


01.02.2023

Learned counsel for the petitioner present. Mr. Umair Azam Khan, Additional Advocate General for the respondents present and sought time for arguments on restoration application. Adjourned. To come up for arguments on restoration application on 06.02.2023 before the D.B.



(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

06.02.2023

Learned counsel for the appellant present. Mr. Azam Umair Khan, Addl. AG for the respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Granted. To come up for arguments on restoration application on 14.03.2023 before the D.B.


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

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E-Stamp
E-Stamp

14th Dec. 2022 Petitioner submitted application for early hearing which is allowed. This petition is fixed on 09.01.2023 instead of 28.02.2023. Parties be informed accordingly.

Parties were informed through notices on 22/12/2022


Registrar


09.01.2023


Petitioner alongwith counsel present.

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Peshawar

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Former made a request for adjournment in order to produce reported judgments, therefore, opportunity granted. To come up for arguments on restoration application on 01.02.2023 before D.B.



(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

10.08.2022

Counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional AG alongwith Asghar Khan, Section Officer for respondents present.

Representative of the respondent department submitted written reply, which is placed on file. To come up for further proceedings on 09.09.2022 before D.B.


(Fareeha Paul)
Member (E)

9-9-22

Proper DB not available the case is adjourned to 24-11-22

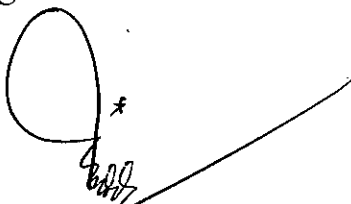
of Rehman


24.11.2022

Clerk of learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

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Peshawar

Clerk of learned counsel for the petitioner requested for adjournment on the ground that learned counsel for the petitioner is busy in the august Supreme Court of Pakistan. Adjourned. To come up for arguments on restoration application on 01.12.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

01/12/22





Due to rush of work the case is adjourned to 28/12/23


Rehman

Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 318 /2022

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge |
|-------|---|--|
| 1 | 2 | 3 |
| 1 | 02.06.2022 | <p>The application for restoration of appeal No. 1381/2010 submitted today by Mr. Muhammad Zafar Tahirkheli 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 <u>21/6/2022</u></p> |
| 2 | 14-6-22  14/6/22 | <p>This restoration application is entrusted to <u>Division Bench</u> at Peshawar to be put up there on <u>20-06-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 20 th June, 2022 | <p>Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.</p> <p>Respondents are directed through the learned Addl: AG to submit <u>implementation report</u> on or before the next date. To come up for implementation report on 10.08.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C. M. NO. _____/2022

In

Service Appeal No. 1381 / 2010

Restoration Appli. no. 318/2022

Ameer Muhammad Durrani

Versus

Govt. of KP.

=====
I N D E X
=====

| S.No | Particulars | Dated | Pages |
|-------------|------------------------------|--------------|--------------|
| 1 | Memo of Petition & Affidavit | | 1-2 |
| 2 | Order | 20-11-2018 | 3 |
| 3 | Service Appeal No. 1381/2010 | | 4-16 |
| 4 | Order | 02-06-2021 | 17-18 |
| 5 | CM 126 / 2020 | | 19-20 |
| 6 | Judgment | 29-03-2022 | 21-26 |
| 7 | Wakalatnama | | 27 |

Peshawar, dated
1st June-2022

[Signature]
(Muhammad Zafar Tahirkheli)
ASC

Peshawar
03009597670

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Restoration Appli. no. 318/22

C. M. NO. _____ /2022
In
Service Appeal No. 1381 / 2010

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 136

Dated 02/6/2022

Ameer Muhammad Durrani

Versus

Govt. of KP.

=====
**APPLICATION FOR THE RESTORATION OF SUBJECT APPEAL
DISMISSED FOR NON-PROSECUTION VIDE ORDER DATED
20-11-2018**
=====

RESPECTFULLY SHEWETH

1. That the above titled appeal was pending before the Hon'ble Tribunal along with two other connected appeals No. 1606 / 2010 titled Balqiaz Khan vs Govt. and 1379 / 2010 titled Ijaz Hussain Vs Govt.
2. That the present applicant along with two others Ejaz Hussain and Balqiaz Khan were arrested by NAB, ref. No. 02 / 15 on 10-12-2014 and remained in lockup up to 25-11-2014.
3. That the cases of the appellant ad Balqiaz were dismissed and default on 20-11-2018, whereas the case of Ejaz Hussain service appeal No. 1378 / 2010 remained pending before the Hon'ble Tribunal. Balqiaz khan filed an application for restoration through CM No. 126 / 2020, which was accepted vide order dated 02-06-2021.
4. That the connected appeal No. 1606 / 2010 has been accepted vide judgment and order dated 29-03-2022 by this Hon'ble Tribunal, wherein the impugned order has been set aside and the case has been reminded to the department to conduct de-novo Inquiry within a period of 60 days.

The applicant being similarly placed and positioned is entitled to similar relief has allowed to Balqiaz Khan vide afore mentioned proceeding.

5. That in view of the dictum laid down by the august Supreme Court of Pakistan 1996 SCMR 1185, the applicant is also entitled to the same benefit, as allowed to the others in connected service appeals by this Hon'ble Tribunal.
6. That initially due to arrest and detention of applicant and later on due to his old age and ailment he was unable to approach this Hon'ble Tribunal within statutory period of limitation. The absence was not intentional as the applicant believed that his case is being pursued by his counsel along with other connected service appeals.

In view of the above, it is therefore requested that by accepting this application, the service appeal No. 1381/2010 may kindly be restored for its disposal in view of judgment and order dated 29-03-2022 passed in service appeal No. 1606 / 2010.

Ameer Muhammad Durrani
Applicant,

Through,

Muhammad Zafar Tahirkheli
(Muhammad Zafar Tahirkheli)
ASC

Peshawar, dated
01st June, 2022

Affidavit

I, Ameer Muhammad Durrani s/o Khan Muhammad Durrani, the applicant, do hereby state on oath that the contents of the above application are true and correct and nothing has been withheld or concealed from this Hon'ble Court.

Ameer Muhammad Durrani
Deponent

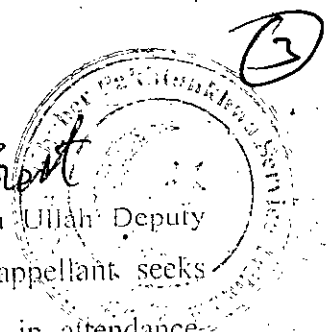


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10.08.2018

Appeal No. 1381/2010
Amir Muhammad Divsani vs Govt



Junior to counsel for the appellant and Mr. Zia Ullah Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 15.10.2018 before D.B.

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

15.10.2018

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney for the respondent present. Due to general strike of the bar, the case is adjourned. To come up on 20.11.2018 before D.B.

Member

Member

20.11.2018

Nemo for appellant present. Mr. Kabirullah Khattak, Addl: AG Mr. Zahid Ur Rehman, Inspector(Legal) for respondents present. The case was called several times today, the last being at 3:10 pm, but none appeared on behalf of the appellant. Dismissed for none prosecution. File be consigned to the record room.

Member

Chairman

Announced:
20.11.2018

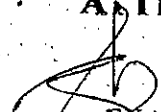
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14/11/2018
COURT OF DISTRICT JUDGE
D.B.

6400
66/-
41/-
70/-
01-06-2022
01-06-2022

Respectfully Sheweth:

1. That appellant was appointed as Junior Clerk in Civil Secretariat, Peshawar on 19.01.1973.
2. That on the recommendations of Provincial Selection Board, appellant was promoted from the post of Superintendent (BPS-16) to the post of Section Officer on current charge basis and posted as Section Officer (Transport) on 11.12.2007. He was performing his official duties to the best of his abilities and to the entire satisfaction of his superiors and no complaint was never made against him in this respect. His service record spread over decades was neat and clean and rendered meritorious services for the last thirty-eight years to the Departments.
3. That charge sheet was issued by respondent No.2 and not the I.O, containing charges of various types. In the statement of allegation, an Enquiry Committee was constituted to probe into the allegations. After the receipt of the charge sheet, reply was submitted and denied the same with cogent reasons. Reply to the charge sheet and statement of allegations be also considered as integral part of this representation. (Copies as annex "A" & "B" respectively).
4. That serious charges were leveled against appellant in the charge sheet and the Enquiry Committee was legally bound to probe into the charges as per the mandate of

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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Ordinance/ Law but the Committee did not prosecute appellant in accordance with law and no statement of any witness was recorded in his presence nor he was afforded opportunity of cross-examination.

5. That the Enquiry Committee prepared self made report and submitted the same to the authority for onward action.
6. That on 11.05.2010, appellant was served with show cause notice reiterating the charges of the charge sheet, which was replied by him on 17.05.2010. (Copies as annex "C" & "D" respectively).
7. That appellant was directed on 11.05.2010 to come up for personal hearing in office of respondent No.2, alongwith written reply to the show cause notice on 18.05.2010 at 09:00 AM. Instead of competent authority, personal hearing was conducted by PSO to respondent No.2 (a BPS-17 Officer), which is against the norms of the Ordinance.
8. That on 18.05.2010, respondent No.1 issued office order bearing No.SO(E-II)ED/3(719)/2007, wherein penalty of dismissal from service and recovery of Rs.1,26,16,435/- (without providing breakup of the recovery amount) was imposed upon appellant. (Copy as annex "E").
9. That on 21.05.2010, appellant submitted comprehensive departmental appeal by threshing out all documentary evidence but no heed was paid to the same by the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(7)

authority and then on 29.06.2/010, the same was rejected by respondent No.2 without support of any reason. (Copies of departmental appeal alongwith annexures and rejection order as annex "F" & "G" respectively).

Hence this appeal, inter alia, on the following grounds;

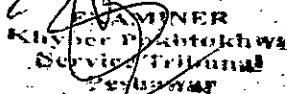
GROUND S:

A. That the impugned orders are against law, facts and record on the following reasons;

a. That on 22.01.2010, appellant was served with charge sheet and statement of allegations and the proceedings of the enquiry were culminated into the impugned order dated 18.05.2010 i.e. for about four months, whereas the Ordinance as well as Para-2 of the statement of allegations duly signed by the competent authority, stipulates 25 days for completion of enquiry proceedings (Annexure-I). Being mandatory, no one is legally allowed to deviate from 25 days. Apart from this, no reason for extension of the enquiry proceedings by the Committee was ever given.

b. That as stated earlier, the Committee did not conduct the enquiry as per the mandate of law. It

ATTESTED


EXAMINER
Khyber Peshawar
Service Tribunal
Peshawar


was incumbent upon the Committee to record

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statement(s) of witness(es) in presence of appellant, however, no such evidence could be seen from the whole proceedings. On this score alone, the impugned action has no legal value.

- c. That as and when the incumbent is served by the final show cause notice, it becomes mandatory for the Committee/ Authority to provide all the proceedings to the servant to enable him to submit comprehensive representation but no enquiry proceedings, as is evident from the notice, was ever supplied to appellant. Such lacuna vitiates all the actions to be null and void.
- B. That the impugned order is legally liable to be set aside on the following grounds;
- i. That in Para-2 of the show cause notice, major penalty of "Dismissal from Service" was imposed upon appellant (Annexure-III), whereas in the order No.SO(E-II)ED-3(719)/2007, dated 18.05.2010, he has been awarded the penalty of "Dismissal from Service" and recovery of Rs.1,26,16,435/- (Annexure-VI). No one shall be awarded with double punishments for one and the same act as per law.
- ii. That the Enquiry Committee did not give any weight to a joint statement, duly signed by appellant and

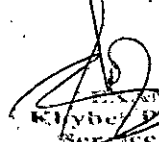
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Member, Panchajanya
Service Tribunal
Bhubaneswar

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two Ex-Cashiers (Transport) of Administration Department (Annexure-VII), wherein the factual position was brought into the notice of Enquiry Committee but no weight was given, which is injustice and based on malafide intention.

- iii. That in the above statement, it was clearly mentioned that some of the payments were made to Ex-Additional Secretary (Admn), Administration Department directly or through his P.A (Syed Irfan Shah), as the undersigned was asked by immediate boss to arrange payments for the repair and POL charges for the vehicles provided to some Political Personnel, Guests/ Officers of the Chief Minister's Secretariat, Khyber Pukhtun Khwa. As Additional Secretary is the next higher authority in the Department after Administrative Secretary, appellant was bound to obey the orders of immediate boss and did not want to make any hurdles in running of official business. However, the Enquiry Committee instead of considering the above-mentioned facts, directly held responsible him for all this situation by showing the amount in the total amount of recovery amounting to Rs.1,26,16,435/- in the order issued by respondent No.1, which is highly condemnable and request for justice.

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EXAMINER
Khyber Pukhtun Khwa
Service Tribunal
Peshawar

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iv. That the charge of mis-appropriation/ embezzlement of auction money amounting to Rs.72,07,742/- was also leveled against the appellant in the charge sheet and statement of allegations issued on 22.01.2010. In this regard, a comprehensive reply was submitted to the Enquiry committee on 30.01.2010 (Annexure-II) wherein it was mentioned that as per Rule-7(1) of Treasury Rules Vol-I & II, the amount so generated as revenue must, without undue delay, be paid in full into a treasury or bank and shall not be re-appropriated to meet departmental expenditure (Annexure-VIII).

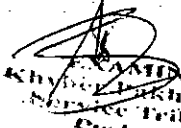
Similarly, Para-26 under heading "Chapter-3 - Revenue & Receipts" of the GFR is also crystal clear on the subject matter (Annexure-IX). The embezzlement/ misappropriation of Government funds was brought into the notice of the Enquiry Committee, which was committed by the DDO of that period i.e. Mr. Shahid Sohail, Ex-Section Officer (Transport), Administration Department. On promotion as Deputy Secretary, he succeeded to post himself as Deputy Secretary (Admn), Administration Department and remained there for about 4-5 months. During his tenure as Section Officer (Transport) as well as Deputy Secretary

ATTESTED

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Service [unclear]
[unclear]

(11)

(Admn) had not deposited the amount of auction, instead he and his Cashier (Mr. Ejaz Hussain) handed over vouchers of repairs and POL to Mr. Mustafa Kamal, Cashier, which was clear violation of the aforesaid Financial Rules. But the Committee even did not bother to call him to explain as why the amount of auction money was not deposited in the Government Treasury inspite of clear-cut rules, but the blunder and irregularity committed by Mr. Shahid Sohail Khan was put on the shoulders of the appellant and the amount was added in the total of recovery against him and the person who violated the aforesaid Treasury & Financial Rules committed embezzlement/ mis-appropriation of the amount fetched through auction of 32nd phase held on 11.07.2008 (despite the fact that a huge amount was released by the Finance Department for running the official business of Transport Section, Administration Department), was exempted from disciplinary action by the enquiry Committee. However, appellant was made scapegoat right at the time when he reached at the age of superannuation on 19.05.2010. This is merely injustice and one-sided disciplinary action and violation of the said Ordinance, as no opportunity was given to him for cross-examination of the witness(es). However,

ATTESTED

Khayal Khan
Member Tribunal
Faisalabad

(12)

undue favour was extended to Mr. Shahid Sohail, Ex-Deputy Secretary (Admn)/ Ex-Section Officer (Transport) and let him free, which is against the judgments of superior courts that all shall be dealt equally and fairly.

- v. That in the charge sheet, one charge on account of hiring charges was also leveled against appellant. In this regard, it is submitted that due to non-availability of vehicles in good condition with the Administration Department, vehicles were hired by the Transport Section on the direction of Honourable Chief Minister, Khyber Pukhtun Khwa, conveyed through Ex-Additional Secretary (Admn), Administration Department as is evident from his note dated 13.05.2009 (Annexure-X). The Ex-Additional Secretary (Admn), Administration Department posted Mr. Aman Khan Hoti as Caretaker-II in the Transport Section, Administration Department and assigned him duty of hiring of vehicles for protocol duties. Mr. Aman Khan Hoti and Mr. Khalid Pervaiz, Assistant Caretaker (Transport) were authorized by Ex-Additional Secretary (Admn) to prepare and process the bills on account of hiring charges. As far as payment of the hiring charges is concerned, in this regard it submitted that it was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(13)

responsibility of the Administration Section of Administration Department to send the bills to A.G Office for pre-audit, as expenditure on account of hiring charges are met out from the head of Account "01-General Public Service, 015-General Services, 051-Personal Services, 051501-Establishment Services General Administration, PR-4017-Establishment Department, AO-3919-Payment to others for Services Rendered" (Annexure-XI), which relates to Administration Section of Administration Department. This fact can also be confirmed from the note of Ex-Deputy Secretary (Admn) of Administration Department (copy enclosed at Annexure-XII). Thus the charge on account of hiring charges, as mentioned in the charge sheet, was totally incorrect and based on biased and malafide intention. As such, the amount of hiring charges added to the total amount of recovery is incorrect and malafide and the question of recovery on account of hiring charges does not arise in this case.

- vi. That according to Khyber Pukhtun Khwa Removal from Service Ordinance, 2000, the pension rules shall not be disturbed in any manner and kept intact in the Ordinance promulgated by a Dictator ruled for many years on Islamic Republic of Pakistan to crush

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(14)

the Government servants through it and to make them jobless, which is totally contrast with the E&D Rules and against the spirit of justice. The said Ordinance has been revoked by the National Assembly of Islamic Republic of Pakistan, through a Bill but the same is still in vogue in the Province of Khyber Pukhtun Khwa. Appellant expect that the Democratic Government of Khyber Pukhtun Khwa, would waive of the major penalty of "Dismissal from Service" and recovery of Rs.1,26,16,435/- and do justice to the low paid and poor Government servants.

vii. That the impugned order has not been signed by the competent authority, so has no legal value.

viii. That the charge sheet dated 19.01.2010 issued to appellant by the authority was on the basis of minutes of DAC meeting held on 18th, 19th and 22nd December, 2009 regarding Advance Paras on the accounts of Transport Section, Administration Department (Annexure-XIII). However, as per Para-2(G) of Government of Khyber Pukhtun Khwa, Finance Department letter No.SO(A/Cs)/FD/1-6/1997, dated 17.12.1997, the Department concerned should complete action on the decision of the DAC as quickly as possible well before the PAC

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EXAMINED
Khyber Pukhtun Khwa
Service Tribunal
Peshawar

meeting (Annexure-XIV). As such PAC is the competent forum for initiation disciplinary proceedings, if any, against the officers/ officials on the basis of Audit Paras. But it is astonishing to point out that the competent authority imposed the major penalty/ recovery in millions without fulfilling the requirements of Audit Paras.

- ix. That the competent authority has not ever provided breakup of amount of Rs.1,26,16,435/- from which the appellant would be able to ascertain the Head of account of expenditure and defend it properly.
 - x. That no benefit of 38 years rendered service was ever extended to appellant as appellant was due for retirement on the very next day.
 - xi. That the impugned orders dated 18.05.2010 or 29.06.2010 are based on malafide and therefore, are improper, unjust, arbitrary, discriminatory, without lawful authority and of no legal effect.
- C. That the appellate order is not based on legal footing as the same was rejected without the support of any reason. The Apex Supreme Court of Pakistan in plethora of the judgments has held that order of rejection of appeal shall be supported by cogent reason, while in the rejection order dated 29.06.2010 only word "reject" is used.

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Member (S) /
 Member (S) /
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 Member (S) /

(16)

D. That appellant has pointed out not only to the Enquiry Committed but also to the appellate authority that some other officers/ official save sole responsibilities in the subject matter for hiring of vehicles to the dignities of the Chief Executive and deposit auction money in the Government Treasury but both the authorities (Enquiry Committee & Appellate Authority) split over and did not take any notice on their behalf, so all were not equally and fairly dealt within the subject matter, thus discriminated.

It is, therefore, most humbly prayed that on acceptance of this appeal, order dated 18.05.2010 of respondent No.1 or 29.06.2010 of respondent No.2 be set aside and appellant be re-instated in service with all back benefits since 18.05.2010, with such other relief as may be deemed appropriate.

Au Omar
Appellant
Through *Saadullah Khan*
Saadullah Khan Marwat
Advocate,

Dated: 19.07.2010

Received on 19.07.2010
[Signature]
 Director
 Service Branch
 Peshawar

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 621
 01-06-22
 01-06-22

02.06.2021

Appellant in person present.

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Muhammad Adeel Butt learned Additional Advocate General for official respondents present.

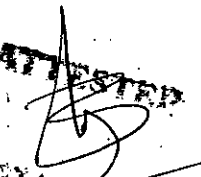
Appeal No.1606/2010 titled Balqiaz Khan Vs. The Government was dismissed in default and the present application has been filed for restoration of said appeal. It has been brought in knowledge of the Bench that another Appeal No.1379/2010 titled Ijaz Hussain Vs. Establishment Department involving similar question of facts and law is pending before this Tribunal. The dictates of justice demand that applicant/appellant should be given opportunity to argue his appeal on merits alongwith the connected appeal as mentioned before, therefore, the Appeal No.1606/2010 is restored. It be properly registered and this application stands consigned to the record room, copy whereof be placed on original file. To come up for arguments in the main Service Appeal No.1379/2010 on 14.07.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

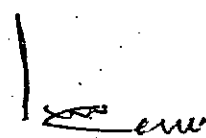
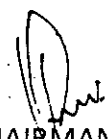
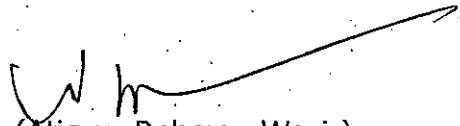
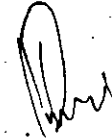
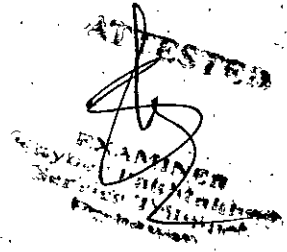
Form-A
FORM OF ORDER SHEET

(18)

BEF

Court of _____

Appeal's Restoration Application No. 126 /2020

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 03.09.2020 | <p>The application for restoration of appeal No. 1606/2010 submitted by Mr. Saadullah Khan Marwat Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 27.10.2020 | <p>This restoration application is entrusted to D. Bench to be put up there on <u>27-10-2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Petitioner in person and Addl. AG for the respondents present.</p> <p>The Bar is observing general strike, therefore, the matter is adjourned to 31.12.2020 for further proceedings before the D.B.</p> <p style="text-align: center;">  (Atiq-ur-Rehman Wazir) Member </p> <p style="text-align: right;">  Chairman </p> <p style="text-align: center;">  </p> |

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(19)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

C. M. No. 126 / 2020

IN

S.A No. 1606/2010

Govt. of KP & Others

Balqiaz Khan

versus



**APPLICATION FOR RESTORATION OF THE SUBJECT
APPEAL DISMISSED IN DEFAULT BY THIS HONORABLE
TRIBUNAL VIDE ORDER DATED 20-11-2018:**

Kyber Pakhtunkhwa
Service Tribunal

Entry No. 673

Dated 03-09-2020

Respectfully Sheweth,

1. That the subject Appeal along with two other connected Appeals were pending disposal before this hon'ble Tribunal against the impugned order dated 12-07-2010, dismissing applicant from service along with other colleagues:
2. That in the meanwhile, applicant along with two others appellants namely Amir Muhammad Durrani and Ijaz Hussain were arrested by the NAB in the case in hand on 10-12-2014.
3. That the said case was running in the hon'ble Tribunal which was fixed for 20-11-2018 for arguments but due to the proceedings in NAB the same was dismissed in default despite the fact that six other cases of the Counsel of the appellant were also fixed for further proceedings. (Copies attached)
4. That on 01-09-2020, applicant enquired about the case and it came to the knowledge for the first time that the said appeals were dismissed in default on 20-11-2018.
5. That Counsel for the applicant was of the view that the said appeals clubbed with are pending disposal till the final disposal of the case in NAB as similar connected appeal No. 1379/10, Ijaz Hussain vs Govt. & Others is still pending disposal before the hon'ble Tribunal which is fixed before 01-10-2020 for arguments.

Signature
Secretary
Peshawar

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6. That applicant was in Jail since 10-12-2014 and was released on 25-11-2018 and after enquiry on 01-09-2020, it came to the knowledge of the applicant that the appeal has been dismissed on 20-11-2018.

It is, therefore, most humbly requested that the application be accepted as prayed for after restoring the same and to decide it on merit with the connected appeal No. 1379/20.

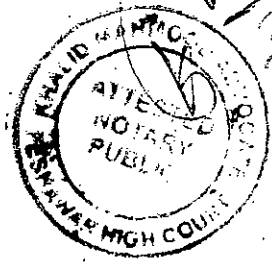
Balqiaz Khan
Applicant

Through *Saadullah Khan Marwat*
Saadullah Khan Marwat
Advocate

Dated 02-09-2020

AFFIDAVIT

I, Balqiaz Khan, Applicant do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief.



DEPONENT

Certified true copy
[Signature]
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

21

Service Appeal No. 1606/2010

Date of Institution ... 17.08.2010

Date of Decision ... 29.03.2022



Balqiaz Khan S/O Falak Sher, R/O Marghazar Colony, Swati Patoock, Peshawar. Ex-Assistant, Administration Department, Civil Secretariat Peshawar. ... (Appellant)

VERSUS

Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar and another. ... (Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant service appeal are that the appellant while posted as Cashier, Machinery and Equipment in the Administration Department, Government of Khyber Pakhtunkhwa, was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 on the charges mentioned as below:-

- i. You prepared and en-cashed false bills on fictitious vouchers for payment to firms which did not exist and for repairs, of official vehicles, which were never carried out;

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- ii. You drew an amount of Rs. 38,82,705/- as Cashier and embezzled the same by fabricating record of payments to fictitious firms namely Inayat Auto Workshop, New Toyota Auto Workshop, and Mercedes Auto Workshop, Peshawar;
- iii. You prepared and initiated for payment false repair bills amounting to Rs. 33,65,299/- in favour of M/S Mercedes Auto Workshop, University Road, M/S Inayat Auto Workshop, Tehkal Road and M/S New Toyota Workshop Bara Road, Peshawar; and
- iv. You Facilitated drawal and payment of Rs. 1,695,172/- from public exchequer, in June 2009, for purported payment to M/S Sajid Enterprises, 3rd Floor, Aaly Plaza, Fazal-e-Haq Road, Blue Area, Islamabad on account of providing twenty T-Prado for seven days in Shandur Festival, 2008 @ of Rs. 9,500/- day and their POL Charges of Rs. 4,73,374/- despite the fact that you knew that the bill was inflated against the actual payment of Rs. 5,31,000/-.

On conclusion of the inquiry, the appellant was awarded penalty of dismissal from service and recovery of Rs. 1.895 Million vide order dated 12th July 2010 passed by the competent Authority. The departmental appeal of the appellant was also rejected by the appellate Authority vide order dated 10.08.2010, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has argued that the allegations against the appellant are totally false, fabricated and misleading, which were not at all proved during the inquiry; that all the transactions were being carried out by the predecessor of the appellant and the appellant has been falsely roped in the matter; that the inquiry proceedings were conducted in utter violation of the relevant law and the appellant was not at all provided any opportunity to cross-examine the witnesses as well as co-accused examined during the inquiry; that the appellant was not provided copy of complete inquiry report, which has caused prejudice to the appellant as he was not in a position to properly defend himself; that the appellate

ATTESTED

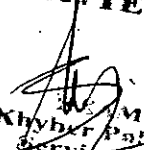
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Authority has not given any reasons for rejecting the departmental appeal of the appellant and as such the same was a non-speaking order, which is not maintainable in view of Section 24-A of General Clauses Act; that Syed Irfan Shah, the then Personal Assistant to Additional Secretary (Admn), Administration Department was also awarded major penalty of dismissal from service, however he has been exonerated by the appellate Authority vide Notification dated 9th July 2012. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. Conversely, learned Additional Advocate General for the respondents has contended that a regular inquiry was conducted against the appellant by complying the mandatory provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000; that the appellant was provided ample opportunity of defending himself, however he was unable to put forward any plausible reason in his defense; that final show-cause notice was issued to the appellant and he was also provided findings of the inquiry; that opportunity of personal hearing was also provided to the appellant by the competent Authority; that the appellant in connivance with the then Section Officer Transport as well as other officials had embezzled huge amount and the charges against him stood proved in a regular inquiry conducted in the matter; that the appellant has also been convicted by judge Accountability Court-II Peshawar and his conviction was upheld up to august Supreme Court of Pakistan. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that disciplinary action was taken against the appellant under Khyber Pakhtunkhwa Khyber Pakhtunkhwa Removal from Service

ATTESTED

 MINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

(23)

(Special Powers) Ordinance, 2000. In view of para-1 (c) of Section-5 of the said Ordinance, the inquiry committee was bound to have provided opportunity to the appellant to cross-examine the witnesses produced against him in the inquiry. The appellant has specifically alleged in his appeal that neither the witnesses were examined in his presence nor opportunity of cross-examination of the witnesses was provided to him but even then the respondents did not bother to refute the aforementioned assertion of the appellant by way of submitting statements of the witnesses alongwith the comments submitted by the respondents. Moreover, the burden to prove the allegations against the appellant was lying upon the shoulders of the respondents, however nothing is available on the record, which could show that the appellant has not been confronted with the incriminating material during the course of evidence recorded by the inquiry officer. Similarly, it is evident from perusal of the show-cause notice that the appellant was provided only copy of the finding of the inquiry committee. Competent Authority was required to have provided copy of complete inquiry report to the appellant so as to enable him to properly defend himself. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176 has graciously held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

7. According to the judgment dated 25.11.2017 passed by Judge Accountability Court-II Peshawar, the appellant has been held liable to have embezzled an amount of Rs. 13,06,518/- but on the other hand the competent Authority vide impugned order dated 12th July 2010, has ordered recovery of an amount of Rs. 1.895 Million from the appellant. In view of material dents in the inquiry

ATTESTED

Khyber
Service
Peshawar

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proceedings, conducting of de-novo inquiry in the matter has become inevitable.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service for the purpose of de-novo inquiry with the direction to the respondents to conduct de-novo inquiry strictly in accordance with the relevant law within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

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**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTUN
KHWA, PESHAWAR**



S.V.P. Peshawar
Service Tribunal
Diary No. 1768
Date 17/8/10

Service Appeal No. 1606 /2010

Balqiaz Khan S/O Falak Sher
R/O Marghazar Colony, Swati Pattock, Peshawar.
Ex-Assistant, Administration Department,
Civil Secretariat Peshawar. Appellant

Versus

1. Secretary, Government of Khyber Pukhtun Khwa,
Establishment Department, Peshawar.
2. Chief Secretary, Government of Khyber Pukhtun Khwa Civil
Secretariat, Peshawar. Respondents

<=> <=> <=> <=> <=> <=> <=> <=>

**APPEAL AGAINST OFFICE ORDER NO.SOE-
IV(E&AD)2(321)/98, DATED 12.07.2010 OF
RESPONDENT NO.1, WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE AND RECOVERY OF
RS.1.895 MILLION WAS ALSO IMPOSED BY HIM
FOR NO LEGAL REASON.**

<=> <=> <=> <=> <=> <=> <=> <=>

ATTESTED

OFFICER
Khyber Pakhtunkhwa
Peshawar

Respectfully Sheweth:

1. That appellant was appointed Junior Clerk in the year 1986 and was promoted to the post of Senior Clerk in the year 1996. He was further promoted to the post of Assistant in the year 1998. He was performing his duties in the Administration Department as Assistant when on

17/8/10

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9454



ایڈوکیٹ: محمد ظہیر خان

بار کونسل ایسوسی ایشن نمبر: 10-7764

رابطہ نمبر: 0300-9597670

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سویٹ ٹریسٹ / محمد ظہیر خان پختونخواہ پشاور

| | |
|-----------------------------|--------------------|
| منجانب: سائل / درخواست گزار | دعویٰ: S.A 1381/10 |
| | علت نمبر: |
| | مورخہ: |
| | جرم: |
| | تھانہ: |

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا روایتی متعلقہ

آن مقام پشاور کے ایڈووکیٹ محمد ظہیر خان کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف 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 سیکٹرفہ یا اپیل کی برائگی 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 قانون کے واسطے ہر جائزے کے لئے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختر منظور و قبول ہوگا دوران مقدمہ میں جو نوچہ ہر جائزہ 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: 22-06-2022

مقام کے لیے منظور ہے۔

Accepted
 2
 Accepted file

نوٹ: اس وکالت نامہ کی فونو کالی قابل قبول ہوگی۔

محمد ظہیر خان
 ایڈووکیٹ

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No. 318/2022 in Service Appeal No. 1381/2010

Ameer Muhammad Durrani.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others.....Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS

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Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

C.M. No. 318/2022 in S.A. No.1381/2010

Mr. Ameer Muhammad Durrani (Ex-PMS BS-17).....(Appellant)

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
2. Chief Secretary, Govt of Khyber Pakhtunkhwa, Peshawar.
..... (Respondents)


PARAWISE REPLY ON BEHALF OF RESPONDENTS

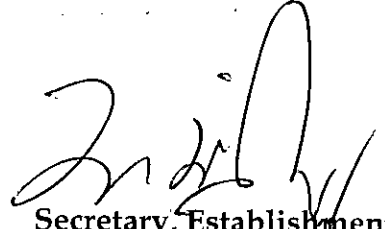
Respectfully Sheweth,

1. Need no comments.
2. Subject to proof before the honourable Tribunal.
3. **Correct to the extent that the honourable Tribunal in utter disregard of valid and legal objections of the Respondents and also in contravention of Section-9 of Khyber Pakhtunkhwa Service Tribunal Act 1974 restored the Service Appeals of Mr. Balqias Khan and Ijaz Hussain, which were badly hit by "The Limitation Act, 1908". As laid down in the said Act, for readmission of an appeal dismissed for want of prosecution, "restoration application" is required to be filed within thirty days (30) of the dismissal of the appeal, with sufficient cause/justification.**
4. Correct to the extent that the honourable Tribunal has partially allowed the appeal of Mr. Balqias Khan with direction to the respondents to conduct de-novo inquiry in the matter within a period of 60 sixty days. However, it is worth pointing that the appellant is not similarly placed with Mr. Balqias Khan as appeals of both the appellants have different facts and merits; worked in different capacities and penalties, commensurate to their respective inefficiency, misconduct and negligence in conduct of official business, were imposed upon as per their involvement in their capacity and grade. Thus relief granted to Mr. Balqias Khan cannot be extended to the appellant who deliberately held back from pursuing his case for years in the Tribunal owing to the merit of the case and waited for the outcome of the appeals of Mr. Balqias Khan and Ijaz Hussain and has now approached to the Tribunal for relief on the analogy of the afore-named appellants.
5. As explained in preceding paras that every case has its own facts and merits and in view of the same the fate of the case is decided/ determined. Likewise, the appeal of the appellant will be decided separately as per facts and merits of its own after the decision on the fate of restoration application. Hence the appeal of the appellant is not a connected appeal with that of Mr. Balqias Khan and therefore, he is not entitled for relief in view of the dictum laid down by the Supreme Court of Pakistan 1998 SCMR 1185.
6. As has been admitted by the appellant and explained in para-03 above, the appellant has not approached the honourable Tribunal within the statutory period of limitation. He has relied on the flimsy grounds like old age wherein law provides for alternative in the form of Power of Attorney and that he was under delusion that his counsel was pursuing his appeal

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alongwith other connected service appeals. Moreover, he has taken the plea that he was under arrest by NAB in ref.No02/15 but without clarifying as for how long and providing any proof to substantiate his claim.

It is, therefore, most humbly prayed that on acceptance of this written Reply, the instant Restoration Application being not within the statutory period of limitation/devoid of merit, may very graciously be regretted/ dismissed with costs.


Chief Secretary
Khyber Pakhtunkhwa
Respondent No.2

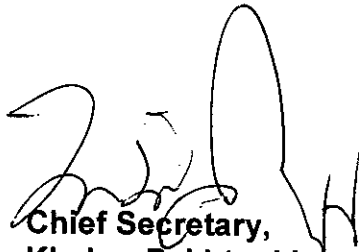

Secretary, Establishment
Department
Respondent No.1

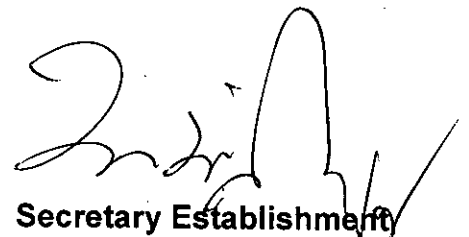
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION DEPARTMENT

AUTHORITY LETTER

Mr. Sultan Shah, Superintendent Litigation Section-I,
Establishment Department, Government of Khyber Pakhtunkhwa
is hereby authorized to submit Reply before the Service Tribunal,
Khyber Pakhtunkhwa Peshawar, in connection with C.M No.
318/2022 in S.A No. 1381/2010 titled as Mr. Ameer Muhammad
Durrani Versus Govt. of Khyber Pakhtunkhwa on behalf of
Respondents.


Chief Secretary,
Khyber Pakhtunkhwa
(Respondent No.02)


Secretary Establishment
Department
(Respondent No.01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No. 318/2022 in Service Appeal No. 1381/2010

Ameer Muhammad Durrani.....Appellant

Versus


Govt. of Khyber Pakhtunkhwa & Others.....Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS

AFFIDAVIT

I Sultan Shah Superintendent (Litigation) Establishment Department do hereby solemnly declare that contents of the Reply are correct to the best of my knowledge and record and nothing has been concealed from this Honourable Tribunal.

Deponent



(Sultan Shah)

Superintendent (Lit)

E & A Department

CNIC 17301-1286739-5

ATTACHED



10-8-22