

28.03.2019

Clerk to counsel for the petitioner present. Implementation report not submitted. Hazrat Shah Superintendent representative of the respondent department absent. He be summoned with the direction to furnish implementation report. Adjourn. To come up for further proceedings/implementation report on 29.04.2019 before S.B



Member

29.04.2019

Petitioner in person and Addl. AG for respondents present. Petitioner seeks adjournment. Granted. Case to come up further proceedings on 31.05.2019 before S.B.



(Ahmad Hassan)

Member

31.05.2019

Petitioner alongwith counsel and Addl. AG for the respondents present.

Petitioner states that since his grievance has been redressed by the respondents, he requests for consignment of instant execution proceedings.


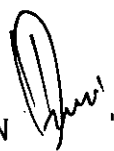

Order accordingly.



Chairman

FORM OF ORDER SHEET

Execution Petition No. 25/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17.01.2019	<p>The Execution Petition of Mr. Saeed Muhammad submitted to-day by Mr. Tajdar Faisal Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;">  REGISTRAR 17/1/19 </p>
2-	<p>18-1-19</p> <p>22.02.2019</p>	<p>This Execution Petition be put up before S. Bench on <u>22-2-19</u>.</p> <p style="text-align: right;">  CHAIRMAN </p> <p>Counsel for the petitioner present.</p> <p>Notice be issued to the respondents for submission of implementation report on 28.03.2019 before S.B.</p> <p style="text-align: right;">  Chairman </p>

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Execution/Implementation Application No. 25 /2019
In Service Appeal No: 1089 of 2017

Saeed Muhammad _____ Applicant

Versus

Govt. of Khyber Pakhtun Khwa through Secretary Health and others
_____ Respondents.

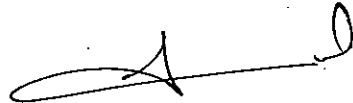
INDEX

S.No	Description of documents	Annex	Pages
1	Execution/Implementation Application		2-4
2	Affidavit		5
3	Copy of Service Appeal & order/judgment dated: 28-12-2018	A & B	6-18
4	Copy of application	C	19
5	Wakalat Nama		20

Applicant

Through

Dated:-16/01/2019


TAJDAR FAISAL KHAN
MINA KHEL
Advocate High Court
Peshawar.
205-B, 4th Floor, Town Tower,
Jahangir Abad, Peshawar.
0313-8708424

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

Execution/Implementation Application No. 25 /2019 Khyber Pakhtunkhwa
Service Tribunal
In Service Appeal No: 1089 of 2017

Diary No. 95

~~2019~~ 17-1-2019

Saeed Muhammad S/O Rasham Gul,

R/O Village Dheri Sikandar Khan, Daulat Pura, Tehsil & District Charsadda.

Appellant

Versus

1. Govt. of Khyber Pakhtun Khwa through Secretary Health Department, Civil Secretariat, Peshawar.
2. Director General, Health Services, Health Department, Near District Court, Peshawar.
3. District Health Officer, Charsadda.
4. Provincial Coordinator, Lady Health Worker Program, Khyber Pakhtun Khwa, Peshawar.

Respondents

**APPLICATION FOR AND ON BEHALF OF
APPLICANT / APPELLANT FOR
IMPLEMENTATION OF ORDER/
JUDGMENT DATED: 28-12-2018 PASSED BY
THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO. 1089/2017 AND CONTEMPT
PROCEEDINGS MAY KINDLY BE
INITIATED AGAINST RESPONDENTS FOR
WILLFULLY DISREGARDING THE
ORDERS OF THIS HON'BLE AND TO
PUNISH THEM IN ACCORDANCE WITH
LAW.**

Respectfully Sheweth!

1. That the applicant filed above cited Service Appeal No. 1089/2017 before this Hon'ble Tribunal, challenging the action of the respondents vide which they have dismissed the applicant from service vide order dated: 28-04-2017. Needless to mention that prior

to the impugned order dated: 28-04-2017, the respondents also passed order dated: 21-09-2016 in respect of dismissal of applicant which order was set aside by the respondent No. 1 on 02-03-2017 but the applicant was not awarded salary for the intervening period.

2. That the said appeal was argued at length before this august Tribunal and the same was allowed vide order/judgment dated: 28-12-2018. The relevant portion of the judgment dated: 28-12-2018 is reproduced here-in-below:-

“For what has been discussed above we allow both the appeals, as prayed for in the memoranda. Parties are left to bear their respective costs. File be consigned to the record room”.

{True copy of the Service appeal and order/judgment dated: 28-12-2018 are annexed, mark as **Annex-A & B**}

3. That the applicant after passing of the above order, approached to the respondents and duly informed them about the order dated: 28-12-2018 of this Hon'ble Tribunal containing clear directions by providing attested copy of the judgment along with application, however, the respondents paid no heed thereto. The applicant visited the office of the respondents so many times but to no avail.
{True copy of the application is annexed, mark as **Annex-C**}
4. That due to the unturned attitude of the respondents, the applicant is constrained to knock at the door of this Hon'ble Tribunal for the implementation of the order/judgment dated: 28-12-2018.
5. That the respondents despite of the clear directions, have willfully disobeyed the order of this Hon'ble Tribunal by not doing the needful as directed through the order / judgment dated: 28-12-2018.
6. That the respondents have blatantly disregarded the clear directions of this Hon'ble Tribunal and have in fact flouted the process of law by their naked misuse of power.
7. That the above noted contemptuous behavior of the respondents on one side made mockery of the orders of this August Tribunal and on the other side increased the agonies and miseries of the applicant.

It is, therefore, most respectfully prayed that on acceptance of this application, this Hon'ble Tribunal may be pleased to:-


- I. **Direct** the respondents to implement the order/judgment dated: 28-12-2018 in letter and spirit by issuing re-instatement order of the applicant along with back benefits forthwith.

- II. **Initiate** the contempt proceedings against the respondents.
- III. **To Punish** the respondents in accordance with law for failing to comply with the directions of the Hon'ble Tribunal.
- IV. **Any other relief** deemed appropriate in the circumstances of the case may also be granted.

Dated: 16.01.2019

Through

Applicant



TAJDAR FAISAL KHAN
MINA KHEL
Advocate High Court
Peshawar.

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

Execution/Implementation Application No. _____/2019
In Service Appeal No: 260 of 2017

Saeed Muhammad _____ Applicant

Versus

Govt. of Khyber Pakhtun Khwa through Secretary Health and others
_____ Respondents

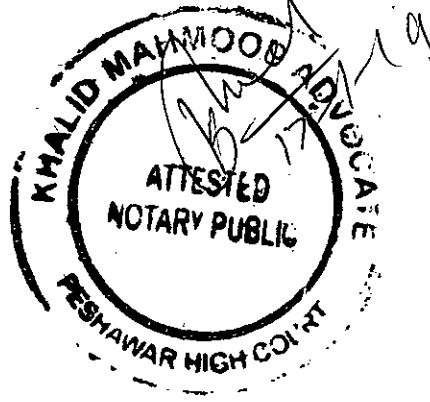
AFFIDAVIT

I, **Saeed Muhammad** S/O Rasham Gul, R/O Village Dheri Sikandar Khan, Daulat Pura, Tehsil & District Charsadda, do hereby solemnly affirm and declare upon oath that the contents of the Application are true and correct to the best of my knowledge & belief and nothing has been concealed or with held there from.

Identified By;


TAJDAR FAISAL KHAN
MINA KHEL
Advocate High Court

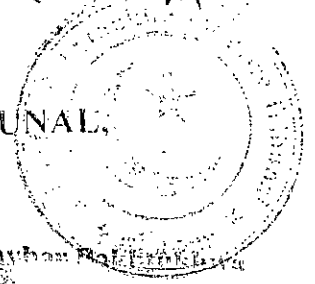
Deponent



6 (1)

Amra

BEFORE KHYBER PAKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. 1089 /2017

Khyber Pakhtun Khwa

Dir. 1085

Date 19-9-2017

Saeed Muhammad S/O Rasham Gul,

R/O Village Dheri Sikandar Khan, Daulat Pura, Tehsil & District Charsadda.

Appellant

Versus

- ✓ 1. Govt. of Khyber Pakhtun Khwa through Secretary Health Department, Civil Secretariat, Peshawar.
- ✓ 2. Director General, Health Services, Health Department, Near District Court, Peshawar.
- ✓ 3. District Health Officer, Charsadda.
- ✓ 4. Provincial Coordinator, Lady Health Worker Program, Khyber Pakhtun Khwa, Peshawar.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF THE RESPONDENT NO. 3 WHO ISSUED IMPUGNED ORDER DATED: 28-04-2017, VIDE WHICH THE APPELLANT WAS DISMISSED AND ORDER DATED: 10-08-2017 OF THE RESPONDENT No. 2, WHO DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT.

Saeed
19/9/17

ATTESTED

Registrar
Khyber Pakhtun Khwa
Service Tribunal,
Peshawar

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED: 28-04-2017, VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE AND ORDER DATED: 10-08-2017 VIDE WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS

Re-submitted to -day and filed.

Saeed
Registrar
28/9/17

~~2~~ 7

DISMISSED, MAY KINDLY BE SET ASIDE AND
RESULTANTLY THE APPELLANT MAY GRACIOUSLY
BE REINSTATED IN SERVICE WITH ALL BACK
BENEFITS.

Respectfully Sheweth!

The appellant most humbly submits as under:-

1. That the present appellant was appointed upon recommendation of the Departmental Selection Committee, vide order Dated: 22-05-2006 w.e.f. 15-06-2006 as "Driver" in the respondents department in BHU Daulat Pura.

2. That the appellant was falsely implicated in criminal offence and in this respect MAD report dated: 23-06-2016 was lodged in Police Station Batagram, Charsadda.

{True copy of MAD report is attached as Annex-A}

3. That the respondent No. 3 on the basis of MAD report, issued order of suspension of present appellant and others vide order dated: 24-06-2016 and through the said order Deputy DHO and one another Doctor Feroz Shah were appointed as Enquiry Officer to probe into the matter and submit fact finding report within seven days.

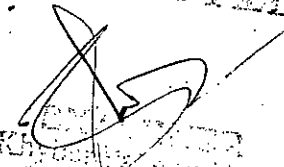
{True copy of suspension order dated: 24-06-2016 is attached as Annex-B}

4. That to the utter shock of the appellant, the respondent No. 3 on the basis of fact finding enquiry report, issued the impugned order of dismissal from service against the present appellant vide order dated: 21-09-2016.

{True copy of order dated: 21-09-2016 is attached as Annex-C}

5. That after getting knowledge of the impugned order, the present appellant approached the respondent No. 3 with an application for conducting fresh/ De-novo inquiry. The respondent No. 3 on the application of the appellant ordered fresh inquiry but to the utter shock and dismay of the appellant, the said inquiry was also conducted without associating with the appellant and without adopting the proper criteria as laid down by law and rulings of apex

ATTESTED


Khalid Ahmad
Service Tribunal,
Peshawar

3) 8

court of Pakistan and thereafter impugned order dated: 14-11-2016 was passed.

{True copy of application and order dated: 14-11-2016 are attached as **Annex-D & D/1**}

6. That after issuance of impugned order dated: 14-11-2016, the appellant filed departmental appeal on 17-11-2016, which was accepted partially on 02-03-2017 and the appellant was reinstated for the purpose of inquiry.

{True copies of departmental appeal and order dated: 02-03-2017 are attached as **Annex-E & E/1**}

7. That the appellant after reinstatement was called upon to report to the office of respondent No. 3 for facing disciplinary proceedings vide office order dated: 29-03-2017 and the appellant on 10-04-2017 appeared and resume his duty.

{True copy of order dated: 29-03-2017 and report dated: 10-04-2017 are attached as **Annex-F & F/1**}

8. The respondent No. 3 vide office order dated: 12-04-2017 constituted inquiry committee and on the same date also issued statement of allegations and charge sheet to the appellant.


{True copy of order dated: 12-04-2017, statement of allegations and charge sheet are attached as **Annex-G, G/1 & G/2**}

9. That after issuance of statement of allegations and charge sheet, the appellant submitted his written defense on 19-04-2017 to the inquiry committee.

{True copy of written defense is attached as **Annex-H**}

10. That the inquiry committee allegedly recorded statements of four employees of BHU Daulat Pura and two other persons, but surprisingly two of them also submitted their written submissions to the inquiry officer and stated their ignorance about the alleged incidence.

{True copy of statements are attached as **Annex-I**}

ATTESTED

For the Officer
In-charge
Service Tribunal,
Punjab

(4) (9)

11. That after recording the statements, the inquiry committee submitted their report to the respondent No. 3 on 20-04-2017.

{True copy of inquiry report dated: 20-04-2017 is attached as Annex-J}

12. That after submission of inquiry report, respondent No. 3 issued show cause notice to the appellant on 20-04-2017, which was replied by the appellant by submitting written reply on 25-04-2017 and the respondent No. 3 while ignoring the written submissions of the appellant, passed the impugned order dated: 28-04-2017.

{True copy of show cause notice dated: 29-03-2017 and reply dated: 25-04-2017 are attached as Annex-K & K/1}

13. That the respondent No. 3 despite of perusing the detailed reply to the show cause notice, acted in haste and passed the impugned order dated: 28-04-2017 by ordering removal from service of the present appellant.

{True copy of impugned order dated: 28-04-2017 are attached as Annex-L}

14. That the appellant feeling dissatisfied from the impugned order, preferred departmental appeal to the respondent No. 2 (DG Health Service) on 05-05-2017, which was regretted vide office order dated: 10-08-2017 (received to the appellant on 20-08-2017).

{True copy of departmental appeal dated: 05-05-2017 and impugned order dated: 10-08-2017 are attached as Annex-M & M/1}

15. That the appellant being aggrieved and having no other efficacies remedy except to file the instant appeal for the redressal of his grievances before this Hon'ble Tribunal on the following amongst other grounds.

ATTESTED

[Handwritten signature]
Secretary
Peshawar

GROUND:

A. Because the impugned orders of respondents dated: 28-04-2017 and 10-08-2017 are against law, facts, hence liable to be set-aside.

5, (15)

B. Because it has been clear from the record of the case and also highlighted by the respondents while corresponding over departmental appeal of the appellant that E & D rules have blatantly been violated while dealing with the case of appellant.

C. Because the all the persons who recorded their statements before the inquiry committee are not the eye witness of the alleged incidence and whole episode was ended over the hearsay evidence of the interested persons, which is against the law.

D. Because the statements of Umair Jan and Muhammad Riaz were not considered in which they deposed about the innocence of the appellant.

E. Because the witness ^{Fahmida} (LHW) who deposed against the appellant is never the eye witness of the incidence nor was present at the alleged spot. Further she has been given charge of **Lady Health Supervisor** of **BHU Daulat Pura** by the respondents as reward.

~~2. The report of the inquiry committee is attached herewith for reference.~~

F. Because the alleged girl has not been produced before the inquiry committee nor her statement was recorded by them, which lacuna alone is sufficient for setting aside the impugned orders.

G. Because no FIR has been lodged of the said incidence but astonishingly the appellant has been victimized of the unproved incidence. Further the appellant has never been arrested or prosecuted for any immoral activity as alleged in the charge sheet/statement of allegations.

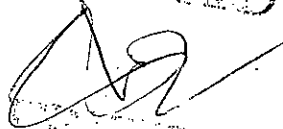
H. Because the dismissal of the appellant from his service without adopting proper criteria and codal requirements by the respondents is against the worthy ruling of the Hon'ble Superior Courts of Pakistan and therefore, the same are illegal practice and such practice adversely effects efficiency of incumbents and also reduces their confidence and faith in public, hence the impugned orders referred above are liable to be un-held on this score also.

ATTESTED


Secretary
Government of Punjab

- I. Because the appellant had been made victim of discrimination, demerits, partiality and favoritism without any just and reasonable cause thereby offending the fundamental rights of the appellant as provided by the constitution of 1973, hence the impugned orders detailed above are liable to be set at naught.
- J. Because the respondents in utter disregard to the principles of the fairness, merit and transparency, passed the impugned orders which are against the law, illegal, unlawful and void ab initio and liable to be turned down.
- K. Because the appellant is very hardworking and punctual in his duty, therefore, no complaint received by the Respondents against the appellant but the Respondents unlawfully and illegally proceeded against the appellant by ordering his removal from service, which is against the law and fundamental rights of the appellant.
- L. Because the appellant was condemned unheard, his departmental appeal was not properly adjudicated in the manner as provided by the law. Further no chance of personal hearing was given to the present appellant in order to redress his grievances which shows the malafide of the Respondents, hence needs interference of this Hon'ble Tribunal.
- M. Because the present impugned order is illegal, illogical, against facts, without jurisdiction and suffering from material irregularity, hence they are untenable and liable to be struck down.
- N. Because the Respondents erroneously exercised their powers against judicial principle, and have passed the impugned orders and opened a new pandora box in clear violation of Service law, hence, the said impugned orders are liable to be set aside, and the appellant may kindly be re-instated in service with all back benefits.
- O. The appellant crave for leave of the Hon'ble Tribunal to raise additional grounds at the time of arguments.

ATTESTED



SECRETARY
TRIBUNAL

A) (12)

IT IS, THEREFORE, MOST RESPECTFULLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL:

- i. An order of setting aside of impugned orders dated: 28-04-2017 and 10-08-2017 may kindly be passed.
- ii. The appellant may kindly be reinstated in service with all back benefits.
- iii. Any other relief, though not specifically asked for, deems appropriate to the Hon'ble Tribunal may also be granted.

Appellant

Through:

Dated: 15/09/2017

[Faint signature and text]

[Signature]
TAJDAR FAISAL KHAN
MINA KHEL
Advocate High Court, Peshawar.

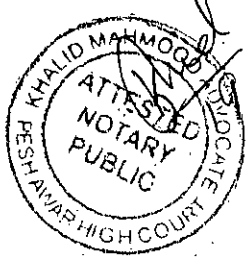
VERIFICATION:

It is verified that all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal.

[Signature]
Deponent

Note: That no such like petition / Appeal on this subject matter has earlier been filed before this Hon'ble Tribunal.

[Signature]
Certified true copy
Peshawar



Name of the petitioner: _____
 Date of Filing: 02-01-19
 Number of Pages: 2802
 Copying Fee: 10
 Urgent: 2
 Fetal: 18
 Name: _____
 Date of Case: 02-01-19
 Date of Judgment: 02-01-19

17

Annex B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1089/2017

Date of Institution ... 19.09.2017

Date of Decision ... 28.12.2018



Saeed Muhammad son of Rasham Gul, R/O Village Dheri Sikandar Khan, Daulat Pura, Tehsil and District Charsadda. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat, Peshawar and 3 others. ... (Respondents)

Present.

TAJDAR FAISAL KHAN,
Advocate.

... For appellant

MR. ZIAULLAH,
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

This judgment is proposed to decide also Appeal No. 260/2017 (Mst. Tahmida Versus Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar and others).

2. The appellant in Appeal No. 1089/2017 Saeed Muhammad and Mst. Tahmida are husband and wife. Their services were regularized on 24.09.2014 as Driver and Lady Health Supervisor when they were posted at BHU, Daulat Pura.

ATTESTED

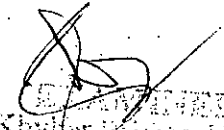
CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

14

The initial date of appointment of Saeed Muhammad was 15.06.2006 while that of Mst. Tahmida was 10.01.2005. Both the appellants were proceeded against departmentally in pursuance to a single alleged occurrence, in pursuance whereof, the appellant Saeed Muhammad was removed from service on 28.04.2017, whereas, Mst. Tahmida was transferred to BHU Mazhara with stoppage of two annual increments with accumulative effect. The departmental appeal of Saeed Muhammad was regretted on 10.08.2017 while that of Mst. Tahmida remained un-responded, hence the appeals in hand.

3. The facts relevant for the purpose of matters in hand are that on 23.06.2016 a report was lodged through Daily Diary by one Imran son of Shamsud Din resident of Daulat Pura to the effect that on 23.06.2016, at 09.30A.M, the complainant was present in BHU Daulat Pura while in the courtyard of BHU Dr. Imtiaz, Fazle Malik Chowkidar, Saeed Driver and a young girl were also present. Saeed Driver alongwith the girl whose name and whereabouts were not known, went inside Iqra Public School owned by Fazle Malik Chowkidar while Dr. Imtiaz and Fazle Malik stayed outside the school. The complainant climbed over the wall of the school and entered inside where he saw Saeed Driver with the girl in objectionable condition. On raising hue and cry by complainant Dr. Imtiaz and Fazle Malik ran away while Saeed and the girl also left the place. The occurrence was alleged to have been witnessed by Shamsur Rahman ^{of} son of Janullah. The complainant demanded proceedings against BHU staff, Saeed Driver, Imtiaz Technician, Fazle Malik Chowkidar and wife of Saeed Mst. Tahmida. He also demanded their transfer from the said BHU. The reason for delay in reporting the matter was disclosed to be the consultation with elders of locality.

ATTESTED


 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

(15)


4. The appellant Saeed Muhammad, as a consequence to the Daily Diary report was dismissed from service on 21.09.2016 while Mst. Tahmida was suspended on 24.04.2016 due to involvement of her husband in the alleged criminal offence. Saeed Muhammad applied for denovo enquiry on 27.09.2016, however, his dismissal order was confirmed on 14.11.2016. He submitted his departmental appeal on 17.11.2016 which was partially allowed vide order dated 02.03.2017 and the appellant was reinstated in service for the purpose of enquiry. The ensuing enquiry report was submitted on 22.04.2017, while the impugned order was passed on 28.04.2017. He preferred a departmental appeal against the impugned order of removal from service passed on 28.04.2017 which was regretted and rejected on 10.08.2017.

On the other hand Mst. Tahmida was ordered to report to DHO office, Charsadda on 24.06.2016 and on 21.09.2016 the impugned order of her transfer to BHU Mazhara with stoppage of two annual increments with accumulative effect, was made. She submitted a departmental appeal which remained un-responded.

5. We have heard learned counsel for the appellant and learned Deputy District Attorney on behalf of the respondents.

The latter forcefully argued that the departmental appeal of Mst. Tahmida was barred by time i.e. having been brought after more than two months of issuance of impugned order, therefore, her Service Appeal was liable for dismissal. Opposing to Appeal No. 1089/2017 it was contended that all the codal formalities were fulfilled before passing of impugned order. The appellant was involved in a heinous offence, that too, in the Holy month of Ramazan, therefore, he was rightly removed from service by the respondents.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(18)

As against that learned counsel for the appellant argued that appellant Mst. Tahmida was penalized for the alleged act committed by her husband and no incidence of misconduct was proved against her. Speaking about appeal No. 1089/2017 of Saeed Muhammad it was stated that the proceedings were outcome of political motivation and were fabricated only to have the appellant transferred from BHU Daulat Pura. It was beyond perception that a wife could facilitate her husband in commission of crime as alleged in the Daily Diary, it was added.

6. It is a matter of record that denovo enquiry against the appellant Saeed Muhammad was ordered on 02.03.2017 on the ground that the procedure under the rules was not observed in the first round. The DHO Charsadda (respondent No. 3) was, therefore, required to initiate disciplinary proceedings strictly in accordance with rules with extension of opportunity of personal hearing to the appellant. On the other hand, the statement of allegations and charge sheet issued to the appellant depicted the contents inconsistent with the facts as alleged in the Daily Diary dated 23.06.2016. It was noted in the statement of allegations and the charge sheet that the appellant was caught red hand by the public while being involved in immoral activities with a girl inside Iqra Public School Daulat Pura while, on the contrary, hand it was categorically noted in the Daily Diary that appellant Saeed and the girl left the place on raising hue and cry by the complainant. There was no mention of general public gathering on the spot and witnessing the occurrence. Similarly, it was noted in the enquiry report that the appellant was caught red hand^{ed} by the local police of Police Post Daulat Pura while involved in immoral activities with a girl inside Iqra Public School. It is pertinent to note that the enquiry officer recorded statements of Sartaj Khan, Tehsil Member and Amir Khan, Islahi Committee

ATTESTED

[Signature]
 Director
 Services
 Tehsil

(17)

Daulat Pura. These statements revealed that none of the witnesses, included in the enquiry, was an eye witness to the occurrence alleged against the appellant and they narrated the hearsay only. The statement of one Shakeela Naz LHV is available on record. Through this statement, mother of the girl was also introduced to have accompanied her. All the fore-noted discrepancies suggest that the alleged occurrence was narrated in different mode and manner by the complainant and witnesses.

7. We have also noted the strange state of affair where, despite allegations of commission of a heinous offence by the appellant, the name of co-accused of crime i.e. girl could not come to the surface throughout the proceedings what to speak of availability of her statement. It is also a fact that the incident reported through Daily Diary dated 23.06.2016 was not incorporated in an FIR, therefore, the police investigation did not see light of the day in the case. Obviously, no medical examination of the persons, alleged to have been involved, could take-place. There is yet another aspect of the case i.e. the statement of witnesses were recorded in the absence of appellant who was never extended an opportunity of cross-examining them. The record is also depictive of the fact that the complainant Imran and the appellant entered into compromise, wherein, it was noted that the reporting of alleged occurrence was due to misconception. Witnesses Muhammad Riaz, Malaria Supervisor and Umair Khan Medical Technician also subsequently submitted in writing that they were ignorant of the alleged act on behalf of appellant.


8. It is clear from the above noted facts that the offence/mischief ^{alleged} against the appellant, which was made basis for his removal from service, was not investigated


18

nor proved. Even the nature of offence could not be ascertained in the absence of requisite investigation. The contents of Daily Diary and the statement of witnesses recorded during enquiry suggest that the motivation for the proceedings against the appellant was more whimsical than real.

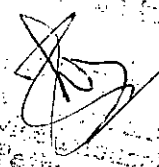
9. Attending to the case of Mst. Tahmida it is evident that she was neither issued a charge sheet nor statement of allegations. No proper enquiry was conducted against her, however, she was awarded the impugned penalty. Regarding the delay in filing departmental appeal, suffice ^{it} to say that the learned Deputy District Attorney could not rebut the argument that the impugned order was communicated to the appellant with considerable delay. The contents of report in the Daily Diary suggest that in pursuance to the offence alleged against the husband of appellant she was required to be proceeded against by the complainant. In short, it can be safely held that the appellant was condemned unheard.

10. For what has been discussed above we allow both the appeals, as prayed for in the memoranda. Parties are left to bear their respective costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
28.12.2018

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Petition 02-01-18
Number of Copies 2400
Copying Fee 14/-
Urgent 2/-
Total 16/-
Name of Clerk
Date of Declaration 02-01-19
Date of Delivery of Copies 02-01-19

10

(19)

Annex-C

The Hon'ble District Health Officer,
District Charsadda.

Subject: Implementation of Judgment
dated: 28-12-2018 passed by Hon'ble
KP Service Tribunal Peshawar.

Respected Sir,

with reference to the subject cited above,
the applicant with great respect submits as under:

- 1- That the applicant was dismissed from service
vide order dated: 28-04-2017.
- 2 That the applicant filed appeal No. 1089/2017
before Khyber Pakhtun Khwa Service Tribunal
which was allowed and the applicant is
reinstated in service with all back benefits
through order dated: 28-12-2018. (Copy attached).

It is, therefore, respectfully prayed
That the order of re-instatement may
kindly be passed and the arrears since
September 2016 till date may also
be released.

Applicant

03/01-19

Dated: 03/01/2019.

Said Muhammad

قیمت
50 روپے

1216



ایڈریس:

بار کونسل ایسوسی ایشن نمبر: 1578-59-6

رابطہ نمبر: 0317-858627

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: خیبر پختونخواہ خواہ کورس ڈائریجنٹ

منجانب:	دعویٰ:
سید محمد	علت نمبر:
بنام	مورخہ:
گورنمنٹ کالج	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام کے لئے سید محمد صاحب مندرجہ خواہ منجانب سے وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
المرقوم:

مقام: _____

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Saeed M