

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT, ABBOTTABAD.

Appeal No. 115/2019

Date of institution ... 17.01.2019
Date of decision 19.04.2019

Mst. Fatima Nasir, FJCT Surgical, Health Department, Khyber
Pakhtunkhwa Peshawar. ... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Health
Department, Peshawar and four others. ... (Respondents)

Present

Ch. Abdur Rauf Chohan,
Advocate ... For appellant.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appeal in hand contains the prayer to the effect that the respondents be directed to reinstate the appellant in service forthwith.
2. The facts as available on the record are that on 28.12.2010 the appellant was appointed as a Female Junior Clinical Technician (Surgical) BPS-09 on temporary basis and without pension. She, on 15.03.2014, submitted resignation to the District Health Officer, Abbottabad on account of her domestic affairs. The said resignation was accepted on 31.03.2014 with the order of recovery of one month salary in lieu of advance notice. The appellant submitted her departmental appeal against the order dated 31.03.2014, which was not responded to.



3. I have heard learned counsel for the appellant whose main contention was that the resignation tendered by the appellant was not voluntary and she was driven to such eventuality due to highhandedness of superior officers. It was further stated that the order of acceptance of resignation was not communicated to the appellant, therefore, she could not prefer a departmental appeal in time. It was also the submission of learned counsel that the impugned resignation was accepted in haste by the District Health Officer, Abbottabad which was not in accordance with the principles of natural justice. He relied on 2005-SCMR-1194.

4. The maintainability of instant service appeal itself is under the cloud in view of the order of appointment of appellant dated 28.12.2010. It was clearly noted as condition No. 1 therein that the appointment was on contract basis and could be terminated any time without any reason on one month notice.

5. It is also evident from the record that the resignation submitted by the appellant on 15.03.2014 was on the ground that after her marriage she was residing at village LaKhala Sherwan and due to domestic affairs she could not perform her duty. The resignation, was not at all, accepted immediately after its tendering but an office order to that effect was issued after more than fifteen days. The judgment relied upon by the learned counsel, therefore, is not applicable to the case in hand.

6. The contention of appellant regarding non-communication of order dated 31.03.2014 and her ignorance to that effect also would not appeal to a prudent mind. The appellant kept mum for more than four years

after passing of impugned office order, especially, when she was not performing any duty nor was being paid salary for the said period.

For what has been stated above, the appeal in hand is found meritless and is, therefore, dismissed in limine. File be consigned to the record room.





(HAMID FAROOQ DURRANI)
Chairman
Camp Court, Abbottabad.

ANNOUNCED
19.04.2019

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 115/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/1/2019	<p>The appeal of Mst. Fatima Nasir received today by post through Ch. Abdur Rauf Chohan 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 <u>24/1/19</u></p>
2-	1-2-19	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>19-4-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mst. Fatima Nasir FJCT Surgical Health Department Khyber Pakhtunkhwa received today i.e. on 17.01.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested. ✓
- 2- Annexures of the appeal may be flagged. ✓
- 3- Departmental appeal having no date be dated. ✓ *copy of receipt is annexed.*
- 4- Five more copies/sets of the appeal along with annexures i.e. completed in all respect may also be submitted with the appeal.

No. 122 /S.T,

Dt. 17/01/2019.

17/01/19
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Ch. Abdur Rauf Chohan Adv.
High Court Abbottabad.

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

Service Appeal No. 115 /2019

Mst. Fatima Nasir, FICT Surgical, Health Department, Khyber Pakhtunkhwa,
Peshawar.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa,
Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

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...APPELLANT

Through

Dated: 16-01-2019


(Ch. Abdur Rauf Chohan)
Advocate High Court, Abbottabad

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

Service Appeal No. 115 /2019

Mst. Fatima Nasir, FJCT Surgical, Health Department, Khyber Pakhtunkhwa,
Peshawar.

....APPELLANT
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 77

Dated 17-1-2019

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. Director Health Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Abbottabad.
4. Medical Superintendent, D.H.Q Hospital Abbottabad.
5. District Accounts Officer Abbottabad.

....RESPONDENTS

Filed to-day

Registrar

17/1/19.

**Re-submitted to -day
and filed.**

Registrar

24/1/19

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974, FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS APPOINTED AS FJCT SURGICAL IN DISTRICT HEADQUARTER HOSPITAL ABBOTTABAD AND THE APPELLANT RESIGN FROM SERVICE DUE TO SOME DOMESTIC PROBLEMS. THE APPELLANT PREFERRED DEPARTMENTAL PRESENTATION FOR

REINSTATEMENT IN SERVICE BUT RESPONDENTS
ARE RELUCTANT TO REINSTATE THE APPELLANT.

=====

PRAYER: ON ACCEPTANCE OF THE INSTANT
SERVICE APPEAL, THE RESPONDENTS BE DIRECTED
TO REINSTATE THE APPELLANT IN SERVICE
FORTHWITH. ANY OTHER RELIEF DEEMED FIT AND
PROPER IN THE CIRCUMSTANCES OF THE CASE.

=====

Respectfully Sheweth: -

1. That the appellant has been appointed as FJCT Surgical in District Headquarter Hospital, Abbottabad on 28/12/2010. Copy of appointment order is annexed as Annexure "A".
2. That the appellant served the department more than three and half years with devotion and dedication.
3. That mother of appellant was serving in Women & Children Hospital, Abbottabad and she was patient of Sugar and High Blood Pressure, suddenly fell ill.
4. That the appellant due to illness of her mother requested to the Medical Superintendent DHQ to

transfer the appellant in the Women and Children Hospital Abbottabad, he refused and then the appellant wrote an application to DCO about the situation, DCO called the Medical Superintendent and subsequently appellant was transferred from DHQ to Women & Children Hospital but the Medical Superintendent kept personal grudge against the appellant.

5. That after that the department harassing the appellant by playing different tactics including transfer from Women & Children Hospital to DHQ and DHQ to Women & Children Hospital and not granting leave to the appellant.
6. That appellant got married and domestic problems started, then appellant applied for the leave to adjust the marital life and accommodation problems moved some applications for leave.
7. That the then Medical Superintendent asked the appellant verbally for resignation. All the applications are in possession of concerned department.
8. That the appellant was in deep trouble and pressurized by her husband and accommodation problems and from another side department stressed the appellant too much. In these circumstances under a huge pressure unwillingly appellant resigned from the service on

15/03/2014. Copy of resignation letter is attached as
Annexure "B".

9. That after the application of resignation presented by the appellant, DHO without waiting immediately accepted the resignation of the appellant on 17/03/2014 without any inquiry, notice and personal hearing even not giving a chance to withdraw the resignation. Copy of order is annexed as Annexure "C".
10. That the present appellant moved an appeal/representation to the respondent No.1 but no response of the said appeal has given to the appellant. Copy of departmental appeal is annexed as Annexure "D".
11. That feeling aggrieved, the appellant seeks indulgence of this Honourable Court for her reinstatement in service, inter-alia, on the following grounds; -

GROUND S; -

- a) That the impugned acts of the respondents by not reinstating in service are illegal, unlawful and against the norms of justice, hence, liable to be set-aside.

- b) That the appellant due to accommodation problems and other domestic problems on demand of then Medical Superintendent, unwillingly resign from service.
- c) That the respondent No.4 did not bother to inquire whether the appellant voluntarily resigned or had any problem, genuineness of the resignation was also not inquired.
- d) That the resignation was not communicated to the appellant, appellant is able to get copy of the same on 14/09/2018.
- e) That the respondents are bound to act according to law. It is universally accepted principle of law that when law prescribe something to be done in a particular manner that must be done in same manner and not otherwise. A proper procedure has been prescribed in the law on the subject which has been violated by respondents therefore, the acts of the respondents are liable to be set-aside.
- f) That the appellant is poor lady resigned under tremendous pressure of husband and the

department, she could not appeal within time because copy of the order was not communicated to appellant.

- g) That the appellant has served with honesty and dignity for betterment of the respondents department.
- h) That the other points shall be urged at the time of arguments.

It is, therefore, humbly prayed that on acceptance of the instant service appeal, the respondents be directed to reinstate the appellant in service forthwith. Any other relief deemed fit and proper in the circumstances of the case



...APPELLANT

Through

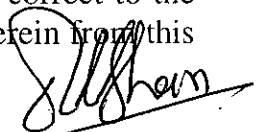
Dated: _____/2019



(Ch. Abdur Rauf Chohan)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



...APPELLANT

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

Service Appeal No. _____/2019.

Mst. Fatima Nasir, FJCT Surgical, Health Department, Khyber Pakhtunkhwa,
Peshawar.

...APPELLANT

VERSUS


Govt. of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa,
Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Mst. Fatima Nasir, FJCT Surgical, Health Department, Khyber Pakhtunkhwa,
Peshawar, do hereby solemnly affirm and declare that the contents of foregoing
appeal are true and correct to the best of my knowledge and belief and nothing has
been concealed therein from this Honourable Court.

attested

Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza,
0347-3146975


DEPONENT

Amere "A"

8

No. 11486 /P-F/Estab/EDO(H)ATD.

Dated Abbottabad the 28 /12 /2010.

To,

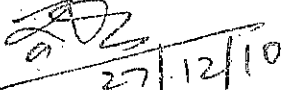
Miss Fatima Nasir D/O Nasir Naeem Khan,
Near Chandni Masjid, Jalal Baba Chowk,
House # 385, Upper Malikpura, Abbottabad.

Subject: OFFER OF APPOINTMENT.
Memo:

As per recommendations of the Departmental Promotion & Selection Committee constituted vide Directorate General Health Services, Khyber Pakhtunkhwa order bearing endorsement No.27940-58/E-II dated 16-11-2010 during its meeting held at Public Health Services Academy, Peshawar on 21st December 2010 under the Chairmanship of the undersigned, I am pleased to offer you a post of Female Junior Clinical Technician (Surgical) BPS-09 on temporary basis without Pension and Gratuity in National Pay Scale of Rs.3820-230-10720 on the terms & conditions mentioned below.

- ✓ Your appointment is purely on contract basis and can be terminated any time without any reason on one month notice.
- ✓ In case you wish to resign any time, prior one month notice or one month pay will be necessary and you shall continue to serve the Government till your resignation is accepted and communicated to you.
- ✓ You will avail the benefits of the Contributory Provident Fund (CPF) through 5 % contribution of minimum of your pay and 5 % contribution to be made by the Government.
- ✓ You will not contribute to General Provident Fund (GPF) and shall not be entitled for Pension & Gratuity benefits.
- ✓ Your service will be subject to your being satisfactory report of verification roll/documents verification.
- ✓ You will have to produce medical certificate of fitness from the Medical Superintendent, BBS (DHQ) Hospital Abbottabad.
- ✓ You will remain on probation for a period of one year and your further continuous will depend on your satisfactory work & conduct.
- ✓ You will governed by the Rules & Orders relating to Leave/TA, Medical Attendance / Pay etc as may be issued by the Government from time to time.
- ✓ You will have to produce an affidavit on judicial stamp paper duly attested by First Class Magistrate with the effect that you will serve the department for at least twelve (12) years, otherwise you will be liable for payment of Rs.600000/- to the Government.

If above offer of appointment on the terms & conditions mentioned above is accepted then you are hereby advised to report for duty to the Medical Superintendent, BBS (DHQ) Hospital Abbottabad on your own expenses within fifteen (15) days of the issuance of this appointment letter positively with the remarks that in case of failure in compliance within stipulated period, this letter shall stand automatically cancelled.


27/12/10
Executive District Officer
(Health) Abbottabad.

attested
Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza
3146975


No.

/P-F/Estab/EDO(H)ATD.

Copy to: -

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Coordinator FJCTs Course, Public Health Services Academy, Peshawar.
For information please.
3. M.S BBS (DHQ) Hospital Abbottabad.
4. District Accounts Officer, Abbottabad.
5. Accounts Section of the undersigned office.
For information and necessary action.

Attested
Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza
0347-3146975


Executive District Officer
(Health) Abbottabad.

ANNE B

9

To,

The District Health Officer,
Abbottabad

through proper channel.

Subject: RESIGNATION FROM SERVICE

Respectfully submitted;

1. That Petitioner is serving as (FJCT Surgical) at Women & Children Hospital (W.C.H) Abbottabd.
2. That Petitioner got married and after marriage, Petitioner is residing at Village Lakhala (Sherwan) and due to domestic affairs cannot perform my duties.

it is therefore, prayed that my Resignation may kindly be accepted and may be relieved from service.

Yours Obediently,

Fatima Nasir
15.3.2014

Mst Fatima Nasir
D/O Nasir Naeem Khan
(FJCT Surgical)
Abbottabad

No. 1137

dt 17-3-2014

Forwarded to District Health officer Abbottabad for necessary action plz.

Medical Superintendent
DHQ Teaching Hospital
Abbottabad

Attested
Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza
0347-3146975

Ameri "C"

10

All the communications should be addressed to the District Health Officer, Abbottabad only and not to the name of any officer or official of this office.



OFFICE OF THE DISTRICT HEALTH OFFICER ABBOTTABAD.

OFFICE ORDER.

The resignation from service tendered by Mst; Fatima Nisar D/o Nasir Naeem Khan FICT Surgical attached to BBS Teaching Hospital Abbottabad received through Medical Superintendent, BBS Teaching Hospital Abbottabad vide his No.1139 dated 17.03.2014 is hereby accepted w.e.f 15.03.2014 with the remarks that her one month salary in lieu of advance notice may be forfeited and deposited into Govt treasury. Moreover, the salary of her absent period may also be deposited into Government Treasury under intimation to this office.

Sd/-

District Health Officer,
Abbottabad.

No. 2434-35

/Estab/D/Posting Dated Abbottabad, the

31/03/2014.

attested

Copy forwarded to the:-

Attested by:
Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyers Plaza I
0347-3146975

1. ✓ Medical Superintendent, BBS Teaching Hospital Abbottabad.
2. Mst; Fatima Nisar D/o Nasir Naeem Khan, C/o MS, BBS Teaching Hospital Abbottabad.
For information and necessary action.

Handwritten signature/initials

OFFICE OF THE MEDICAL SUPERINTENDENT B.B.S.H. HOSPITAL A:ABAD.

District Health Officer,
Abbottabad.

No. 1117-11 dt; Atd; 31/03/2014

Copy to the:-

1. Fatima Nasir D/o Nasir Naeem Khan, FICT (Surgical) BBSH; Atd; H: No. 385 Near Chandni Masjid Jilal Baba Chock Upper Malikpura Abbottabad.
2. Account Section undersigned office.
3. Personal file

Medical Superintendent,
B.B.S. Hospital A:Abad.

Amer-Ding

11

To

The Secretary Health,
Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER
NO.2434-35 DATED 31-03-2014.

Respected Sir,

1. That the appellant has been appointed as FJCT Surgical in District Headquarter Hospital, Abbottabad on 28-12-2010.
2. That the appellant served the department more than three & half years.
3. That mother of appellant was serving in Woman & Children Hospital Abbottabad and she was patient of sugar and high blood pressure, suddenly feel ill.
4. That the appellant due to the illness of her mother requested to the MS DHQ to transfer the appellant in the Women & Children Hospital Abbottabad, he refused and than the appellant wrote an application to DCO about the situation DCO called the MS subsequently appellant transferred from DHQ to Woman & Children Hospital but the MS kept personal grudge against the appellant.
5. That after that the department harassing appellant by playing different tactics including transferred from Women & Children Hospital to DHQ & DHQ to Women & Children Hospital and not granting leave to the appellant.
6. That appellant got married and domestic problems started than the appellant applied for the leave to adjust the marital life and accommodation problems moved some applications for leave the than MS asked the appellant

Attested
Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza
0347-3146975

verbally for resignation. All the applications are in the possession of concerned department.

7. That the appellant was in deep trouble and pressurized by her husband and accommodation problems and from another side department stressed the appellant to much. In these circumstances under a huge pressure unwillingly appellant resigned from the job on 15-03-2014. (Copy of resignation is annexed)
8. That after the application of resignation presented by appellant DHO without waiting immediately accepted the resignation of the appellant on 17-03-2014 without any inquiry, notice, personal hearing even not giving a chance to withdraw the resignation.
9. That the DHO (MS) did not bother to inquire whether the appellant voluntarily resigned or had any problem, genuineness of the resignation was also not inquired.
10. That the resignation was not communicated to the appellant the appellant is able to get copy of the same on 14-09-2018.
11. That the appellant is poor lady resigned under tremendous pressure of husband and the department and could not appeal within time because copy of the order was not communicated to appellant.

PRAYER:- It is prayed that the appellant may be reinstated in service.

dated 24/9/18
attested
 Ch: Abdur Rauf Chohan
 Advocate High Court
 Office 28 Lawyer's Plaza I
 0347-3146975

Fatima Nasir
 (MST. FATIMA NASIR)
 FJCT Surgical
 Health Department, K.P.K.
 Postal Address:
 Office# 28, New Lawyer Plaza-1,
 District Courts Abbottabad.
 Contact# 0333-4575664

وکالت نامہ

کورٹ فیس

بعدالت جناب سروس ٹریبونل کپک لٹنار

عنوان: طاہر نامہ بنام گورنمنٹ کپک ریلوے

مخائب: ایپلنٹ

نوعیت مقدمہ: سروس ایپل
باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کارروائی متعلقہ آن مقام

پنجوہری سبب الٹروف جو خان ایڈووکیٹ کورٹ ایپل

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا لال اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے رضی نامہ و تقرر ٹائٹ و فیصلہ بر طرف روئے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

دھولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دخل کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا محکمہ صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار

بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم جھگڑ کو منظور قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز جہاں رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی قرضی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ ہر وہی مقدمہ مذکورہ کریں اور اگر محکمہ مقرر کردہ میں کوئی جزو جہاں ہو تو وکیل صاحب موصوف

مقدمہ کی پیروی کے پابند ہوں گے۔ نیز درخواست برآمد تجارت ہائش بیضہ منطقی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند ہو

المرقوم: 16-11-19

Ch: Abdur Rauf Chohan
Advocate High Court
Office 28 Lawyer's Plaza I
0347-3146975

بمقام:

السعد السعد

BEFORE THE KHYBER PAKHTUN KHWA
SERVICE TRIBUNAL, PESHAWAR



Service appeal No. 02 of 2014

Mst. Kausar Parveen wife of Nazeer Ahmed
resident near Madni Masjid, Mansehra, Tehsil and
District MansehraAppellant

VERSUS

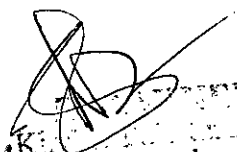
1. Inspector General of prisons Khyber Pakhtun Khwa, Peshawar.
2. Superintendent Circle Headquarters Prisons Haripur, District Haripur.
3. Superintendent Sub-Jail Battagram District Battagram.....Respondents.


APPEAL AGAINST THE ORDER NO.1/15-J-1990/27713 DATED 19.09.2013 VIDE WHICH THE RESPONDENT NO.1 REJECTED THE DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER NO.1843 DATED 01.07.2013 PASSED BY THE RESPONDENT NO.2 VIDE WHICH THE RESIGNATION OF THE APPELLANT WAS ACCEPTED.

PRAYER: -

On the acceptance of the instant appeal, order No.1/15-J-1990/27713 dated 19.09.2013 and order No.1843 dated 01.07.2013 may graciously be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

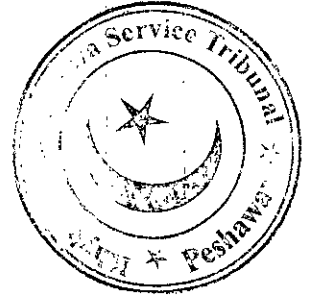

01/07/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 02/2014

Date of Institution... 01.01.2014

Date of decision 23.08.2017



Mst. Kausar Parveen wife of Nazeer Ahmed resident near Madni Masjid, Mansehra,
Teshil and District Mansehra(Appellant)

Versus

1. The Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar
and 2 others.....(Respondents)

MR. SHAH NAWAZ KHAN SWATI,
Advocate

... For appellant.

MR. MUHAMMAD BILAL
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL

... CHAIRMAN
... MEMBER

ATTESTED

[Signature]
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was an employee of the Prison Department and had tendered resignation on 01.07.2013 in Sub Jail, Batagram which was accepted by the Superintendent, Central Prison, Haripur on the same day. The appellant then filed appeal to the appellate authority on 05.08.2013 which was rejected on 19.09.2013 and she then preferred the present service appeal before this Tribunal on 01.01.2014.

ARGUMENTS

3. The learned counsel for the appellant argued that resignation was obtained from the appellant by the Jail authorities which was not voluntary and not written by

the appellant. That she did not know about its acceptance nor any order of acceptance of resignation had ever been communicated to the appellant. Without such communication she preferred departmental appeal on 05.08.2013. That this appeal though decided on 19.09.2013 was never communicated to her. That thereafter she submitted application to the Superintendent, Sub Jail, Batagram for supply of copies of the termination order on 11.12.2013. That on acceptance of the application copy was given to her on the same day and thereafter the appellant moved the present appeal before this Tribunal. The learned counsel for the appellant further argued that neither the original acceptance order was communicated to the appellant till 11.12.2013 nor the order of appellate authority was communicated to her till 11.12.2013, hence the present appeal is within time as the limitation shall start from its communication.

4. On merit, the learned counsel for the appellant relied upon a judgment entitled "Muhammad Zahoor Vs. Registrar, Lahore High Court, Lahore and another" reported as 2005-SCMR-1194, wherein it has been held by their Lordship that acceptance of resignation on the same day was not proper as the accepting authority should have waited for some period and should have satisfied himself about voluntariness of the resignation and especially when the civil servant had not sought for acceptance of her resignation with immediate effect. This judgment further held that in case of appeal before the department authority, the departmental authority should have probed into the matter and should have satisfied himself about the same. He further argued that the appellant was compelled to resign due to non acceptance of some request for leave and it was her husband who ^{was} forced to take her signature on the resignation. The resignation was written by an employee of Prison.

On the other hand, the learned Deputy District Attorney argued that both the departmental appeal as well as the present appeal are time barred. That the appellant after tendering resignation should have herself enquired about the acceptance of her resignation. That she did not withdraw her resignation immediately which is a proof of

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her willingness in tendering resignation. The learned DDA also pressed into service some other examples in which resignations were accepted on the same day.

CONCLUSION

6. When the appellant had tendered the resignation on 01.07.2013 it was for the department to have conveyed the order of acceptance to the appellant but no copy of acceptance order has been addressed to the appellant rather it is argued by the representative of the department that it was sent to the Superintendent, Sub Jail, Batagram and naturally he would have communicated the same to the appellant. This submission of the representative of the respondents is not acceptable because communication is never proved on the basis of presumption unless it is proved on record that the same was communicated to the appellant. Similarly, the order of the departmental authority though speaks of a direction to the Superintendent, Sub Jail, Batagram for communication to the appellant but again there is no record of communication of this order to the appellant. This non-communication has been practically raised ^{by} the appellant in her memo. of appeal and it was necessary for the department to have annexed with their written reply the proof of communication to the appellant. But no record has been annexed with the written reply of the respondents. Therefore, it will be presumed that the allegation of the appellant is correct so far as communication is concerned. The departmental appeal as well as present appeal cannot be termed as time barred.

7. Coming to the merit, the resignation which was tendered in Sub Jail, Batagram, was accepted by the Superintendent, Central Prison, Haripur on the same day is by his ⁱⁿ his ^{own} name and not by the authority itself proof of undue haste by the department. In such like cases care should be taken by the authority to satisfy himself about genuineness and voluntariness of the resignation and especially when the employee is a female. Under normal routine the authority summons the employee that why he/she is resigning but nothing of this sort

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on the part of the accepting authority is available. To-day the representative of the department pressed into service some record that the service record of the appellant was not upto the mark rather her performance was below slandered. If such was the case, then the department should have initiated disciplinary proceedings against the appellant rather than to accept her resignation in such a hasty manner. The departmental authority has also not summoned the appellant for satisfying himself about the voluntariness of the resignation as held in the reported judgment of the august Supreme Court of Pakistan.

8. In view of the above discussion, the present appeal is accepted, the appellant is reinstated in service without back benefits by treating her intervening period as due against leave accrued, if any, or leave without pay for the purpose of her length of service and future benefits. Parties are left to bear their own costs. File be consigned to the record room.

Announced

23-08-2017

Muhammad Akbar
Chairman
Civil Court A/Abad

Sd/- M. Hamid Nughal

Certified to be true copy

F. D. R.
Khyber Pakhtunkhwa
Service Council,
Peshawar

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