.

3. Learned counsel for the appellant heard in limine and the available record gone through.

It was the argument of learned counsel that no proper departmental proceedings were conducted against the appellant before passing of impugned order. No charge sheet was ever served upon her nor any enquiry was undertaken by the respondents. Referring to the copy of Service Book of the appellant, it was contended that she never claimed to have passed the relevant examination in Ist Division. While referring to judgment of this Tribunal passed in Service Appeal No. 1270/2017, learned counsel attempted to argue that relief to the appellant therein was granted, therefore, the present appellant was also entitled for the same treatment. Explaining the delay in submission of instant appeal, it was stated that in cases involving similar proposition and decided together, any delay in one of those was to be ignored. He relied upon 2019-SCMR-1004 and 2020-SCMR-959.

4. At the outset, it requires to be noted that S.A No. 1270/2017 was submitted by one Mohsin Ali on 15.11.2017 and was decided on 23.05.2019. On the other hand, the appeal in hand was lodged on 03.07.2020 against an order dated 30.06.2017, with enormous delay of more than three years. Needless to note that the former appeal was also against an order passed on 30.06.2017. In the

circumstances, it can be safely held that the appellant was not on footings similar to the appellant in Service Appeal No. 1270/2017.

5. It is laid in the memorandum of appeal (Paragraph-5) and was also a point of argument by learned counsel that the appellant preferred departmental appeal, before respondent No. 2 on 28.07.2017, but with no response. In that context pages No. 18 to 20 of instant brief were referred to, claiming the same to be the departmental appeal. Careful examination of referred pages, purported to be departmental appeal, clearly suggests that the contents therein were verbatim to the reply of show cause notice tendered earlier by the appellant. Hand written words "departmental appeal" had though been added. The first Paragraph clearly mentioned that the same was with reference to the show cause notice served upon the appellant. Comparison of other contents of the so-called departmental appeal, when made with the reply of show cause notice, divulge that there was little difference between the two. It is also worth-noting that the prayer contained therein was to the effect that the appellant be exonerated/discharged from the charges mentioned in the show cause notice. It is equally important to note that the year of submission of said departmental appeal was also not noted therein.

It, therefore, becomes clear that the appellant failed to submit any departmental appeal/representation against the impugned order. The appeal in hand is, hence, not competent on that score alone.

6. Attending to the judgments referred to by learned counsel, suffice it to state that those were to apply where more than one cases were heard together and one/some of the cases were barred by time. In the matter in hand, there was no such occasion. It is reiterated that the appellant in Service Appeal No. 1270/2017 was vigilant enough to have submitted the appeal on 15.11.2017

against order dated 30.06.2017, while the appellant herein, remained in deep slumber for further period of about two years.

7. For the foregoing the appeal in hand is meritless and does not deserve admission to regular hearing. It is, therefore, dismissed in limine. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
Chairman

ANNOUNCED
05.01.2021

26.10.2020

Appellant present through representative.

Lawyers are on general strike, therefore, case is adjourned to 05.01.2020 for preliminary hearing, before S.B.




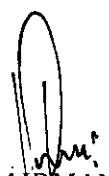

(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6347 /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/07/2020	<p>The appeal of Mst. Nosheen Bibi presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/08/2020</u>.</p> <p> CHAIRMAN</p>
	21.08.2020	<p>Due to public holiday on account of 1st Moharram, the case is adjourned to 26.10.2020 for the same as before.</p> <p> Reader</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 6347/2020

Nosheen bibi.....Appellant

V E R S U S

District Population and Others.....Respondents

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service appeal		1-3
2.	Application for condonation of delay with affidavit.		4
3.	Copy of appointment order dated 25-02-2012	A	5
4.	Copies of Documents & Service book Extract	B & C	6-11
5.	Copy of order dated 05-10-2016 & Arrival report dated 06-10-2016	D & E	12-13
6.	Copy of show cause notice & reply	F & G	14-15
7.	Copy of office order Dated 30-06-2017	H	17
8.	Copy of departmental Appeal	I & J	18-22
9.	Copy of judgments	K	23-27
10.	Wakalatnama		28

Dated:- 30 - 06 - 2020


Appellant
(Nosheen bibi)

Through


Fazal Shah Mohmand
Advocate Supreme Court

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 6367/2020

Nosheen Bibi Wife of Bakhshish Ex Family Welfare Assistant (Female) (BPS-07), FWC Chooee, Haripur.....**Appellant**

V E R S U S

1. District Population Welfare Officer, Haripur.
2. Director General Population Welfare Department KPK Peshawar.
3. Secretary Population Welfare Department KPK Peshawar.

.....**Respondents**

6026
03-07-2020

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30-06-2017 PASSED BY RESPONDENT NO 1 WHERE BY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE ALPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the impugned Order dated 30-06-2017 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That initially the appellant was appointed as Family Welfare Assistant (Female) BPS-05 on contract basis in FWC ADP Project 2011-2012 in the office of respondent No 1 vide Order dated 25-02-2012, her Service Book was prepared accordingly wherein her qualification was mentioned as Matric Second Division and since then she performed her duties with honesty and full devotion. **(Copy of Order dated 25-02-2012, documents & Service Book Extract is enclosed as Annexure A, B & C).**

[Handwritten signature]
3/7/2020

2. That after the project was brought on regular budget the appellant along with others approached the Peshawar High Court for the regularization of their services which petition was accepted and the CPLA of respondents was also dismissed by the Apex Court where after the services of the appellant along with others were regularized vide Office Order dated 05-10-2016 and the appellant reported arrival accordingly. **(Copy of Order dated 05-10-2016 & Arrival Report is enclosed as Annexure D & E).**

3. That Show Cause Notice was issued to the appellant on 06-06-2017 on the allegations of second Division in SSC fake experience certificate which was also replied by the appellant refuting the allegations. **(Copy of Show Cause Notice and reply is enclosed as Annexure F & G).**
4. That the appellant was awarded the major penalty of removal from service by respondent No 1 vide Order dated 30-06-2017. **(Copy of the Order dated 30-06-2017 is enclosed as Annexure H).**
5. That the appellant preferred departmental appeal before respondent No 2 on 28-07-2017 but with no response where after the appellant approached respondent No 3 vide appeal but even then with no response so far. **(Copies of Departmental Appeals are enclosed as Annexure I & J).**
6. That the impugned order dated 30-06-2017 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned order is illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no inquiry was conducted in the matter to had found out the true facts and circumstances.
- D. That the appellant did nothing that would amount to misconduct as the appellant had duly provided her SSC as well as experience certificates and which were also duly verified before release of her salary as such there is no omission or commission on part of the appellant.
- E. That even colleagues of the appellant were removed from service on the same very allegations whose service appeals were accepted and they are reinstated in service, thus the appellant too deserve the same treatment and should not be discriminated. **(Copy of Judgment is enclosed as Annexure K).**
- F. That no charge sheet was issued to the appellant, thus too the impugned order is liable to be set aside on this core alone.

- G. That the appellant was not provided opportunity of personal hearing.
- H. That the appellant has about 5 years of service with unblemished service record.
- I. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-30-06-2020


**Appellant
(Nosheen Bibi)**

Through


**Fazal Shah Mohmand
Advocate Supreme Court.**

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Nosheen Bibi.....**Appellant**

V E R S U S

District Population Officer & others.....**Respondents**

Application for condonation of delay if any

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That exparte action has been taken, the alleged Certificate has not been verified and further the service appeals of the colleagues of the petitioner have been accepted.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-30-06-2020

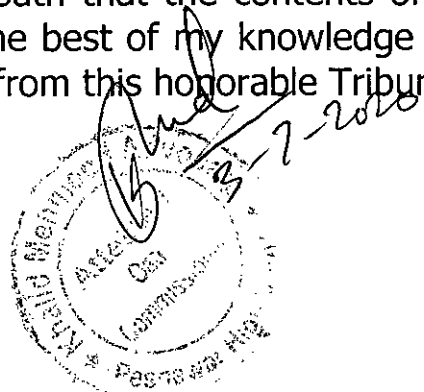

Appellant
(Nosheen Bibi)

Through


Fazal Shah Mohmand
Advocate Supreme Court.

A F F I D A V I T

I, Nosheen Bibi Wife of Bakhshish Ex Family Welfare Assistant (Female) (BPS-07), FWC Chooee, Haripur, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.




DEPONENT

5
A

OFFICE OF THE
DISTRICT POPULATION WELFARE OFFICER,

SWABI Haripur.
Opp near surgical Hospital, Moh Kund, Haripur

Dated Haripur the 25th Feb, 2012.

OFFER OF APPOINTMENT

No.2(16)/2011-12/Admn: Consequent upon the recommendation of the Departmental Selection Committee (DSC), you are offered for appointment as Family Welfare Assistant (Female) BPS-5 on contract basis in FWC ADP Project 2011-12 in District Population Welfare Office, Haripur for the project life on the following terms and conditions.

TERMS & CONDITIONS

1. Your appointment against the post of Family Welfare Assistant (Female) BPS-5 is purely on contract basis for the project life. This Order will automatically stand terminated unless extended. You will get pay in BPS-5 (5400-260-13200) plus usual allowances as admissible under the rules.
2. Your services will be liable to termination without assigning any reason during the currency of the agreement. In case of resignation, 14 days prior notice will be required, otherwise your 14 days pay plus usual allowances will be forfeited.
3. You shall provide Medical Fitness Certificate from the Medical Superintendent of the DHQ Hospital, Haripur before joining service.
4. Being contract employee, in no way you will be treated as Civil Servant and in case your performance is found un-satisfactory or found committed any mis-conduct, your service will be terminated with the approval of the competent authority without adopting the procedure provided in Khyber Pakhtunkhwa (E&D) Rules, 1973 which will not be challengeable in Khyber Pakhtunkhwa Service Tribunal / any court of law.
5. You shall be held responsible for the losses accruing to the Project due to your carelessness or inefficiency and shall be recovered from you.
6. You will neither be entitled to any pension or gratuity for the service rendered by you nor you will contribute towards GP Fund or CP Fund.
7. This offer shall not confer any right on you for regularization of your service against the post occupied by you or any other regular posts in the Department.
8. You have to join duty at your own expenses.
9. If you accept the above terms and conditions, you should report for duty to the District Population Welfare Officer, Haripur within 15 days of the receipt of this offer failing which your appointment shall be considered as cancelled.
10. You will execute a surety bond with the Department.


(Asim Zia Kakakhani)

District Population Welfare Officer,
Haripur

ATTESTED

Copy forwarded to the:-

1. PS to Director General, Population Welfare Department, Peshawar.
2. District Accounts Officer, Haripur.
3. Accountant (Local), DPW Office, Haripur.
4. Master File.

District Population Welfare Officer,
Haripur.

Nosheen Bibi W/o Bakhshesh Ilahi

(For use in Police Department only)

-6- "B"

Matric

1. _____

2. _____

3. _____

Verification Roll No. _____ dated _____ received bac _____

Left Thumb Impression

Qualification <i>Matric</i> Date <i>28.02.20</i>	Qualification
<i>T/ND MARKS 449</i>	
English	First Arts
Pushto	B.L. Or B.A.
Urdu	Pleadership examianition
Plan-drawing	Training School Final-examiant
Finger Print	Other qualification:—
Drill Instructing	
Court Duties	
Reserve Duties	

ATTESTED

N.B. - Line to be drawn under the qualification possessed.

GG.No. - 178200

-9-

Board of Intermediate & Secondary Education
- ABBOTTABAD

DETAILED MARKS CERTIFICATE
Secondary School Certificate Examination
(GENERAL GROUP)



Session 200/ (Annual/Supplementary)

Name Nasheen Bibi

Father's Name Muhammad Iqbal Roll No. 3201

SUBJECT		MARKS OBTAINED	
		In figure	In words
1. English	150	54	Four hundred 40 forty nine
2. Urdu	150	87	
3. Islamiyat Comp:	75	47	
4. Pakistan Studies	75	41	
5. Gen. Mathematics	100	43	
6. General Science	100	54	
7. IS	100	73	
8. EHE	100	50	
Total	850	447-C	

This certificate is issued. Errors and omission excepted

Prepared by: [Signature]

Checked by: [Signature]

Dated 200 15 NOV 2001

Controller of Examinations.
Board of Intermediate & Secondary Education
Abbottabad

ATTESTED

-10- "C"

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Abbottabad N.W.F.P. Pakistan
PROVISIONAL CERTIFICATE
SECONDARY SCHOOL CERTIFICATE EXAMINATION
 Session 2001. Annual/Supplementary

THIS IS TO CERTIFY THAT Noshem Bibi
 Son/Daughter of Muhammad Ishaq
 and a candidate of S.S. AR / G.K.P.-88. Haripur.
 has passed the Secondary School Certificate Examination of the
 Board of Intermediate and Secondary Education, Abbottabad held in Sept. 2001.
 as a *Regular/Private* candidate. He/She obtained 449. Marks out of 850 and has
 been placed in Grade(C.) Representing Good.

The Candidate passed in the following subjects:

- | | | | |
|--------------|--------------|--------------|---------------------|
| 1. English | 2. Urdu | 3. Islamiyat | 4. Pakistan Studies |
| 5. <u>GM</u> | 6. <u>GS</u> | 7. <u>IS</u> | 8. <u>B.H.F.</u> |

Internal assessment Grade by the institution concerned is (-)

Date of birth according to admission form is 21 Seventh February

One thousand nine hundred and Eighty Four (15-02-1984).

Prepared by [Signature]

Checked by [Signature]

Date of Preparation 21/07/02

Asst: Secretary (Certificates)
 B.I.S.E. Abbottabad

ATTESTED

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL HARIPUR



Name of Official: Noshreen Raza
 Caste of Race Awan Father Name Mir Bakhtsheeh Blishi
 Residence Mohalla Rajni New Ichra Pura P.O Ichra Pura H
 By, Birth was Born 15-02-1984 KPK, Pakistan Exact Height 5'3"
 Personal mark of Identification NIL
 Signature of Officials Noshreen Bi Bi
 Signature of Head of Department _____

I do hereby certify that I have examined Mr/Mrs/Miss Noshreen Raza
 A candidate for Employment in the Office of the Distt Population Welfare Officer
 and Can't discover that he had any disease communicable or other constitutional. Haripur
 Affection or bodily infirmity except _____

I do not consider this as disqualification for employment in the Office of the Distt
Population Welfare Officer Haripur
 His age according to his own statement 28 yrs year and by
 appearance about 28 yrs years.

LEFT HAND THUMB AND FINGER IMPRESSIONS:



ATTESTED

MEDICAL SUPERINTENDENT
DHQ HOSPITAL HARIPUR

Dated: 28/2/2012



GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

-12-
"D"

Dated Peshawar the 05th October, 2016

OFFICE ORDER

No. SOE (PWD) 4-9/7/2014/HC:- In compliance with the judgments of the Hon'able Peshawar High Court, Peshawar dated 26-06-2014 in W.P No. 1730-P/2014 and August Supreme Court of Pakistan dated 24-02-2016 passed in Civil Petition No. 496-P/2014, the ex-ADP employees, of ADP Scheme titled "Provision for Population Welfare Programme in Khyber Pakhtunkhwa (2011-14)" are hereby reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of Review Petition pending in the August Supreme Court of Pakistan.

SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Endst: No. SOE (PWD) 4-9/7/2014/HC/2013-70
Dated Peshawar the 05th Oct: 2016

Copy for information & necessary action to the: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Director General, Population Welfare, Khyber Pakhtunkhwa, Peshawar.
3. District Population Welfare Officers in Khyber Pakhtunkhwa.
4. District Accounts officers in Khyber Pakhtunkhwa.
5. Officials Concerned.
6. PS to Advisor to the CM for PWD, Khyber Pakhtunkhwa, Peshawar.
7. PS to Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.
8. Registrar, Supreme Court of Pakistan, Islamabad.
9. Registrar Peshawar, High Court, Peshawar.
10. Master file.

DD (C-ADP)
M/PE
13/10/2016

SECTION OFFICER (ESTT)
PHONE: NO. 091-9223623

ATTESTED

The District Population Welfare Officer,
Haripur.

Subject: ARRIVAL REPORT

R/Sir; In compliance with the
directions contained in Enclst. No
SOE (PWD) 4-9/7/2014/H dated 05th
October 2016, issued by Section Officer (Encl)
Govt of Khyber Pakhtunkhwa Population
Welfare Department, I do hereby
submit my arrival report today
dated 06th October 2016 F.N positively.

ATTESTED

Yours obediently,

Moshreen Bibi 6/10/2016

(Moshreen Bibi)
FWACF, Haripur
Population Welfare
Dept. Haripur

Dated: 6-10-2016

-14-

"F"

(Handwritten mark)

SHOW CAUSE NOTICE

I, Muhammad Suleman Khan, District Population Welfare Officer, Haripur, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve upon you, Mrs. Nausheen Bibi, FWA (Female) (BPS-07) DPW-Office, Haripur as follow:-

- (i) That during the course of verification, the following irregularities have been found on your part:
 - (a) Secondary School Certificate is in fact 2nd Division rather than 1st Division on the basis of which you were appointed for the instant post.
 - (b) Your experience certificate issued by Federal Government Services Hospital Islamabad is found fake.

I am satisfied that you have committed the following acts/omissions specified in rule-3(b) of the said rules i.e guilty of misconduct under section-2 (l)(vi) of Government efficiency and discipline Rules, 2011 of having been appointed in violation of service rules.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Dismissal from service under rules 4 of the said rules.

3. 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.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

In view of the availability of documentary evidence above, I dispense with the requirement of further inquiry.

TESTED
(Handwritten signature)

(Handwritten signature)
DISTRICT POPULATION WELFARE OFFICER
HARIPUR

Mr. Muhammad Suleman Khan
District Population Welfare Officer
Haripur

29.06.2017

Dear Sir,

**SUB: REPLY TO SHOW CAUSE NOTICE DATED 06.06.2017, ISSUED VIDE LETTER
NO. 05(02)/2016-17/ADMIN.**

This is with reference to the subject Show Cause Notice served upon the undersigned namely Nausheen Bibi FWA (Female) (BPS-07), on 06.06.2017 vide letter No. 05(02)/2016-17/admin. The following is the reply to the subject Show Cause Notice:

That the undersigned was reinstated into service against a sanctioned regular post of FWA (Female) (BPS-07), by the Secretary, Population Welfare Department, vide office order No. Government of KPK SOE (PWD) 4-9/7/2014/HC dated 05.10.2016, in compliance with the Judgment dated 26.06.2014, Passed by the Hon'ble Peshawar High Court, Peshawar, in Writ Petition No. 1730/2014, and Judgment Dated 24.02.2016, passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 495-P/2014.

That the undersigned was one of the Petitioners in the above said Writ Petition before the Hon'ble Peshawar High Court, Peshawar. That at the time of hearing of the above said Writ Petitions, the Hon'ble Peshawar High Court was pleased to call comments from the Respondents i.e. department. It is submitted that, no objection regarding appointment of the undersigned was taken by the Respondent before the Hon'ble Peshawar High Court, Peshawar or before the Hon'ble Supreme Court of Pakistan and thereafter, the undersigned was reinstated into service. That the undersigned reserves the right to approach the Hon'ble Peshawar High Court, Peshawar for initiating contempt of court proceedings against the concern authority.

That the subject Show Cause Notice has been served upon the undersigned with mala fide intentions and totally in violation of both the above-said Judgments of the Hon'ble Peshawar High Court, Peshawar and the August Supreme Court of Pakistan. It is also pointed out that no statement of allegations or charge sheet has been served upon the undersigned by your good self, which is the violation of (E&D) rules 2011 and against the principle of natural justice.

ATTESTED

That the appointment order of the undersigned has been acted upon, therefore, now the principle of locus poenitentiae is attracted. (i.e. Once an order has taken effect and in pursuance thereof certain rights have been created in favour of a person, then such order cannot be rescind/canceled to the detriment of rights created). Reference can be made to 2007 PLC (CS) 824 SC. That without prejudice to the above said objections, *inter alia*, the parawise reply of the subject

hold responsible for the same, and the undersigned cant not be punished of any irregularity of the then DSC and the Appointing authority.

In view of the above explanation of the case it is therefore requested your honor to exonerate/discharge the undersigned from the charges mentioned in the subject show cause notice, it is hoped that justice will be done in my case.

I request for personal hearing with your good self-please.

Thanking you in anticipation.

Nousheen Bibi
Nousheen Bibi
FWA (F) BPS-07
FWC Chooee, Haripur

ATTESTED

Received by

Saad

20/6/2017
ZDC Haripur office
Haripur

-17- H

OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, HARIPUR

No.05 (02)/2016-17/Admn

Dated Haripur the 30th June, 2017

OFFICE ORDER

That on the verification of documents and scrutiny of relevant record regarding appointment in violation of service rules against Mrs. Nausheen Bibi, FWA-Female (BPS-07), DPW-Office, Haripur. In view of the availability of documentary evidence, I Muhammad Suleman Khan, District Population Welfare Officer, Haripur as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 dispense with the requirement of further inquiry.

That charges, Secondary School Certificate was found 2nd Division rather than 1st Division on the basis of which she was appointed for the instant post and her experience certificate issued by Federal Government Services Hospital, Islamabad was found fake have been established and as such has been found guilty of misconduct under section-2 (I)(vi) of Government efficiency and discipline Rules, 2011.

Whereas the Competent Authority has served Show Cause notice against the accused official vide this office order of even number dated 06-06-2017

That Competent Authority allowed the opportunity of personal hearing on the accused official on 22-06-2017.

Now in the above circumstances, the Competent Authority has been pleased to award major penalty of Removal from service to Mrs. Nausheen Bibi, FWA-Female (BPS-07), DPW-Office, Haripur with immediate effect under Section-4 b(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

ATTESTED

(MUHAMMAD SULEMAN KHAN)
District Population Welfare Officer
Haripur

Copy forwarded to the: -

1. Deputy Commissioner, Haripur for favour of information please.
2. PA to District Nazim, Haripur for favour of information please.
3. PS to Secretary, Population Welfare Department, KPK for information please.
4. PS to Director General, Population Welfare Department, KPK, Peshawar for information please.
5. District Accounts Officer, Haripur.
6. Accounts Assistant (Local).
7. Official concerned.
8. PF of the official concerned.

(MUHAMMAD SULEMAN KHAN)
District Population Welfare Officer
Haripur

Mr. Muhammad Noor Afzal Khan
Director General Population Welfare Officer
Peshawar

Dear Sir,

Departmental appeal against
Apply for apple

This is with reference to the subject Show Cause Notice served upon the undersigned namely Nausheen Bibi FWA (Female) (BPS-07), on 30-06-2017 vide letter No. 05(02)/2016-17/admin. The following is the reply to the subject ~~subject~~ Removal from service

That the undersigned was reinstated into service against a sanctioned regular post of FWA (Female) (BPS-07), by the Secretary, Population Welfare Department, vide office order No. Government of KPK SOE (PWD) 4-9/7/2014/HC dated 05.10.2016, in compliance with the Judgment dated 26.06.2014, Passed by the Hon'ble Peshawar High Court, Peshawar, in Writ Petition No. 1730/2014, and Judgment Dated 24.02.2016, passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 495-P/2014.

That the undersigned was one of the Petitioners in the above said Writ Petition before the Hon'ble Peshawar High Court, Peshawar. That at the time of hearing of the above said Writ Petitions, the Hon'ble Peshawar High Court was pleased to call comments from the Respondents i.e. department. It is submitted that, no objection regarding appointment of the undersigned was taken by the Respondent before the Hon'ble Peshawar High Court, Peshawar or before the Hon'ble Supreme Court of Pakistan and thereafter, the undersigned was reinstated into service. That the undersigned reserves the right to approach the Hon'ble Peshawar High Court, Peshawar for initiating contempt of court proceedings against the concern authority.

That the subject Show Cause Notice has been served upon the undersigned with mala fide intentions and totally in violation of both the above-said Judgments of the Hon'ble Peshawar High Court, Peshawar and the August Supreme Court of Pakistan. It is also pointed out that no statement of allegations or charge sheet has been served upon the undersigned by your good self, which is the violation of (E&D) rules 2011 and against the principle of natural justice.

ATTESTED

That the appointment order of the undersigned has been acted upon, therefore, now the principle of locus poenitentiae is attracted. (i.e. Once an order has taken effect and in pursuance thereof certain rights have been created in favour of a person, then such order cannot be rescind/canceled to the detriment of rights created). Reference can be made to 2007 PLC (CS) 824 SC. That without prejudice to the above said objections, *inter alia*, the parawise reply of the subject Show Cause Notice is as under:-

a. In reply to paragraph (a) of the subject Show Cause Notice it is stated that at the time of appointment of the undersigned as FWA (Female) in Population Welfare Department Govt. of Khyber Pakhtunkhwa, there was no requirement of male with 1st Division or 2nd Division. As per service rules of the Population Welfare Department Govt. of Khyber Pakhtunkhwa issued vide letter No. DCB(PWD)4-10/06/Vol-11 430-40 dated 19-02-2009, the required qualification for the post of FWA (Female) at S No. 33, was simple

[“Secondary School Certificate from a Recognized Board”.]

It is submitted that in January 2012, the then appointing authority advertized some posts of Family Welfare Assistant (Female) along with other different posts in different news papers. The undersigned applied for the vacant post of FWA (Female). That after qualifying written examination and interview before the duly constituted Departmental Selection Committee, the undersigned was selected on merit basis.

That the undersigned cannot be penalized/held responsible for the reason that why the then appointing authority/DSC given him extra marks of 1st Division (which was not a requirement for the same post) in the merit list. The merit list was prepared and duly signed by the then Departmental Selection Committee. It is further submitted that at the time of appointment the undersigned submitted her Secondary School Certificate along with her application. The same has been verified by the authority from the Board of Intermediate and Secondary Education Abbottabad. The undersigned cannot be held responsible for any alleged irregularity committed by the then DSC/appointing authority at the time of her appointment. That after selection to the post of FWA (Female), the undersigned was issued an appointment letter by the then appointing authority and the undersigned joined the department. The undersigned doesn't know that how many marks were given to him by the then DSC/appointing authority.

It is further pointed out that the then appointing authority illegally kept all the relevant documents/office record with itself from February 2012 to 08.12.2016. That almost five years later, the office record was handed over to the setting DPWO, Haripur on 08.12.2016, which shows mala fide on part of the then appointing authority. The appointing authority/DSC is held responsible for the alleged extra marks given to the undersigned in the merit list.

b. In reply to paragraph (b) of the subject Show Cause Notice it is stated that undersigned has never submitted any certificate issued Federal Government Hospital, Islamabad. That at the time of enquiry conducted by the Director (A&P) and Deputy Secretary (Admin), Population Welfare Department Government of KPK the undersigned also disowned the experience certificate by the above institute. The experience certificate was not provided by the undersigned during the submission of application for appointment of FWA (Female).

ATTESTED

It is submitted that the undersigned did not violate any law, rules or regulation and not committed any irregularity/omission specified in rule 3 (b) of the said rules of i.e. guilty of misconduct under section-2 (i)(vi) E&D rules 2011. That if any irregularity has been committed by the then Departmental Selection Committee and appointing authority, the undersigned cannot be

held responsible for the same, and the undersigned cant not be punished of any irregularity of the then DSC and the Appointing authority.

There an appeal was preferred before D.G Population Dept. I

In view of the above explanation of the case it is therefore requested your honor to exonerate/discharge the undersigned from the charges mentioned in the subject show cause notice, it is hoped that justice will be done in my case.

which demand uniform make this appeal.

I request for personal hearing with your good self-please.

Thanking you in anticipation.

Nousheen Bibi
Nousheen Bibi
FWA (F) BPS-07
FWC Chooee, Haripur

[Signature]
ATTESTED

- 21 - "J"

To, The Secretary Population Welfare,
Khyber Pakhtunkhwa (KPK).

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER REMOVED FROM SERVICE IN
NEGATION OF ALL THE RULES OF JUSTICE AND EQUITY.

Dear Sir,

This is with reference to the subject Show Cause Notice served upon the undersigned namely Nosheen Bibi FWA, (Female) (BPS-07), on 30-06-2017, vide letter No.05(02)/2016-17/admin. The following is the reply to the subject Removal from service.

That the undersigned was reinstated into service against a sanctioned regular post of FWA (Female) (BPS-07), by the Secretary, Population Welfare Department, vide office order No. Government of KPK SOB (PWD) 4-9/7/2014/HC dated 05-10-2016, in compliance with the Judgment dated 26-06-2014, Passed by the Honorable Peshawar High Court, Peshawar, in Writ Petition No. 1730/2014, and judgment Dated 24-02-2016, passed by the Honorable Supreme Court of Pakistan in Civil Petition No. 495-P/2014.

That the undersigned was one of the Petitioners in the above said Writ Petition before the Honorable Peshawar High Court, Peshawar the time of hearing of the above said Writ Petitions, the Honorable Peshawar High Court was pleased to call comments from the Respondents i.e. department. It is submitted, that, no objection regarding appointment of the undersigned was taken by the Respondent before the Honorable Peshawar High Court, Peshawar or before the Honorable Supreme Court of Pakistan and thereafter, the undersigned was reinstated to service. That the undersigned reserves the right to approach the Honorable Peshawar High Court, Peshawar for initiating contempt of court proceedings against the concern authority.

That the subject Show Cause Notice has been served the undersigned with malafide intentions and totally in violation of both above said Judgments of the Honorable Peshawar High Court, Peshawar and the August Supreme Court of Pakistan. It is also pointed out that no statement of allegations charge sheet has been served upon the undersigned by your good self, which is the violation of (E&D) rules 2011 and against the principle of natural justice.

That the appointment order of the undersigned has been acted upon, therefore, now the principle of locus poenitentiae is attracted. (i.e. Once an order has taken effect and in pursuance thereof certain rights have been created in favour of a person, then such order cannot be rescind/cant-fld to the detriment of rights created). Reference can be made to 2007 PLC (CS) 824 SC. That without prejudice to the above said objections, inter alia, the para wise reply of the subject Show Cause Notice is as under:-

- a. In reply to paragraph (a) of the subject Show Cause Notice it is stated that at the time of appointment of the undersigned FWA in Population Welfare Department Govt. of Khyber Pakhtunkhwa, there was requirement of Matric with 1st Division or 2nd Division. As per service rules of the Population Welfare Department Govt. of Khyber Pakhtunkhwa issued vide Letter No. SOE(PWD)440/06/Vol-11. 430-40 dated 19-09-2009, the required qualification for the post of FWA (Female) at S No. 33, was simple

["Secondary School Certificate from a Recognized Board"]

It is submitted that in January 2012, the then appointing authority advertized some posts of Family Welfare Assistant (Female) along with other

ATTESTED

different posts in different news papers. The undersigned applied for the vacant post of FWA (Female). That after qualifying written examination and interview before the duly constituted Departmental Selection Committee, the undersigned was selected on merit basis.

That the undersigned cannot be penalized/held responsible for the reason that why the then appointing authority/DSC given him extra marks of 1st Division (which was not a requirement for the same post) in the merit list. The merit list was prepared and duly signed by the then Departmental Selection Committee. It is further submitted that at time of appointment the undersigned submitted her Secondary School Certificate along with her application. The same has been verified by the authority of Intermediate and Secondary Education Abbottabad. The undersigned cannot be held responsible for any alleged irregularity committed by the then DSC/appointing authority at the time of her appointment. That after selection to the post of FWA (Female), the undersigned was issued an appointment letter by then appointing authority and the undersigned joined the department. The undersigned doesn't know that how many marks were given to me by the then DSC/appointing authority.

It is further pointed out that the then appointing authority illegally kept all the relevant documents/ office record with itself from February 2012 to 08-12-2016. That almost five years later, the office record was handed over to the setting DPWO, Haripur on 08-12-2016, which shows malafide on part of the then appointing authority. The appointing authority/DSC is held responsible for the alleged extra marks given to the undersigned in the merit list.

b. In reply to Paragraph (b) of the subject Show Cause Notice it is stated that the undersigned has never submitted any certificate issued Federal Government Hospital, Islamabad. That at the time of enquiry conducted by the Director (A&P) and Deputy Secretary (Admin), Population Welfare Department Government of KPK the undersigned also disowned the experience certificate by the above institute. The experience certificate was not provided by the undersigned during the submission of application for appointment of FWA (Female).

It is submitted that the undersigned did not violate any law, rules or regulation and not committed any irregularity/omission specified in rule 3(b) of the said rules of i.e. guilty of misconduct under section-2 (i)(vi) E&D rules. 2011. That if any irregularity has been committed by the then Departmental Selection Committee and appointing authority, the undersigned cannot be held responsible for the same, and the undersigned cannot be punished of any irregularity of the then DSC and the Appointing authority. That an appeal was preferred before D.G. Population on dated:28-08-2017 which was not answered by the D.G.

In view of the above explanation of the case it is therefore requested your honour to exonerate/discharge the undersigned from the charges mentioned in the subject show cause notice, it is hoped that justice will be done in my case.

I request for personal hearing with your good self please:

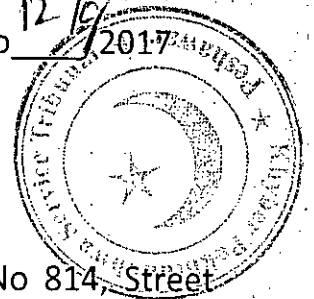
Thanking you in anticipation

ATTESTED

Nosheen Bibi
Nosheen Bibi
FWA (F) BPS-07
FWC Chooee, Haripur.

BEFORE THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No 1279/2017



Mohsin Ali (Ex-FWA- Male) s/o Chan Bahadur r/o House No 814, Street No.2, Mohallah Bhandra, Sector No.2, Khalabat Town Ship, Tehsil and District Haripur.

.....Appellant

Khyber Pakhtunkhwa Service Tribunal

Versus

Diary No. 1310

Dated 15-11-2017

1. Government of Khyber Pakhtoonkhwa through Secretary Population Welfare Department, Peshawar.
2. Director General Population Welfare Department Khyber Pakhtoonkhwa, Peshawar.
3. District Welfare Population Officer Mohallah Kund, Haripur.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION/ ORDER DATED 30-06-2017 WHEREBY THE APPELLANT HAS BEEN SENTENCED WITH MAJOR PENALTY OF REMOVAL FROM SERVICE.

led to-day
Registrar
15/11/17

Prayer:

On acceptance of this appeal the impugned order dated 30-06-2017 may please be set aside and by reinstatement of appellant in his service with all the back benefits.

Respectfully Sheweth:

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa Service Tribunal, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No. 1270/2017

Date of Institution ... 15.11.2017

Date of Decision ... 23.05.2019



Mohsin Ali (Ex-FWA(Male)) S/o Chan Bahadur R/O House No.814, Street No.2,
Mohallah Bhandra, Sector No.2, Khalabat Township, Tehsil and District Haripur.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Population Welfare
Department. Peshawar and two others. ... (Respondents)

MR. MUHAMMAD ILYAS KHAN, Advocate	---	For appellant.
MR. MUHAMMAD BILAL, Deputy District Attorney	---	For respondents
MR. AHMAD HASSAN, MR. MUHAMMAD AMIN KHAN KUNDI	--- ---	MEMBER(Executive) MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS.

2. Learned counsel for the appellant argued that his initial appointment as
Family Welfare Assistant (M) (BPS-5), as a sequel to an advertisement appeared in
the Daily Mashriq on 10.01.2012 was made vide order dated 25.02.2012. He
continued performing duty regularly but to his utter surprise a show cause notice
was served on him on 06.06.2017. The main charge leveled in the above notice was
that though actually he got 2nd division in the SSC Examination but produced 1st
division certificate and got appointment on that basis accordingly. He offered


proper written defense but vide impugned order dated 30.06.2017, he was removed from service. He preferred departmental appeal on 19.07.2017, which was not responded within stipulated period, hence, the present service appeal. He further argued that impugned order was void ab-initio, illegal and unlawful, as it was passed without observance of codal formalities. Reasons for dispensing with regular enquiry were not recorded by the competent authority before serving the show cause notice on him which was a grave illegality. In short the appellant was condemned unheard.

3. Learned Deputy District Attorney argued that the appellant managed to produce a fake certificate of SSC Examination indicating that he had obtained 1st division in the said examination. At the time of appointment this certificate was replaced with his original 2nd division SSC certificate so as to get undue benefit during the verification process. Upon verification it was proved that the certificate was fake/bogus. The appellant was guilty of mis-conduct and after fulfillment of all codal formalities major penalty of removal from service was awarded to him.

CONCLUSION

4. It is not disputed that an advertisement was floated in the Daily "Mashriq" on 10.01.2012 for filling the vacant post of Family Welfare Assistant (Male)(BPS-5) etc. The prescribed qualification for the post was Matric 2nd division. As the appellant possessed the said qualification, therefore, he applied for the post referred to above and got selected vide appointment order dated 25.02.2012. After serving the department for more than five years, a show cause notice dated 06.06.2017 was served on him in which it was alleged that in order to get appointment, he had produced fake/bogus SSC certificate having obtained 1st division but actually he

ATTESTED


 Service Tribunal
 Peshawar

was passed SSC Examination in 2nd division. He submitted reply to the show cause notice. He out rightly denied the allegations leveled against him and clarified to have passed SSC Examination in 2nd division. Despite offering proper defense, he was removed from service vide impugned order dated 30.06.2017.

5. Being a confirmed employee and having served the department for more than five years, the appellant was required to be dealt with according to the E&D Rules 2011. The respondents failed to record reasons in writing for dispensing with regular enquiry, therefore, the show cause notice served on him was of no legal value. As major penalty was awarded to the appellant so the principle of natural justice demanded that regular enquiry and fulfillment of required formalities before passing any adverse order. This proposition has been endorsed by the superior courts in countless judgments. Impugned order passed by the respondents was patently unlawful and nullity in the eyes of law. We have no hesitation to say that opportunity of fair trial as enshrined in Article-10-A of the Constitution of Islamic Republic of Pakistan 1973 was denied to the appellant, rather he was condemned unheard.

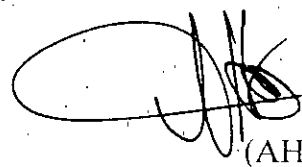
6. Now turning to the factual controversies involved in the case in hand illustrates the photocopies of the documents appended with the service appeal in hand indicated that he had passed SSC Examination in Session Annual 2006 by obtaining 562 marks out of 1050. It was a clear manifestation that the appellant had cleared Matric Examination in 2nd division. On the other hand respondents despite repeated opportunities could not bring on record the fake/bogus Matric Certificate produced by the appellant at the time of appointment. It is quite interesting to point out that basic qualification for the post of Family Welfare Assistant was Matric 2nd

ATTESTED

BY
 JUDGE
 Service Tribunal,
 Peshawar

division, and the appellant possessed the same. What was the fun in producing fake/bogus certificate having passed above the examination in 1st division. The motive spelt out by the respondents proved to be hollow, unfounded and also smacked of malafide. On the previous date of hearing the respondents were directed that original application submitted by the appellant at the time of appointment be produced in the due course of time to ascertain the veracity of their claim. Though the respondents failed to produce the above application but the appellant during the course of arguments provided a copy of the same, which is placed on record. It was confirmed that he had obtained 562 out of 1050 and got 2nd division. The representative of the respondents further confirmed that said application was original/genuine. By now, it has been established beyond any that the charge of submission of fake document to get undue advantage at the time appointment could not be established against the appellant. It is presumed that he became a victim of underhand tactics of the respondents to favour their blue eyed candidates.

7. As a sequel to above, the appeal is accepted, impugned order dated 30.06.2017 is set aside and the appellant is reinstated in service. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
Member

Camp Court Abbottabad.



(MUHAMMAD AMIN KHAN KUNDI)

Member Date of Presentation of Application 01/07/2022

Number of Words 2000

Copying Fee 225

Urgent 40

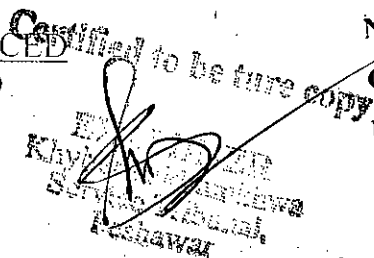
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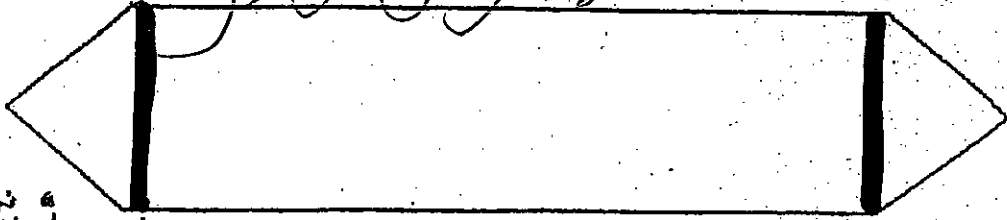
Date of Completion of Copy 01/07/2022

Date of Delivery of Copy 01/07/2022

ANNOUNCED
23.05.2019


Certified to be true copy
Khyber Pakhtunkhwa
Camp Court Abbottabad
Abbottabad

بعدالت ~~حصہ~~ سروس سربندوں کے لئے



صوبہ پنجاب ٹوئین بی بی ٹوئین بی بی نام گورنمنٹ سروس

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کاروائی متعلقہ رابطہ منظر ایڈوکیٹ آن مقام ایڈوکیٹ اور کیلئے قفل شدہ صہفہ A.S اور رابطہ منظر ایڈوکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بسورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و رازیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کسی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا ختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائد التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

ٹوئین بی بی

الرقوم 30 جولائی 2020

واہ الع

مقام لیتاور کے لئے منظور ہے۔
Accepted
Accepted

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



Service Appeal No 6367/2020

Nosheen Bibi Wife of Bakhshish Ex Family Welfare Assistant (Female)
(BPS-07), FWC Chooee, Haripur.....**Appellant**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6026

Dated 03-07-2020

V E R S U S

1. District Population Welfare Officer, Haripur.
 2. Director General Population Welfare Department KPK Peshawar.
 3. Secretary Population Welfare Department KPK Peshawar.
-**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 30-06-2017 PASSED BY RESPONDENT NO 1 WHERE BY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE ALPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

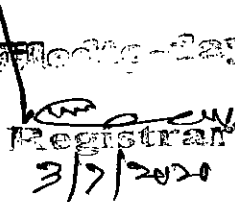
PRAYER:-

On acceptance of this appeal the impugned Order dated 30-06-2017 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That initially the appellant was appointed as Family Welfare Assistant (Female) BPS-05 on contract basis in FWC ADP Project 2011-2012 in the office of respondent No 1 vide Order dated 25-02-2012, her Service Book was prepared accordingly wherein her qualification was mentioned as Matric Second Division and since then she performed her duties with honesty and full devotion. **(Copy of Order dated 25-02-2012, documents & Service Book Extract is enclosed as Annexure A, B & C).**

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
3/7/2020

2. That after the project was brought on regular budget the appellant along with others approached the Peshawar High Court for the regularization of their services which petition was accepted and the CPLA of respondents was also dismissed by the Apex Court where after the services of the appellant along with others were regularized vide Office Order dated 05-10-2016 and the appellant reported arrival accordingly. **(Copy of Order dated 05-10-2016 & Arrival Report is enclosed as Annexure D & E).**



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 6347/2020

Date of Institution ... 03.07.2020
Date of Decision ... 05.01.2021

Nosheen Bibi Wife of Bakhshish Ex-Family Welfare Assistant (Female) (BS-07) FWC
Chooee, Haripur. ... (Appellant).

VERSUS

District Population Welfare Officer, Haripur and two others. ... (Respondents)

Present.

Mr. Fazal Shah Mohmand,
Advocate.

... For appellant

MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

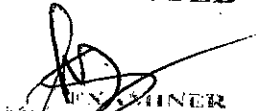
JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal contains the prayer for setting aside order dated 30.06.2017, passed by respondent No.1. Through the order the appellant was removed from service and her departmental appeal/representation there-against was not responded to till the submission of appeal in hand.

2. It is laid in the memorandum of appeal that the appellant was initially appointed as Family Welfare Assistant (Female) BPS-05 on contract basis in FWC ADP Project. The project was shifted to regular budget, therefore, the appellant and others approached the Honourable Peshawar High Court for regularization of their respective service. The petition was allowed and a CPLA against the judgment was also dismissed by the Apex Court. Consequently, the service of appellant was regularized through office order dated 05.10.2016.

ATTESTED



CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

On 06.06.2017, a show cause notice was issued to the appellant containing the allegations, in terms, that the appellant had secured 2nd Division in S.S.C Examination and also that she had furnished fake experience certificate for the purpose of her employment. The proceedings ended in award of major penalty of removal from service to the appellant vide impugned order. It is the claim of appellant that she preferred departmental appeal before respondent No. 2 on 28.07.2017, which was not responded to.

3. Learned counsel for the appellant heard in limine and the available record gone through.

It was the argument of learned counsel that no proper departmental proceedings were conducted against the appellant before passing of impugned order. No charge sheet was ever served upon her nor any enquiry was undertaken by the respondents. Referring to the copy of Service Book of the appellant, it was contended that she never claimed to have passed the relevant examination in Ist Division. While referring to judgment of this Tribunal passed in Service Appeal No. 1270/2017, learned counsel attempted to argue that relief to the appellant therein was granted, therefore, the present appellant was also entitled for the same treatment. Explaining the delay in submission of instant appeal, it was stated that in cases involving similar proposition and decided together, any delay in one of those was to be ignored. He relied upon 2019-SCMR-1004 and 2020-SCMR-959.

4. At the outset, it requires to be noted that S.A No. 1270/2017 was submitted by one Mohsin Ali on 15.11.2017 and was decided on 23.05.2019. On the other hand, the appeal in hand was lodged on 03.07.2020 against an order dated 30.06.2017, with enormous delay of more than three years. Needless to note that the former appeal was also against an order passed on 30.06.2017. In the


ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

circumstances, it can be safely held that the appellant was not on footings similar to the appellant in Service Appeal No. 1270/2017.

5. It is laid in the memorandum of appeal (Paragraph-5) and was also a point of argument by learned counsel that the appellant preferred departmental appeal, before respondent No. 2 on 28.07.2017, but with no response. In that context pages No. 18 to 20 of instant brief were referred to, claiming the same to be the departmental appeal. Careful examination of referred pages, purported to be departmental appeal, clearly suggests that the contents therein were verbatim to the reply of show cause notice tendered earlier by the appellant. Hand written words "departmental appeal" had though been added. The first Paragraph clearly mentioned that the same was with reference to the show cause notice served upon the appellant. Comparison of other contents of the so-called departmental appeal, when made with the reply of show cause notice, divulge that there was little difference between the two. It is also worth-noting that the prayer contained therein was to the effect that the appellant be exonerated/discharged from the charges mentioned in the show cause notice. It is equally important to note that the year of submission of said departmental appeal was also not noted therein.

It, therefore, becomes clear that the appellant failed to submit any departmental appeal/representation against the impugned order. The appeal in hand is, hence, not competent on that score alone.

6. Attending to the judgments referred to by learned counsel, suffice it to state that those were to apply where more than one cases were heard together and one/some of the cases were barred by time. In the matter in hand, there was no such occasion. It is reiterated that the appellant in Service Appeal No. 1270/2017 was vigilant enough to have submitted the appeal on 15.11.2017

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against order dated 30.06.2017, while the appellant herein, remained in deep slumber for further period of about two years.

7. For the foregoing the appeal in hand is meritless and does not deserve admission to regular hearing. It is, therefore, dismissed in limine. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
Chairman

ANNOUNCED
05.01.2021

Certified to be true copy
EMANUL HUSSAIN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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