

19.07.2021

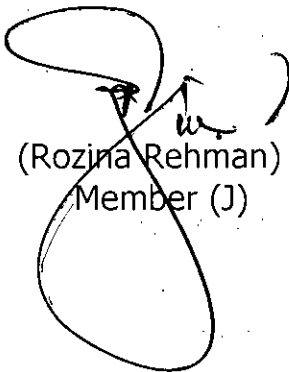
Petitioner with counsel present.

Muhammad Adeel Butt learned Additional A.G alongwith Naheed Gul Assistant for respondents present.

At the very outset, the Tribunal was informed about the implementation order in respect of the present petitioner wherein his intervening period was converted into earned leave. Notification dated 15th February, 2021 was also produced. He therefore, submitted an application with a request to file the instant petition being fully satisfied.

Keeping in view the above-mentioned notification coupled with request of the petitioner, execution proceeding stands filed, being fully satisfied. No order as to costs. File be consigned to the record room.

Announced.
19.07.2021


(Rozina Rehman)
Member (J)

15.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 12.04.2021.


Reader

12.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 19.07.2021 for the same as before.



Reader

29.12.2020 Appellant alongwith counsel and Muhammad Rasheed alongwith Naheed Gul, Assistant for respondents present.

Representative of respondents submitted Para-wise comments on behalf of respondent No.1 & 2 and stated at the bar that as per leave rules, no other leave is admissible except Extra Ordinary Leave (EOL), which can be granted by the competent authority in lieu of absence hence the intervening period w.e.f. 21.05.2013 to 13.03.2019 was converted in the Extra Ordinary Leave (EOL) in light of Rules-12(3)of Civil Servant Revised Leave Rules, 1981 and the principle of " no work no pay" as per Peshawar High Court judgment dated 19.06.2013, hence objection of the appellant is denied.

It was noted that this Tribunal has accepted the appeal with conversion of intervening period in the leave of the kind due which means that the period of absence to be converted in the earned leave/leave on half pay and leave without pay as per leave account of the appellant. Since this court in its judgment has converted the absence in leave of the kind due hence it is obligatory upon the respondents to act accordingly.

Representative of respondents No. 1 & 2 was directed to do the needful and submit implementation report. To come up for further proceedings/implementation report on 15.02.2021 before S.B.


(Atiq-Ur-Rehman Wazir)
Member (E)

EP 367/19

29.09.2020

Petitioner with counsel and Addl. AG alongwith Naheed Guyl, Superintendent for the respondents present.

The petitioner has submitted rejoinder to joint parawise comments of the respondents. Placed on record. To come up for arguments on 18.11.2020 before S.B.


Chairman

18.11.2020

Counsel for petitioner and Addl; AG alongwith Naheed Gul, Assistant for respondents present.


Learned AAG requests for time to address arguments. He also seeks permission to bring on record additional documents necessary for the resolution of dispute.

The proceedings are adjourned to 29.12.2020 before S.B on which date the arguments shall positively be address by the parties. The respondents as well as the petitioner are allowed to submit additional documents, if so advised.


Chairman

24.02.2020

Junior to learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for respondents present. Petitioner requested for adjournment due to non-availability of his learned counsel. To come up for further proceedings on 02.04.2020 before S.B.


(Hussain Shah)
Member

02.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.


Reader

25.06.2020

Petitioner in person present. Addl: AG alongwith Mr. Zar Muhammad, Assistant for respondents present. Petitioner seeks adjournment as his learned counsel is not available today. Adjourned. To come up for further proceedings on 12.08.2020 before S.B.


MEMBER

12.08.2020

Petitioner alongwith counsel and Addl. AG alongwith Saleem Khan, S.O for the respondents present.

The representative of respondents has submitted record including minutes of meeting dated 13.07.2020 regarding implementation report in the matter of execution petition No. 367/2019. The petitioner may submit written objection, if any, on or before next date of hearing.

Adjourned to 29.09.2020 before S.B.


Chairman

28.10.2019

Nemo for petitioner. Addl. AG alongwith Saleem Khan, Superintendent for the respondents present.

Representative of respondent No. 2 states that he is not in possession of the brief and is appearing before the Tribunal in connection with some other cases. He is required to obtain copy of order dated 01.10.2019 and submit the requisite implementation report on next date of hearing.

Adjourned to 02.12.2019 before S.B.


Chairman

02.12.2019

Petitioner in person and Addl. AG alongwith Zar Muhammad, Assistant for the respondents respondents.

The representative of the respondents has submitted joint parawise comments by the respondents No. 1 & 2. The same are placed on record with a copy handed over to the petitioner. To come up for further proceedings on 13.01.2020 before S.B.


Chairman

13.01.2020

Petitioner in person and Addl. AG alongwith Zar Muhammad, Assistant for the respondents present.

Former requests for adjournment due to general strike of the Bar. Adjourned to 24.02.2020 before S.B.


Chairman

01.10.2019

Counsel for the appellant present.

The relevant facts of the matter in hand are that the appellant earned a judgment of this Tribunal in his favour on 07.12.2018. Through the judgment in appeal No. 1172/2013 the appellant was reinstated in service while the intervening period was required to be treated as leave of the kind due. On the other hand, the notification dated 09.04.2019 issued by respondent No. 2 transpires that after reinstatement of the appellant the intervening period w.e.f. 21.05.2013 to 31.03.2019 was treated as leave without pay.

In the circumstances prima-facie the notification was not in line with the judgment in Appeal No. 1172/2013, instant appeal is, therefore, converted into implementation petition to execute the judgment of this Tribunal in letter & spirit. It shall be re-numbered as such and notices be issued to respondents for submission of implementation report on 28.10.2019 before S.B.

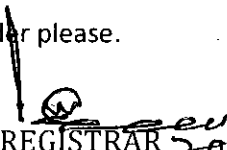

Chairman



Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1067/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/08/2019	<p style="text-align: center;">The appeal of Mr. Noor Hussain presented today by Mr. Inayatullah Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 20/8/19</p>
2-	20/08/19.	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/10/2019.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

*PS
Inayatullah*

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution Petition no. 367/2019

S.A.No. 1067/2019

Noor Hussain Appellant

Versus

Govt. of KPK through Chief Secretary & another.. Respondents

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S.No.	Description of documents.	Annexure	Pages.
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4.	Copy of judgment dated 07.12.2018	A	8-12
5.	Copy of impugned order dated 09.04.2019	B	13
6.	Copy of appeal and order dated 31.05.2019	C-D	14-15
7.	Copy of departmental appeal dated 19.06.2019 and impugned final order dated 06.08.2019"	E-F	16-18
8.	Copy of FR 54	G	19
9.	Wakalatnama.		20



Appellant

through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)
Cell: 0333-9227736

Dated: 17.08.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution Petition No 367/2019

S.A.No. 1067 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1178

Dated 20/8/2019

Noor Hussain son of Juma Khan
R/o House No.1365, Damodar Street,
Nowshera Cantt..... Appellant

Versus

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat,
Peshawar.
- 2) Govt. of KPK through Secretary Establishment, Civil
Secretariat, Peshawar..... Respondents

Appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 09.04.2019 whereby the appellant was reinstated in terms of the Service Tribunal judgment dated 07.12.2018 w.e.f. 29.01.2010 but the intervening period w.e.f. 21.05.2013 to 31.03.2019 was treated as leave without pay. Feeling aggrieved against the impugned order referred above, the appellant preferred his appeal dated 03.05.2019 to Secretary Govt. of Khyber Pakhtunkhwa, Establishment Department which was regretted vide order dated 31.05.2019 against which the appellant preferred his departmental appeal dated 19.06.2019 before Chief Secretary Khyber Pakhtunkhwa Peshawar which was also regretted vide order dated 06.08.2019, hence presents the instant service appeal before this Hon'ble Tribunal within 30 days for award of back benefits/ arrears of pay in terms of F.R. 54.

Filed to-day

Registrar
20/8/19

Appeal is converted into
implementation Petition
vide order dt 01-10-2019.

Prayer:

On acceptance of this service appeal, the impugned orders dated 09.04.2019, 31.05.2019 and 06.08.2019 may kindly be set aside and the respondents may kindly be directed to pay all back benefits/ arrears of pay for the intervening period w.e.f. 21.05.2013 to 31.03.2019 in terms of F.R. 54, which states that where a government servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty **(a) if he is honorably acquitted, the full pay to which he would have been entitled if he has not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal/ removal.....**

Any other relief to whom the appellant is found entitled during course of hearing may also be granted.

Respectfully Sheweth;

Brief facts giving rise to the instant appeal are as under:-

- 1) That the appellant was reinstated vide judgment dated 07.12.2018 by this Hon'ble Tribunal. (Copy of judgment dated 07.12.2018 is attached as Annex: "A").
- 2) That the appellant was reinstated by respondent No.2 in terms of the judgment of this Hon'ble Tribunal vide order dated 09.04.2019 as Senior Scale Stenographer (BS-15) in

service w.e.f. 29.01.2010 but unfortunately the intervening period w.e.f 21.05.2013 to 31.03.2019 was treated as leave without pay. (Copy of impugned order dated 09.04.2019 is attached as Annex: "B").

- 3) That the appellant feeling aggrieved against the impugned order as referred in para-2 preferred his appeal dated 03.05.2019 before respondent No.2 for award of back benefit/ arrears of pay and allowances but this appeal was regretted vide order dated 31.05.2019. (Copy of appeal and order dated 31.05.2019 are attached as Annex: "C and D").
- 4) That appellant preferred his departmental appeal before the Appellate Authority i.e. respondent No.2 against the impugned order dated 09.04.2019 and 31.05.2019 in terms of FR 54 for award of back benefits/ arrears of pay and grant of allowances/ increments but the same was also regretted vide order dated 06.08.2019. (Copy of departmental appeal dated 19.06.2019 and impugned final order dated 06.08.2019 are attached as Annex: "E and F").
- 5) That feeling aggrieved against the impugned orders dated 09.04.2019, 31.05.2019 and 06.08.2019, constrained to file the instant service appeal for grant of back benefits/ arrears of pay and allowances/ increments on the following amongst other grounds:

GROUND FOR APPEAL:

- a) That the impugned orders are against the law, facts and material available on record, hence not tenable in the eyes of law, which are violative of Article 4 of the Constitution of Islamic Republic of Pakistan.

"All citizens shall be treated in accordance with law".

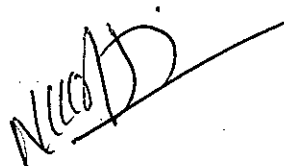
- b) That the appellant is entitled for the grant of back benefits/ arrears of pay and allowances/ increments in terms of judgment of the Hon'ble Services Tribunal dated 07.12.2018 where the impugned order dated 21.05.2013 and impugned order dated 11.06.2013 were set aside and the appellant was reinstated in service. It is pertinent to refer to the concluding paras of the judgment for ready reference, "***The intervening period may be treated as leave of the kind due. Resultantly the impugned order dated 11.06.2013 and 22.07.2019 are also set aside***".
- c) That the appellant is entitled to receive back benefits/ arrears of pay/ allowance/ increments in terms of FR 54 where it has been categorically mentioned that when a government servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal/ removal. (Copy of FR 54 is attached as Annex: "G").
- d) That there are plethora ^{of} case law that when the order of dismissal or removal is set aside a civil servant is entitled to back benefits and it would be unjust to deprive him of back benefits for the intervening period as he remained out of job without any fault on his part. (Reported case law are quoted here for ready reference of this Hon'ble Tribunal, ***2011 TD Service 179 (b), 2003 SCMR 291, PLD 1992 SC 207, PLD 1993 SC 200, 2011 PLC (CS) 1665, 2007 PLC (CS) 924, 2005 PLC (CS) 790, 2019 PLC (CS) 572, 2002 PLC (CS) 1237.***
- e) That the impugned orders are also violative of section 24-A of General Clauses Act as the competent authority as well

as appellate authority failed to pass a speaking order with reasons, hence liable to be set aside on this ground alone.

- f) That additional grounds will be raised at the bar with kind permission of this Hon'ble Tribunal.

Keeping in view, what has been stated above, it is, therefore, humbly requested the impugned orders dated 09.04.2019, 31.05.2019 and 06.08.2019 may kindly be set aside and the respondents may kindly be directed to pay all back benefits/ arrears of pay for the intervening period w.e.f. 21.05.2013 to 31.03.2019 in terms of F.R. 54, which states that where a government servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty **(a) if he is honorably acquitted, the full pay to which he would have been entitled if he has not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal/ removal.....**

Any other relief, which has not been specifically asked for and to whom the appellant is found entitled may also be granted.



Appellant
Noor Hussain

Dated: 17.08.2019

Through



Inayat Ullah Khan
Advocate High Court
LL. M (U.K)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

S.A.No. _____/2019

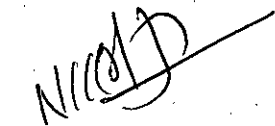
Noor Hussain Appellant

Versus

Govt. of KPK through Chief Secretary & another.. Respondents

AFFIDAVIT

I, Noor Hussain son of Juma Khan R/o House No.1365, Damodar Street, Nowshera Cantt do hereby affirm and declare on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

17201-2307235-9

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

S.A.No: _____/2019

Noor Hussain Appellant

Versus

Govt. of KPK through Chief Secretary & another.. Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Noor Hussain son of Juma Khan
R/o House No.1365, Damodar Street,
Nowshera Cantt

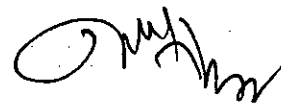
RESPONDENTS:

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Govt. of KPK through Secretary Establishment, Civil Secretariat, Peshawar



Appellant

through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)

Dated: 17.08.2019

Annexure "A" (8)

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1

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



Appeal No. 1172/13

1193
29/7/13

Noor Hussain S/o Juma Khan

R/o House No. 113/3 Kassi Mohallah, Saddar Bazar, Nowshera Cantt.

.....Petitioner

Versus

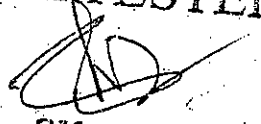
1. Govt. of KPK through Secretary, Establishment Department, Civil Secretariat, Peshawar.
2. Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
3. Govt. of KPK through Secretary, Elementary and Secondary Education Department, Civil Secretariat, Peshawar.

..... Respondent

Appeal u/s 4 of the NWFP Service Tribunal Act, whereby Departmental Appeal filed on 11.06.2013 by the appellant against the dismissal, has been regretted on 15.07.2013 received by appellant on 22.07.2013 through which vide order dated 21.05.2013 issued by respondent No.1 the appellant has been dismissed from service by imposing major penalty of dismissal from service with effect from the date of his conviction by National Accountability Court-I, Peshawar on 29.01.2010.

29/7/13

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


ATTESTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1172/2013

Date of Institution ... 31.07.2013

Date of Decision ... 07.12.2018



Noor Hussain S/o Juma Khan, R/o House No. 113/3 Kassi Mohallah, Saddar Bazar, Nowshera Cantt. Presently House No. 1365, Damudar Street, Nowshera Cantt. ... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary, Establishment Department, Civil Secretariat, Peshawar and another. ... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney.

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1225/2013 titled Noor Hussain as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant was awarded major penalty of dismissal from service vide impugned order dated 21.05.2013. Feeling aggrieved, he filed departmental appeal on 11.06.2013 which was rejected on 15.07.2013 received by him on 22.07.2013, hence, the present service appeal.

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa

(10)

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ARGUMENTS

4. Learned counsel for the appellant argued that he was arrested by NAB on 31.08.2006 and remained in jail upto 01.08.2007. He was placed under suspension w.e.f 31.8.2006 by the respondents. The appellant remained in that position till ^{1.8.2007} ~~21.05.2013~~. Thereafter on the orders of Peshawar High Court, Peshawar he was released on bail. That after conclusion of trial by the Accountability Court he was awarded four months. R.I alongwith fine on Rs.5000/- He filed an appeal in Peshawar High Court which was dismissed vide judgment dated 18.05.2016. Against the above judgment of Peshawar High Court, Peshawar dated 18.05.2016 he filed criminal appeal no. 457/2017 in the august Supreme Court of Pakistan which was accepted vide judgment dated 30.05.2018. Not only order of the Peshawar High Court was set aside, but he was acquitted of the charges giving him benefit of doubt. After having been acquittal of the charges impugned dismissal order dated 24.05.2013 lost its utility/validity. He deserved to be reinstated in service with all back benefits. That the impugned order passed by respondent no 1 (Secretary Establishment) was *corum-non-judice*, as respondent no.2 (Chief Secretary) was the competent authority in this case. Despite the fact his criminal appeal was pending in Peshawar High Court and without waiting of its outcome major penalty was awarded to him. Reliance was placed on case law reported as 2012 PLC (CS)502, 2002 SCMR 57, 2003 SCMR 215 and PLJ 2012 T.r.C (Service) 6. Learned counsel for the appellant stressed on the last judgment referred to above as circumstances of both the cases were similar.

5. On the other hand learned Deputy District Attorney argued that the appellant had concealed his conviction by the Accountability Court vide judgment dated 29.01.2010.

ATTESTED

ATTESTED


EXAMINER
Khyber Pakhtunkhwa

Upon getting knowledge respondents rightly dismissed him from service. The Peshawar High Court had not suspended the judgment of the Accountability Court so action of the respondents was intandum with the laid down rules. Moreover, Secretary Establishment was the competent authority for employees up to BPs-15 and at the time of imposition of penalty the appellant was in BPS-15. At the end he requested that the appeal may be dismissed.

CONCLUSION

6. On the charges of some underhand dealing in preparation of fake/bogus arms licenses, the appellant was arrested by NAB on 31.08.2006. He was placed under suspension by the respondents from 31.08.2006. On acceptance of his bail application by the Peshawar High Court, Peshawar, he was released from jail on 01.08.2007. After conclusion of trail by the Accountability Court, he was sentenced to four months R.I alongwith fine of Rs. 5000/-. Order of the Accountability Court was assailed through an appeal in Peshawar High Court but was dismissed. He was dismissed from service vide impugned order dated 24.05.2013. Subsequently, criminal appeal no. ^{457/2017} 589/2002 filed in the august Supreme Court of Pakistan was accepted vide judgment dated 30.05.2018. Judgment of the Peshawar High Court was set aside and the appellant acquitted of the charges. The charge on the basis of which major penalty of dismissal from service was imposed on him was no more in the field. Appellant has a sound case for reinstatement in service. Attention is invited to case law reported as PLJ 2012 T.r.C (Services) 6 relied upon by the learned counsel for the appellant. In this Case a former DMG Officer was awarded 10 years R.I by the Accountability Court. He was also awarded penalty of dismissal from service on the basis of conviction by the Accountability Court. Later on the said officer was acquitted of the charge by the august Supreme Court of Pakistan. Charge on which penalty of dismissal from service was awarded to the civil servant was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

ATTESTED

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automatically set aside when there was no conviction there was no dismissal from service. Directions were given to the respondents to reinstate him and grant all the back benefits. Both the cases are similar in nature.

7. The appellant has also filed service appeal no. 1225/2013 against the impugned order dated 11.06.2013, where-under he was directed to return subsistence drawn by him for the period from 29.01.2010 to 30.11.2013. The contention of the respondents was that he had concealed his conviction by the Accountability Court vide order dated 29.01.2010 and continued to draw salary/subsistence allowance upto 21.05.2013. It is not disputed that he remained suspended from service upto 21.05.2013 and received subsistence allowance under F.R 53. On acceptance of service appeal no 1172/2013 and withdrawal of impugned order dated 21.05.2013, he shall be deemed to have been reinstated in service w.e.f. 29.01.2010. In these circumstances, it would unjust to recover the salaries already received/drawn by the appellant.

8. As a sequel to above, the appeal is accepted, impugned order dated 21.05.2013 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside. Parties are left to bear their own costs. File be consigned to the record room.

ATTESTED

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

[Signature]
(AHMAD HASSAN)
MEMBER

ANNOUNCED
07.12.2018

Date of Presentation of Application	07-12-18
Number of Words	2000
Copying Fee	12-00
Urgent	-
Total	12-00
Name of Copyist	<i>[Signature]</i>
Date of Completion of Copy	17-12-18
Date of Delivery of Copy	17-12-18

Certified to be true copy
[Signature]
Rt. Service Officer, Peshawar

Annexure "B" (13)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar, the 09.04.2019.

NOTIFICATION

NO. SOE-IV (E&AD) 19 (102)/2014:- In pursuance of judgments of Supreme Court of Pakistan dated 30.05.2018 and Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 07.12.2018, the Competent Authority has been pleased to re-instate Mr. Noor Hussain, Senior Scale Stenographer (BS-15) in service w.e.f. 29.01.2010 and the intervening period w.e.f. 21.05.2013 to 31.03.2019, may be treated as leave without pay.

2. Subsequently, he is posted in Auqaf Department, against the vacant post, w.e.f. 01.04.2019.

SECRETARY ESTABLISHMENT

Endst: No. & date even

Copy forwarded for information to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer (Admn.), Administration Department.
3. The Section Officer (General), Auqaf Department.
4. The Estate Officer, Administration Department.
5. The Section Officer (Secret), Establishment Department.
6. PS to Secretary, Establishment Department.
7. PS to Special Secretary (E), Establishment Department.
8. PA to Addl: Secretary (HRD Wing), Establishment Department.
9. PA to Deputy Secretary (E), Establishment Department.
10. Official concerned.


(HAZRAT JAMAL)
SECTION OFFICER (E.IV)

ATTESTED

To

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department.

Through: Proper Channel

Subject: APPEAL, CORRECTION OF NOTIFICATION DATED 09.04.2019

Dear Sir,

In pursuance of Notification No.SOE.IV(E&AD)/9(102)/2014 dated 09.04.2019 (copy enclosed) in which I was re-instated in service w.e.f 29.01.2010 (BS-15).

2. That in the said Notification it was written that "the intervening period w.e.f. 21.05.2013 to 31.03.2019 may be treated as leave without pay" which is in-justice and incorrect because in the Honorable Service Tribunal Order dated 07.12.2018 it has been clearly written as "the intervening period may please be treated as leave of the kind due" which was not counted as leave but counted without pay (copy of the judgement attached). Moreover it is pertinent to mention here that the undersigned throughout service has not availed any kind of leave i.e. Earned, Medical, Ex-Pakistan leave etc. (Except 120 days Earned leave). In this connection, my leave accounts according to the Service Book is enclosed for kind perusal.

3. The intervening period may please be treated as leave on half pay instead of leave without pay as the leave credit of **1214 days** are already available in my account. While intervening days are **2555**.

4. It is requested that necessary correction may kindly be made according to the decision of the Honorable Service Tribunal Khyber Pakhtunkhwa and after proper calculation the pay may please be released to the appellant, because the pay as well as increments of the appellant badly suffered which will be a great loss to the appellant during the time of retirement. The appellant retirement is very near i.e. 30.03.2021.

5. It is further requested that since 29.01.2010 till date my seniority/ promotions as well as annual increments may please be released to the appellant as earlier as possible, on the humanitarian grounds.

Note: photocopy of Service Book is also attached Please.

Thanking you in anticipation.

ATTESTED

Dated 03/05/2019.

Yours faithfully;

(Signature) 03/05/19
(NOOR HUSSAIN)

Senior Scale Stenographer (BS-15)
Aduaf Department, Khyber Pakhtunkhwa

Amrku "D" (15)

18

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)



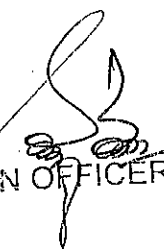
No. SOE-IV (E&AD) 9 (102)/2004.
Dated Peshawar the ~~31.12.2018~~
31-05-2019

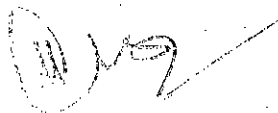
To


The Section Officer (Admn),
Auqaf Department.

Subject: APPEAL-CORRECTION OF NOTIFICATION DATED 09.04.2019.

I am directed to refer to your letter No. SO(Admn)/AHR&MAD/1-227/2019/3231-32 dated 08.05.2019 on the subject noted above and to state that the case of Mr. Noor Hussain, Senior Scale Stenographer (BS-16) has been processed in light of Peshawar High Court Peshawar judgment dated 19.06.2013 and regretted.


SECTION OFFICER (E.V) 31/5/19.



Mr. Noor Hussain
P.F.
Received
on 11/6/2019
 11/6/19


ATTESTED

Annexure "E" (16)

To

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

Through:- PROPER CHANNEL

Subject: - Departmental Appeal Against the Order vide No. SOE-IV (E&Ad)9(102)/2004 dated 31.05.2019 Issued by the Secretary, Establishment Department Civil Secretariat Peshawar through which the Appeal of the Appellant has been Regretted. (Copy of the appeal is at Annexure "A" and Copy of the Order Dated 31.05.2019 is annexure "B").

PRAYER:-

On acceptance of this appeal, the order dated 31.05.2019 may kindly be set aside and the Notification dated 09.04.2019 may kindly be modified / corrected in the light of the judgement of Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 07.12.2018.

Dear Sir,

In pursuance of Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 07.12.2018, the appellant has been re-instated in service vide Notification No. SOE-IV(E&AD)9(102)/2014, dated 09.04.2019 (Annex-C), that in the decision of the August Service Tribunal it has clearly been ordered that the intervening period may please be treated as leave of the kind due. Copy of Service Tribunal is Annex-D.

2. In this connection the appellant submitted an appeal to the Secretary, Establishment Department for grant of intervening period salaries (Half Pay instead of full pay) as ordered by the KPK Service Tribunal that "The Intervening period may please be treated as leave of the kind due" but the Department reinstated the appellant in the service and the intervening period w.e.f 21.05.2013 to 31.03.2019 treated as leave without pay in violation of the decision of the Service Tribunal which amount to contempt of Court. As the appellant has not so much leave in credit according to Service Book, therefore, the appellant requested for considering Half Pay which is fulfilling the intervening period according the Service Book record. To this effect Leave Account prepared / submitted and regretted in the light of judgement of Peshawar High Court, Peshawar dated 19.06.2013 (copy enclosed Annex-E). Which has no relevancy with the case of the Appellant the Service Tribunal has already given decision regarding the absence period are which department has not filed an appeal in higher forum (Supreme Court of Pakistan). Thus has

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(17) 16

attend finality and no one is authorize to pass orders in violation of decision of the Service Tribunal.

3. It is pertinent to mention here the F.R.54(a) speak that:-

F.R.54 Where a Government Servant has been dismissed or removed in reinstated, the revising or appellate authority may grant to him for the period of his absence from duty ____

(a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal / removal. (Copy attached Annex-F).

4. Accordingly the appellant acquitted honorably by the Supreme Court of Pakistan, Islamabad (Copy attached Annex-G) and accordingly KPK Service Tribunal issued the order of the reinstatement vide intervening may please be treated as leave of the kind due. ~~there is no mentioning of~~ there is no mentioning of "Without Pay".

5. In view of the position explained above, it is humbly requested that the case of the appellant may please be considered sympathetically and according to the order of KPK Service Tribunal Peshawar to avoid the Contempt of Court of Honorable KPK Service Tribunal Peshawar and the order dated 31.05.2019 may kindly be modified and the case may kindly be decided as August Service Tribunal ordered in their decision dated 07.12.2018.


ATTESTED

Your's faithfully,


(Noor Hussain)

Senior Scale Stenographer (B-16)
Population Welfare Department
Civil Secretariat
Peshawar

Dated: 19-06-2019

Annexure "F" 8



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

No. SOE.IV (E&AD) 9(102)2014
Dated Peshawar, the 06.08.2019

To

Section Officer (Gen),
Population Welfare Department.

Subject:

DEPARTMENTAL APPEAL AGAINST THE ORDER VIDE NO. SOE-IV (E&AD) (102)/2004 DATED 31.05.2019 ISSUED BY THE SECRETARY ESTABLISHMENT DEPARTMENT, CIVIL SECRETARIAT PESHAWAR THROUGH WHICH THE APPEAL OF THE APPELLANT HAS BEEN REGRETTEED.

I am directed to refer to your letter No.SOG/PWD/1-226/PF/2018/1853-54 dated 21.06.2019 on the subject noted above and to state that the appellate authority has regretted the appeal of Mr. Noor Hussain, Personal Assistant (BS-16) on the subject matter.

(HAZRAT JAMAL)
SECTION OFFICER (E-IV)

Copy to:-

1. Mr. Noor Hussain, Personal Assistant, Population Welfare Department.

SECTION OFFICER (E-IV)

Received
on 7/8/19
R

TESTED

FR 54

27

FR 54—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—

- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

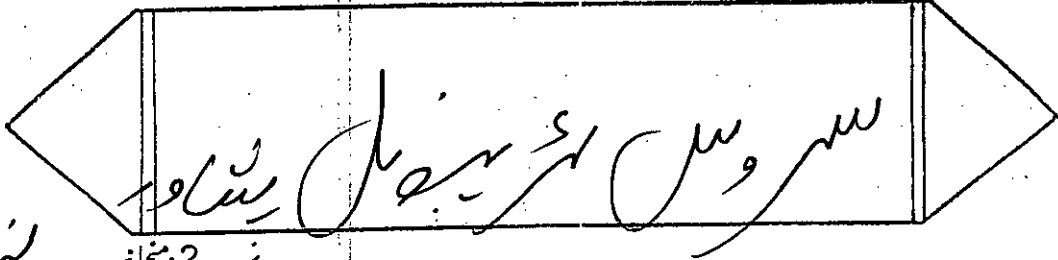
In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

Explanation.—In this rule, "revising authority" means the "authority" or "authorised Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.

ATTESTED

*FR. 54 substituted by S.R.O. 718(1)/93, 2nd August, 1993, Gaz. of Pak., Extr., pt. II, P. No. 1339, Aug. 22, 1993. (Effective from 30th June, 1993).

بجراالت



لوڈ جسٹس
لوڈ جسٹس بنام گورنمنٹ آف پاکستان

موزخہ
مقدمہ 2019-2018-2019
دعویٰ Service Appeal
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لبریری سٹاؤ کیلئے کنسلڈ اللہ خان اربو وکیٹ یا کی دوش
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانش 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 سندر ہے۔

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المرقوم 27 28 2019

واہ العی

مقام لبریری سٹاؤ
کے لئے منظور ہے۔
Accepted by
Inayat Ullah
Adv Pkt
LHM (HK)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 367 of 2019

In Service Appeal No. 1172 of 2013

Noor Hussain.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others.....Respondents

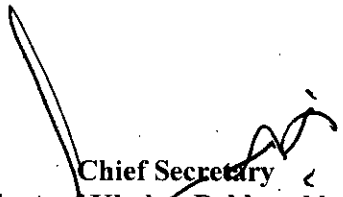
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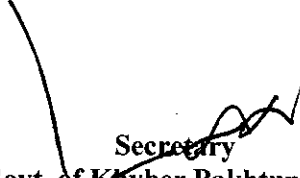
Sr. No.	Description of Documents	Annex	Pages
1.	Comments	----	2-3
2.	Affidavit	----	4
3.	Appeal of the Appellant	Annex-I	12
4.	Judgment dated 19.06.2013.	Annex-II	13
5.	Departmental Appeal against the Order dated 31.05.2019	Annex-III	15-16
6.	Letter dated 06.08.2019 whereby the Establishment Department regretted appeal of the Mr. Noor Hussain.	Annex-IV	17

GROUND

- A. Incorrect.** The reinstatement order has been issued in the light of Court Judgment while the appeals have been treated in accordance with the rules / policies. Hence, there is no violation of Law at any level.
- B. Incorrect.** The judgment of the Hon'ble Services Tribunal Peshawar, dated 07-12-2018 has been implemented in true letter and spirit, thereby, re-instating the petitioner in service with considering intervening period as leave without pay.
- C. Correct** in terms of FR-54. However, while implementing Service Tribunal Judgment, Peshawar, dated 07-12-2018, the petitioner has been re-instated in the service and in order to treat the intervening period as leave of kind due, Peshawar High Court Judgment in W.P No 1180/2012 dated 19-06-2013 has been considered wherein principle of no work no pay has been endorsed.
- D. No comments.**
- E. Incorrect.** Appeals of the petitioner has been processed under relevant rules / policies and the appellant has also been informed, accordingly.
- F. No comments.**

It is therefore, humbly prayed that on acceptance of instant Parawise comments/ reply, the petition of petitioners may be dismissed with costs.


Chief Secretary
Govt. of Khyber Pakhtunkhwa
(Respondent No.1)


Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Deptt
(Respondent No.2)

PP

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT
PESHAWAR

Execution Petition No. 367/2019

Noor Hussain S/O Juma Khan.

(Petitioner)

VERSUS

- | | |
|--|-------------|
| 1. Chief Secretary Khyber Pakhtunkhwa
Civil Secretariat, Peshawar | Respondents |
| 2. Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department. | Respondents |

Joint parawise comments / reply on behalf of respondents No. 1&2

PRELIMINARY OBJECTIONS.

1. That the petitioner has got no cause of action against the respondents.
2. The Petitioner is estopped by his own conduct to file the present petition in the Court.
3. The Petitioner has not come to this Honorable Tribunal with clean hands and has concealed material facts from this Honorable Tribunal.

ON FACTS

1. Correct.
2. Correct.
3. Correct to the extent that appeal of the appellant, against the order dated 09-04-2019 for award of back benefits / arrears of pay and allowances was processed and regretted (**Annex-I**) as the case had already been finalized, keeping insight the Peshawar High Court judgment in W.P No 1180/2012 dated 19-06-2013; imposing therein principle of no work no pay (**Annex-II**).
4. Incorrect. The appellant being aggrieved came-up with departmental appeal asking therein to consider the request for back benefits in terms of FR-54 (**Annex-III**) which was also processed and regretted for the reason cited in the para-3 above (**Annex-IV**).



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 367 of 2019

In Service Appeal No. 1172 of 2013

Noor Hussain.....Appellant


Versus

Govt. of Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, Zar Muhammad, Office Assistant Litigation-II Section, Establishment Department Govt. of Khyber Pakhtunkhwa do hereby solemnly declare that contents of the comments are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Court.

Deponent



(Zar Muhammad)

Office Assistant Litigation
Establishment Department
CNIC No. 17301-3947509-7

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No 1172/13



RECEIVED
29/7/13

Noor Hussain S/o Juma Khan

R/o House No. 113/3 Kassi Mohallah, Saddar Bazar, Nowshera Cantt.

.....Petitioner

Versus

1. Govt. of KPK through Secretary, Establishment Department, Civil Secretariat, Peshawar.
2. Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
3. Govt. of KPK through Secretary, Elementary and Secondary Education Department, Civil Secretariat, Peshawar.

..... Respondent

Appeal u/s 4 of the NWFP Service Tribunal Act, whereby Departmental Appeal filed on 11.06.2013 by the appellant against the dismissal, has been regretted on 15.07.2013 received by appellant on 22.07.2013 through which vide order dated 21.05.2013 issued by respondent No.1 the appellant has been dismissed from service by imposing major penalty of dismissal from service with effect from the date of his conviction by National Accountability Court-I, Peshawar on 29.01.2010.

29/7/13

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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w:
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1172/2013

Date of Institution ... 31.07.2013

Date of Decision ... 07.12.2018



Noor Hussain S/o Juma Khan, R/o House No. 113/3 Kassi Mohallah, Saddar Bazar,
Nowshera Cantt. Presently House No. 1365, Damodar Street, Nowshera Cantt.
... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary, Establishment Department,
Civil Secretariat, Peshawar and another. ... (Respondents)

MR. INAYAT ULLAH KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1225/2013 titled Noor Hussain as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant was awarded major penalty of dismissal from service vide impugned order dated 21.05.2013. Feeling aggrieved, he filed departmental appeal on 11.06.2013 which was rejected on 15.07.2013 received by him on 22.07.2013, hence, the present service appeal.

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal.

ARGUMENTS

4. Learned counsel for the appellant argued that he was arrested by NAB on 31.08.2006 and remained in jail upto 01.08.2007. He was placed under suspension, w.e.f. 31.8.2006 by the respondents. The appellant remained in that position till 21.05.2013. Thereafter on the orders of Peshawar High Court, Peshawar he was released on bail. That after conclusion of trial by the Accountability Court he was awarded four months. R.I alongwith fine on Rs.5000/- He filed an appeal in Peshawar High Court which was dismissed vide judgment dated 18.05.2016. Against the above judgment of Peshawar High Court, Peshawar dated 18.05.2016 he filed criminal appeal no. 457/2017 in the august Supreme Court of Pakistan which was accepted vide judgment dated 30.05.2018. Not only order of the Peshawar High Court was set aside, but he was acquitted of the charges giving him benefit of doubt. After having been acquittal of the charges impugned dismissal order dated 24.05.2013 lost its utility/validity. He deserved to be reinstated in service with all back benefits. That the impugned order passed by respondent no 1 (Secretary Establishment) was *coram-non-judice*, as respondent no.2 (Chief Secretary) was the competent authority in this case. Despite the fact his criminal appeal was pending in Peshawar High Court and without waiting of its outcome major penalty was awarded to him. Reliance was placed on case law reported as 2012 P.L.C (CS)502, 2002 SCMR 57, 2003 SCMR 215 and PLJ 2012 T.r.C (Service) 6. Learned counsel for the appellant stressed on the last judgment referred to above as circumstances of both the cases were similar.

5. On the other hand learned Deputy District Attorney argued that the appellant had concealed his conviction by the Accountability Court vide judgment dated 29.01.2010.

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 Attester
 Khyber Pakhtunkhwa
 Service Tribunal.

THE CIVIL ALFOP




Upon getting knowledge respondents rightly dismissed him from service. The Peshawar High Court had not suspended the judgment of the Accountability Court so action of the respondents was intandum with the laid down rules. Moreover, Secretary Establishment was the competent authority for employees up to BPs-15 and at the time of imposition of penalty the appellant was in BPS-15. At the end he requested that the appeal may be dismissed.

CONCLUSION

6. On the charges of some underhand dealing in preparation of fake/bogus arms licenses, the appellant was arrested by NAB on 31.08.2006. He was placed under suspension by the respondents from 31.08.2006. On acceptance of his bail application by the Peshawar High Court, Peshawar, he was released from jail on 01.08.2007. After conclusion of trail by the Accountability Court, he was sentenced to four months R.I alongwith fine of Rs. 5000/-. Order of the Accountability Court was assailed through an appeal in Peshawar High Court but was dismissed. He was dismissed from service vide impugned order dated 24.05.2013. Subsequently, criminal appeal no. ^{457/2017} ~~586/2002~~ filed in the august Supreme Court of Pakistan was accepted vide judgment dated 30.05.2018. Judgment of the Peshawar High Court was set aside and the appellant acquitted of the charges. The charge on the basis of which major penalty of dismissal from service was imposed on him was no more in the field. Appellant has a sound case for reinstatement in service. Attention is invited to case law reported as PLJ 2012 T.r.C (Services) 6 relied upon by the learned counsel for the appellant. In this Case a former DMG Officer was awarded 10 years R.I by the Accountability Court. He was also awarded penalty of dismissal from service on the basis of conviction by the Accountability Court. Later on the said officer was acquitted of the charge by the august Supreme Court of Pakistan.

Charge on which penalty of dismissal from service was awarded to the civil servant was

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BY 
 Khyber Pakhtunkhwa
 Service

5/12/18

automatically set aside when there was no conviction there was no dismissal from service. Directions were given to the respondents to reinstate him and grant all the back benefits. Both the cases are similar in nature.

7. The appellant has also filed service appeal no. 1225/2013 against the impugned order dated 11.06.2013, where-under he was directed to return subsistence drawn by him for the period from 29.01.2010 to 30.11.2013. The contention of the respondents was that he had concealed his conviction by the Accountability Court vide order dated 29.01.2010 and continued to draw salary/subsistence allowance upto 21.05.2013. It is not disputed that he remained suspended from service upto 21.05.2013 and received subsistence allowance under F.R 53. On acceptance of service appeal no 1172/2013 and withdrawal of impugned order dated 21.05.2013, he shall be deemed to have been reinstated in service w.e.f. 29.01.2010. In these circumstances, it would unjust to recover the salaries already received/drawn by the appellant.

8. As a sequel to above, the appeal is accepted, impugned order dated 21.05.2013 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]
(AHMAD HASSAN)
MEMBER

[Signature]
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
07.12.2018

Date of Presentation of Application	<u>07-12-18</u>
Number of Words	<u>2000</u>
Copying Fee	<u>12-00</u>
Urgent	<u>—</u>
Total	<u>12-00</u>
Name of Copyist	<u>[Signature]</u>
Date of Completion of Copy	<u>17-12-18</u>
Date of Delivery of Copy	<u>17-12-18</u>

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar, the 09.04.2019

NOTIFICATION

NO. SOE-IV (E&AD) 19 (102)/2014:- In pursuance of judgments of Supreme Court of Pakistan dated 30.05.2018 and Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 07.12.2018, the Competent Authority has been pleased to re-instate Mr. Noor Hussain, Senior Scale Stenographer (BS-15) in service w.e.f. 29.01.2010 and the intervening period w.e.f. 21.05.2013 to 31.03.2019, may be treated as leave without pay.

2. Subsequently, he is posted in Auqaf Department, against the vacant post, w.e.f. 01.04.2019.

SECRETARY ESTABLISHMENT

Endst: No. & date even

Copy forwarded for information to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer (Admn.), Administration Department.
3. The Section Officer (General), Auqaf Department.
4. The Estate Officer, Administration Department.
5. The Section Officer (Secret), Establishment Department.
6. PS to Secretary, Establishment Department.
7. PS to Special Secretary (E), Establishment Department.
8. PA to Addl. Secretary (HRD Wing), Establishment Department.
9. PA to Deputy Secretary (E), Establishment Department.
10. Official concerned.


(HAZRAT JAMAL)
SECTION OFFICER (E.IV)

To

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department.

Through: Proper Channel

Subject: APPEAL, CORRECTION OF NOTIFICATION DATED 09.04.2019

Dear Sir,

In pursuance of Notification No.SOE.IV(E&AD)/9(102)/2014 dated 09.04.2019 (copy enclosed) in which I was re-instated in service w.e.f 29.01.2010 (BS-15).

2. That in the said Notification it was written that "the intervening period w.e.f. 21.05.2013 to 31.03.2019 may be treated as leave without pay" which is in-justice and incorrect because in the Honorable Service Tribunal Order dated 07.12.2018 it has been clearly written as "the intervening period may please be treated as leave of the kind due" which was not counted as leave but counted without pay (copy of the judgement attached). Moreover it is pertinent to mention here that the undersigned throughout service has not availed any kind of leave i.e. Earned, Medical, Ex-Pakistan leave etc. (Except 120 days Earned leave). In this connection, my leave accounts according to the Service Book is enclosed for kind perusal.

3. The intervening period may please be treated as leave on half pay instead of leave without pay as the leave credit of **1214 days** are already available in my account. While intervening days are **2555**.

4. It is requested that necessary correction may kindly be made according to the decision of the Honorable Service Tribunal Khyber Pakhtunkhwa and after proper calculation the pay may please be released to the appellant, because the pay as well as increments of the appellant badly suffered which will be a great loss to the appellant during the time of retirement. The appellant retirement is very near i.e. 30.03.2021.

5. It is further requested that since 29.01.2010 till date my seniority/promotions as well as annual increments may please be released to the appellant as earlier as possible, on the humanitarian grounds.

Note: photocopy of Service Book is also attached Please.

Thanking you in anticipation.

Yours faithfully,

(NOOR HUSSAIN)

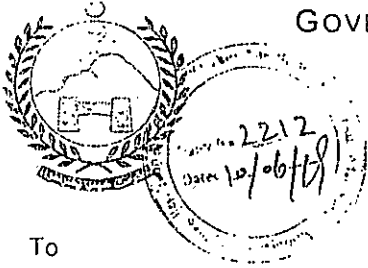
Senior Scale Stenographer (BS-15)
Auqaf Department, Khyber Pakhtunkhwa

Date d 03/05/2019

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Annex I

Annex I
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FIB



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

538

No. SOE-IV (E&AD) 9 (102)/2004.
Dated Peshawar the ~~21-12-2018~~

31-05-2019

To

The Section Officer (Admn),
Auqaf Department.

Subject: APPEAL-CORRECTION OF NOTIFICATION DATED 09.04.2019.

I am directed to refer to your letter No. SO(Admn)/AHR&MAD/1-227/2019/3231-32 dated 08.05.2019 on the subject noted above and to state that the case of Mr. Noor Hussain, Senior Scale Stenographer (BS-16) has been processed in light of Peshawar High Court Peshawar judgment dated 19.06.2013 and regretted.

SECTION OFFICER (E.IV) 31/5/19.

Mr. Noor Hussain
P.F.

Received
on 11/6/2019

11/6/19

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENTWP No. 1180/2012.JUDGMENTDate of hearing..... 19.06.2013.....Petitioners. (Syed Tahir Abbas): *By Mr. M. Zafer Tahir Khedi, Advocate*Respondents. (Government of Khyber Pakhtunkhwa etc) *By Mr. M. Mujtaba Khan, Advocate, u.m. Mansoor Tariq, Advocate, Peshawar.*

.....

WAQAR AHMED SETH J. Petitioner Tahir Abbas,

Ex-Assistant Director, seeks the constitutional jurisdiction of this

Court praying for that:

"A. for a declaration to the effect that the petitioner being an ex-retrenched Assistant Director (B-17) of PUDB is entitled to be reinstated readjusted/absorbed against the available vacancy as other similarly retrenched Assistant Directors (B-17, who have been reinstated/absorbed in compliance with the direction of the Hon'ble Peshawar High Court

Annex III

Annex - III

PS/Secy E&AD
Diary No. 571/2019
F.T.S. No. 2263
Date 27/6/19
PS/C.S Khyber Pakhtunkhwa
Diary No. 6881/W/19
Date 27/6/19

15

To

The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

Through:- PROPER CHANNEL

Subject:- Departmental Appeal Against the Order vide No. SOE-IV (E&Ad)9(102)/2004 dated 31.05.2019 Issued by the Secretary, Establishment Department Civil Secretariat Peshawar through which the Appeal of the Appellant has been Regretted. (Copy of the appeal is at Annexure "A" and Copy of the Order Dated 31.05.2019 is annexure "B").

Handwritten notes: 27/6/19, 28.6.19

PRAYER:-

On acceptance of this appeal, the order dated 31.05.2019 may kindly be set aside and the Notification dated 09.04.2019 may kindly be modified / corrected in the light of the judgement of Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 07.12.2018.

Dear Sir,

In pursuance of Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 07.12.2018, the appellant has been re-instated in service vide Notification No. SOE-IV(E&AD)9(102)/2014, dated 09.04.2019 (Annex-C), that in the decision of the August Service Tribunal it has clearly been ordered that the intervening period may please be treated as leave of the kind due. Copy of Service Tribunal is Annex-D.

Handwritten notes: 27/7/19, 27/6/19, SBE, DS(E)

2. In this connection the appellant submitted an appeal to the Secretary, Establishment Department for grant of intervening period salaries (Half Pay instead of full pay) as ordered by the KPK Service Tribunal that "The Intervening period may please be treated as leave of the kind due" but the Department reinstated the appellant in the service and the intervening period w.e.f 21.05.2013 to 31.03.2019 treated as leave without pay in violation of the decision of the Service Tribunal which amount to contempt of Court. As the appellant has not so much leave in credit according to Service Book, therefore, the appellant requested for considering Half Pay which is fulfilling the intervening period according the Service Book record. To this effect Leave Account prepared / submitted and regretted in the light of judgement of Peshawar High Court, Peshawar dated 19.06.2013 (copy enclosed Annex-E). Which has no relevancy with the case of the Appellant the Service Tribunal has already given decision regarding the absence period are which department has not filed an appeal in higher forum (Supreme Court of Pakistan). Thus has

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attend finality and no one is authorize to pass orders in violation of decision of the Service Tribunal.

3. It is pertinent to mention here the F.R.54(a) speak that:-

F.R.54 Where a Government Servant has been dismissed or removed in reinstated, the revising or appellate authority may grant to him for the period of his absence from duty ____

(a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal / removal. (Copy attached Annex-F).

4. Accordingly the appellant acquitted honorably by the Supreme Court of Pakistan, Islamabad (Copy attached Annex-G) and accordingly KPK Service Tribunal issued the order of the reinstatement vide intervening may please be treated as leave of the kind due. ~~there is no mentioning of~~ there is no mentioning of "Without Pay".

5. In view of the position explained above, it is humbly requested that the case of the appellant may please be considered sympathetically and according to the order of KPK Service Tribunal Peshawar to avoid the Contempt of Court of Honorable KPK Service Tribunal Peshawar and the order dated 31.05.2019 may kindly be modified and the case may kindly be decided as August Service Tribunal ordered in their decision dated 07.12.2018.

Your's faithfully,

NHC
(Noor Hussain)

Senior Scale Stenographer (B-16)
Population Welfare Department
Civil Secretariat
Peshawar

Dated: 19-06-2019

Annex IV

Annex V

17

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

No. SOE.IV (E&AD) 9(102)2014
Dated Peshawar, the 06.08.2019

To

Section Officer (Gen),
Population Welfare Department.

Subject:

DEPARTMENTAL APPEAL AGAINST THE ORDER VIDE NO. SOE-IV (E&AD) (102)/2004 DATED 31.05.2019 ISSUED BY THE SECRETARY ESTABLISHMENT DEPARTMENT, CIVIL SECRETARIAT PESHAWAR THROUGH WHICH THE APPEAL OF THE APPELLANT HAS BEEN REGRETTEED.

I am directed to refer to your letter No.SOG/PWD/1-226/PF/2018/1853-54 dated 21.06.2019 on the subject noted above and to state that the appellate authority has regretted the appeal of Mr. Noor Hussain, Personal Assistant (BS-16) on the subject matter.

Copy to:-

1. Mr. Noor Hussain, Personal Assistant, Population Welfare Department.


(HAZRAT JAMAL)
SECTION OFFICER (E-IV)


SECTION OFFICER (E-IV)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)**

No. SOE.IV E&AD 12(123)/2019
Dated Peshawar the 13.07.2020


To

The Section Officer (Lit-II),
Judicial Wing, Establishment Department.

Subject:- **EXECUTION OF PETITION NO. 367/2019 TITLED NOOR HUSSAIN
VS GOVT. OF KP AND OTHERS**

I am directed to refer to your letter No.SO (Lit-I)E&AD/3-2020/2013 dated 07-07-2020 on the subject noted above and to state that the Khyber Pakhtunkhwa Service Tribunal judgment dated 07-12-2018 in Appeal No. 1172/2013 filed by Mr. Noor Hussain Senior Scale Stenographer (now PA) has been implemented in true letter and spirit.

Details of the implementation can be pursued from the Minutes of the meeting held in this regard on 13-07-2020 (copy annexed).


Section Officer (E-IV)
Establishment Department

**MINUTES OF THE MEETING HELD ON 13-07-2020 REGARDING
IMPLEMENTATION REPORT IN EXECUTION OF PETITION NO. 367/2019
TITLED NOOR HUSSAIN VS GOVT OF KP AND OTHERS**

A meeting was held on 13-07-2020 at 11:30 hours under the Chairmanship of Addl: Secretary (Judiciary), Establishment Department, in the office of Deputy Secretary (Estab) to discuss the implementation of judgment of Khyber Pakhtunkhwa Service Tribunal dated 07-12-2018. The following attended the meeting.

- i. Additional Secretary (Judicial), Establishment Department
- ii. Deputy Secretary (Estab), Establishment Department
- iii. Section Officer (R-IV), Establishment Department.
- iv. Section Officer (E-IV), Establishment Department.

2. Opening the discussion, the Section Officer (E-IV), presented the Execution Petition No.367/2019 of Khyber Pakhtunkhwa Service Tribunal, regarding implementation of the above cited judgment holding therein *"In the circumstances prima facie the notification was not in line with the judgment in Appeal No. 1172/2013, instant appeal is therefore converted into implementation petition to execute the judgment of this tribunal in letter and spirit. It shall be re-numbered as such and notices be issued to respondents for submission of implementation report"*.

3. After threadbare discussion, it was decided to convey the following actions taken by the department in implementation of the judgment:

- i. The petitioner has been re-instated in the service on 09-04-2019 (Annex-I).
- ii. After re-instatement, his name has been placed in the due place in the seniority list of his cadre i.e Senior Scale Stenographers (B-16) (Annex-II).
- iii. After regaining his seniority, the petitioner was promoted as Personal Assistant (BS-16) (Annex-III).
- iv. As regards leave, the Tribunal has directed for grant of the leave due. According to Leave Rules, no other leave except Extra Ordinary Leave can be granted by the competent authority retrospectively in lieu of absence without leave. Therefore, the intervening period w.e.f 21-05-2013 to 31-03-2019 was converted into EOL in light of Rule-12(3) of the Civil Servant Revised Leave Rules, 1981 and the principle of no work no pay announced by the Peshawar High Court, Peshawar Judgment dated 19-06-2013 (Annex-IV & V).

4. The meeting ended with note of thanks from and to the Chair.



Annexure 'B' (12)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar, the 09.04.2019.

NOTIFICATION

NO. SOE-IV (E&AD) 19 (102)/2014: -

In pursuance of judgments of Supreme Court of Pakistan dated 30.05.2018 and Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 07.12.2018, the Competent Authority has been pleased to re-instate Mr. Noor Hussain, Senior Scale Stenographer (BS-15) in service w.e.f. 29.01.2010 and the intervening period w.e.f. 21.05.2013 to 31.03.2019, may be treated as leave without pay.

2. Subsequently, he is posted in Auqaf Department, against the vacant post, w.e.f. 01.04.2019.

SECRETARY ESTABLISHMENT

Endst: No. & date even

Copy forwarded for information to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer (Admn.), Administration Department.
3. The Section Officer (General), Auqaf Department.
4. The Estate Officer, Administration Department.
5. The Section Officer (Secret), Establishment Department.
6. PS to Secretary, Establishment Department.
7. PS to Special Secretary (E), Establishment Department.
8. PA to Addl. Secretary (HRD Wing), Establishment Department.
9. PA to Deputy Secretary (E), Establishment Department.
10. Official concerned.

(HAZRAT JAMAL)
SECTION OFFICER (E.IV)

11/5/19



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GOVERNMENT
ESTABLISHMENT

NOTIFICATION

No.SO.E.IV(E&AD)1-13/2013 (Private Secretaries Cadre):
with Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointments) Regulations, 1974 (as amended), Civil Servants (Appointments) Stenographer (BPS-16) (as stood on 26.04.2013), Civil Servants

FINAL SENIORITY LIST OF SENIOR SCALE STENOGRAPHERS

S.NO	Name of official	Academic Qualification	Date of Birth	District
1	Mr. Noor Hussain	B.A	01.04.1961	Peshawar
2	Mr. Fazle Subhan	M.A	24.03.1969	Swat
3	Mr. Safdar Khan	B.A	10.05.1968	Peshawar
4	Mr. Jehan Zeb Khan	M.A	15.04.1970	Swat
5	Mr. Muhammad Javed S/O Ali Rehman	M.A	11.02.1970	Abbottabad
6	Mr. Waqar Ahmad	B.A.	01.10.1961	Peshawar
7	Mr. Mujahid Khan	F.A.	12.04.1966	Peshawar
8	Mr. Liaqat Ali	M.A.	12.06.1961	Peshawar
9	Mr. Sher Rehman	M.A.	15.02.1966	Malakand
10	Mr. Mirza Ghulam	B.A./LLB	05.04.1960	Chitral
11	Mr. Fazl-e-Rabi	F.A.	30.03.1967	Abbottabad
12	Mr. Muhammad Ishaq	Matric	03.05.1963	Abbottabad
13	Mr. Momin Khan	B.A.	04.01.1969	Mohmand
14	Mr. Said Akbar	M.A.	02.10.1962	Kurram
15	Mr. Gul Nadir	Matric	01.03.1963	Dir
16	Mr. Tila Khan	B.A.	07.05.1966	Khyber
17	Mr. Noor Rehman	Matric	04.01.1968	Malakand
18	Mr. Haider Zaman	B.A.	17.02.1966	Kohat
19	Mr. Ihsanullah Khan	B.A.	03.03.1969	Malakand

8

9

FINAL SENIORITY LIST OF SENIOR SCALE STENOGRAPHERS

S.No	Name of official	Academic Qualification	Date of Birth	Division
88	Mr. Muhammad Irshadullah	M.A	01.09.1967	Dir
89	Mr. Farasat Hussain	B.A	12.03.1973	Kohat
90	Mr. Nasir Ali	B.A	01.06.1966	Kurrat
91	Mr. Shakeel Khan	B.A	20.11.1968	FR/P
92	Mr. Yar Muhammad	B.Sc.	06.04.1970	Malah
93	Mr. Ahmad Hussain	B.A	02.01.1978	Chitra
94	Mr. Ashraf ud Din	M.A	01.01.1981	Chitra
95	Mr. Ikramullah	F.A	18.04.1968	Khyber
96	Mr. Muhammad Nisar Khan	D.Com	14.03.1975	Mohm
97	Mr. Amir Sultan Ahmad Shah	D.Com	25.02.1976	Bann
98	Mr. Redi Khan	F.A	01.06.1974	Kyber
99	Mr. Munawar Khan	Matric	06.05.1965	Now
100	Fazal Ali	B.A	15.01.1966	Swat
101	Mr. Baitur Rehman	Matric	01.01.1968	Pesh
102	Mr. Khan Muhammad Khan	M.A	07.09.1963	Lakk

Endst. No. SOE-IV (E&AD) 1-13/2013 (Private Secretaries)

Copy forwarded to:-

1. All Administrative Secretaries (except Board of Revenue)
2. The Military Secretary to Governor, Khyber Pakhtun
3. Principal Secretary to Governor, Khyber Pakhtunkhwa
4. The Director, Staff Training Institute, Khyber Pakhtun



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar, the 31st May, 2019

NOTIFICATION

No. SOE.IV(E&AD)1-7/2019:- On the recommendations of Departmental Promotion Committee, the competent authority is pleased to promote the following Acting Charge Personal Assistants (BS-16)/ Senior Scale Stenographers (BS-16) of the Civil Secretariat, Khyber Pakhtunkhwa, Peshawar as Personal Assistants (BS-16) on regular basis, with immediate effect:-

S.No	Name of Officials
1.	Mr. Noor Hussain S/O Jumma Khan
2.	Mr. Muhammad Suleman
3.	Mr. Asif Khan
4.	Syed Razaqat Ali Shah
5.	Mr. Jamshaid Alam
6.	Mr. Bilal Khan
7.	Mr. Naveed Ahmad
8.	Mr. Inayatullah
9.	Mr. Irfan Haider
10.	Mr. Mudasir Khan
11.	Mr. Muhammad Tayyab
12.	Mr. Arifullah S/O Haji Gul Zamin Khan
13.	Mr. Zar Muhammad
14.	Mr. Niqab Khan
15.	Mr. Zafran Khan
16.	Mr. Waqar Khan S/O Said Sher
17.	Syed Tayyib Ali Shah
18.	Mr. Farhatullah
19.	Mr. Tariq Saleem Khan S/O Sarfaraz Khan

2. The above Personal Assistants on their promotion shall remain on probation for a period of one year, in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15(1) of Khyber Pakhtunkhwa Civil Servants (appointment, Promotion & Transfer) Rules, 1989 and extendable for another year with the specific orders of appointing authority within two months of the expiry of first year of probation period as specified in Rule-

15(2) of Rules ibid. Moreover, they shall exercise their option within 60 days of this notification as provided in Rule 5 of Khyber Pakhtunkhwa Civil Secretariat (Private Secretaries) Service Rules, 2012. The said option should come through their respective Departments/ Offices. In case they fail to do so within the stipulated period they will remain in PS Cadre.

3. Consequent upon their promotion, the following posting/ transfer are ordered:-


S.#	Name of Officials	From	To
1.	Mr. Noor Hussain	Augaf Deptt.	Population Welfare Deptt.
2.	Mr. Muhammad Suleman	E&AD (O&M Section)	Retained E&AD (O&M Section)
3.	Mr. Asif Khan	CM Sectt.	Retained CM Sectt.
4.	Syed Razaqat Ali Shah	Finance Deptt	Retained Finance Deptt.
5.	Mr. Jamshaid Alam	Home Deptt.	Retained Home Deptt.
6.	Mr. Bilal Khan	P&D Deptt.	Retained P&D Deptt.
7.	Mr. Naveed Ahmad	Governor Sectt.	Retained Governor Sectt.
8.	Mr. Inayatullah	E&AD (O/O Special Assistant to CM for ST&IT)	Retained E&AD (O/O Special Assistant to CM for ST&IT).
9.	Mr. Irfan Haider	Higher Education Deptt.	Retained in Higher Education Deptt.
10.	Mr. Mudasir Khan	E&AD (O/O Minister for C&W)	Retained in E&AD (O/O Minister for C&W)
11.	Mr. Muhammad Tayyab	On deputation to PDMA	E&AD for actualization of his promotion.
12.	Mr. Arifullah S/O Haji Gul Zamin Khan	ST&IT Deptt.	Retained ST&IT Deptt.
13.	Mr. Zar Muhammad	E&AD (O/O Advisor to CM for Energy & Power)	Retained E&AD (O/O Advisor to CM for Energy & Power)
14.	Mr. Niqab Khan	E&AD (O/O DSR-I)	Retained E&AD (O/O DSR-I)
15.	Mr. Zafran Khan	Governor Sectt.	Retained in Governor's Sectt.
16.	Mr. Waqar Khan S/O Said Sher	Industries Deptt.	Governor's House.
17.	Syed Tayyib Ali Shah	Irrigation Deptt.	Retained in Irrigation Deptt.
18.	Mr. Farhatullah	E&AD (Lit Section)	Retained in E&AD (Litigation Section).
19.	Mr. Tariq Saleem Khan S/O Sarfaraz Khan	Excise & Taxation Deptt.	Retained in Excise & Taxation Deptt.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST. NO. & DATE EVEN.

A copy is forwarded to the -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Section Officer (Secret), Establishment Department.
3. Section Officer (Admn), Administration Department.
4. Estate Officer, Administration Department.
5. **All Section Officers (Admn/Estt/Gen _____) of the concerned Administrative Department of Civil Secretariat.**
6. All Concerned Offices/ Section, E&A Deptt _____
7. Deputy Director (IT), Establishment & Administration Deptt.
8. PS to Special Assistant to CM for ST&IT Khyber Pakhtunkhwa.
9. PS to Advisor to CM for Energy & Power Khyber Pakhtunkhwa.
10. PS to Secretary Establishment Department.
11. PS to Special Secretary (Estt:), Establishment Department.
12. PA to Addl: Secretary (HRD Wing) Establishment Department.
13. PA to Deputy Secretary (Estt:), Establishment Department.
14. Officials concerned.


SECTION OFFICER (E-V)
31/5/19.

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Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

WP No. 1180/2012.

JUDGMENT

Date of hearing 19.06.2013.....

Petitioners. (Syed Tahir Abbas) *By Mr. M. Zafer Tahir Khelso, Advocate*

Respondents. (Government of Khyber Pakhtunkhwa etc) *By Mr. M. Mansoor Tameer, Advocate, Peshawar.*

WAQAR AHMED SETH .J. Petitioner Tahir Abbas,

Ex-Assistant Director, seeks the constitutional jurisdiction of this court praying for that:-

"A. for a declaration to the effect that the petitioner being an ex-retrenched Assistant Director (B-17) of PUDB is entitled to be reinstated readjusted/absorbed against the available vacancy as other similarly retrenched Assistant Directors (B-17, who have been reinstated/absorbed in compliance with the direction of the Hon'ble Peshawar High Court

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and adequate livelihood with reasonable rest and leisure.

19. Whereas, the record is suggestive of the fact that the petitioner has been discriminated time and again and in view of the above while allowing the instant writ petition, the respondents are directed to adjust the petitioner, immediately with all consequential benefits except wages. The reasons for not allowing the wages for the intervening period is that petitioner has not worked during this period on the principle no work, no pay. Order accordingly.

Announced
Dated 19.6.2013

JUDGE

JUDGE

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19.6.13
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27.7.13

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27.7.13

(6) Leave salary to be paid during maternity leave shall be regulated as for other leave, in accordance with the formula provided in rule 8.

(7) The leave salary to be paid during maternity leave will, therefore, remain unaffected even if any increment accrues during such leave and the effect of such an increment will be given after the expiry of maternity leave.

11. Disability Leave.---(1) Disability leave may be granted outside leave account on each occasion upto a maximum of seven hundred and twenty days on such medical advice as the head of office may consider necessary, to a civil servant, other than civil servant in part time service, disabled by injury, ailment or disease contracted in course or in a consequence of duty or official position.

(2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. Extraordinary Leave (Leave without Pay).---(1) Extraordinary leave may be granted on any ground upto a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

(2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

⁹[(3) Extraordinary leave may be granted retrospectively in lieu of absence without leave.]

13. Leave on Medical Certificate.---Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply.

14. Leave Preparatory to Retirement.---The maximum period upto which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.

15. Recreation Leave.---Recreation leave may be granted for fifteen days once in a calendar year, the debit to the leave account may, however, be for ten days leave on full pay;

Provided that such leave shall not be admissible to a Civil servant in a vacation department.

Note: Casual Leave (as Recreation Leave) shall, however, continue to be granted for 10 days only subject to other conditions under Government instructions.

16. Leave Ex-Pakistan.---(1) Leave Ex-Pakistan may be granted on full pay to a civil servant who applied for such leave or who proceeds abroad during leave, or takes leave while posted abroad or is otherwise on duty abroad and makes a specific request to that effect.

(2) The leave pay to be drawn abroad shall be restricted to a maximum of three thousand rupees per month.

⁹. Sub-rule (3) of rule 12 added by Notification NO. FD.SO(SR-IV)5-54/80 (Vol.II), dated 01.06.1982.

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR.

Execution Petition No.367/2019

Noor Hussain..... Appellant

Versus

Chief Secretary K.P. and another..... Respondents

REJOINDER ON BEHALF OF APPELLANT TO
THE JOINT PARA-WISE COMMENTS/ REPLY
FILED BY RESPONDENTS NO.1 AND 2.

Respectfully Sheweth;

The appellant in rejoinder submits as under:-

Reply to the Preliminary objections:

All Preliminary objections No.1 to 3 are incorrect, wrongly set up, hence denied. Nothing has been brought on record to justify the stereotype preliminary objections raised in the joint para-wise comments/ reply.

ON FACTS:

- 1) Para-1 needs no reply.
- 2) Para-2 need no reply.
- 3) That para-3 is incorrect, hence denied. The appellant filed departmental appeal for grant of back benefit in the light of judgment dated 07.12.2018 wherein the Hon'ble Tribunal categorically held as follows:

“The intervening period may be treated as leave of the kind due. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside”.

The judgment of Hon'ble Tribunal cannot be reviewed or reopened in the light of reasoning advanced in para-3 of joint parawise comments/ reply. Even it is settled law that when the impugned order is set aside, the civil servant is entitled to back benefits and it would be unjust to deprive a civil servant of back benefits for the intervening period as he remained out of job without any fault on his part. **2013 SCMR 752, 2011 TD Service 179 (b), 2003 SCMR 291, 2007 PLC (CS) 924, PLD 1993 (SC) 200, 2011 PLC (CS) 1665, 2009 PLC (CS) 572, 2002 PLC (CS) 1237.**

- 4) Para-4 is incorrect, hence denied. The appellant's case is fully justified in terms of FR 54 for grant of back benefits. The Tribunal has allowed back benefits to the appellant as referred to in para-3 above.

ON GROUNDS:

- a. Incorrect, hence denied. The ground raised in appeal/ execution petition is correct.
- b. Incorrect, hence denied. The Tribunal's judgment has not been implemented in its letter and spirit and this Hon'ble Tribunal has already directed the respondents to grant back benefits to the appellant and to file compliance report.
- c. Incorrect, hence denied. The judgment of Peshawar High Court legally speaking cannot be cited at the state of Execution Petition. The respondents, if had any observation, were required to challenge the judgment of Hon'ble Tribunal dated 17.12.2018 before the Apex Court, but has not been questioned, hence the

judgment of Tribunal attained finality and the same issue cannot be reopened, which is a past and close transaction.

d,e,f) Grounds d, e and f are Incorrect. No convincing reply has been given to the grounds raised in appeal.

Keeping in view what has been stated above the respondents may kindly be directed to forthwith pay all consequential back benefits/ arrears of pay in the light of Tribunal judgment dated 17.12.2018.

Dated: 28.09.2020

Appellant

Through



Inayat Ullah Khan
Advocate High Court
Peshawar.
LL.M (U.K)

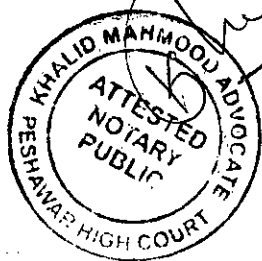
&




Muhammad Haris Sher
Advocate

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the accompanying Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




Deponent

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No. 367/2019

Noor Hussain S/O Juma Khan.

(Petitioner)

VERSUS

Chief Secretary Khyber Pakhtunkhwa
and others

Respondents

Para-wise comments / reply on behalf of respondents No. 1&2

Respectfully Sheweth;

Preliminary objections No.1 to 3 are correctly set up, hence objection of the appellant is denied

ON FACTS

1. No comments.
2. No comments.
3. As regards back benefits, the Tribunal in its judgment dated 07-12-2018 has directed that the intervening period may be treated as leave of kind due. According to leave rules, no other leave except Extra Ordinary Leave (EOL) can be granted by the competent authority retrospectively in lieu of absence without leave, therefore, the intervening period w.e.f. 21.05.2013 to 31.03.2019 was converted in Extra Ordinary Leave (EOL) in light of Rules -12(3) of Civil Servant Revised Leave Rules, 1981 and the principle of “no work no pay” as per Peshawar High Court judgment dated 19.06.2013, hence objection of the appellant is denied.
4. As explained in Para-3 above.


ON GROUNDS.

- a). Incorrect, court Judgment has been implemented in letter and spirit and the appeals have been treated in accordance with the Provincial government Rules/Policies, hence objection of the appellant is denied.
- b). As explained in Para-A above.
- c). Stance of the appellant is incorrect, as the appellant was dismissed from service after his conviction in NAB case. The appellant challenged the conviction in the apex court and his dismissal from service in Service Tribunal. After his acquittal, by the Supreme Court of Pakistan, the Tribunal held vide judgment dated 07.12.2018 that the charges on the basis of which major penalty of dismissal from service was imposed on him was no more in the field and the appellant has sound case for re-instatement in service. The appellant was dismissed from service on

his conviction in NAB Case, which was disposed of accordingly; hence the Department did not challenge as challenging the same lies on the part of NAB. Hence, objection of the appellant is denied.

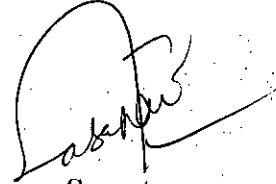
- d). Grounds D, E and F are fully correct and convincing, hence objection of the appellant is denied.

It is therefore, humbly prayed that on acceptance of instant Para-wise reply, the petition of petitioner may be dismissed with costs.



Chief Secretary

Govt. of Khyber Pakhtunkhwa
(Respondent No.1)



Secretary

Govt. of Khyber Pakhtunkhwa,
Establishment Department
(Respondent No.2)

Before The KPK Senior Tribunal

Noor Hussain

vs

Establishment Department

Execution Petition

Respectfully Sheweth

That the above mentioned B.P.

has been implemented in letter and spirit,

hence needs to be disposed off.

It is therefore, requested to dispose off the above mentioned execution petition.

19/7/21

(A)
19/7/21