

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

Service Appeal No.5724 of 2021

Muhammad Sajid (Ex-Warden)

Khyber Pakhtunkhwa
Service Tribunal

Case No. 4461

Dated 20/3/2023

APPELLANT

VERSUS

Government of Khyber Pakhtunkhwa and Other

.....Respondents

REJOINDER

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

- i. Not correct the Appellant has got cause of action, as he was awarded major penalty of removal from service without affording him ample opportunity as per law in order to put forward his defense.
- ii. Not correct, the Appeal is maintainable within the four corners of law.
- iii. Not correct, the Appellant has come to this Hon'ble Tribunal with clean hand.

- iv. *Not correct, the Appellant has got locus standi as the Appellant has done no gross misconduct and was suffering seriously from illness, and despite that the Appellant was awarded major penalty of removal from service.*
- v. *Not correct, all the necessary parties have been arrayed in the instant Appeal.*
- vi. *Not correct, the Appeal of the Appellant is well within time in the attending circumstance i.e covid-19*

ON FACTS:

- 1. *Not correct, whereas the para of Appeal is correct as during period of probation the appellant performed his duty as per directions of this high-up, that is why the appellant successfully completed his probation period.*
- 2. *Not correct, whereas the para of Appeal is correct. The performance of Appellant was upto the mark and performed his duty to the entire satisfaction of his seniors. The appellant performance during probation period was also upto the mark that is why the appellant*

successfully completed his probation period. More so that appellant remained absented due to serious illness and never absented willfully, which does not constitute any misconduct. Moreover no show cause notice ever served upon the appellant nor any absence notice ever served to the appellant at his home address.

3. Not correct, the health of appellant was critical and was unable to reach his place of duty. Moreover it was also covid-19 situation prevailing in which there were a lot restriction and hurdles to perform in smooth manner, so such provisions were not apso facto applicable.
4. Not correct, the Appellant was never contacted telephonically nor ever contacted by the inquiry officer and all the proceedings were conducted at the back of Appellant according to their whim and wishes, no proper inquiry ever been conducted. Had the appellant been informed, he would have submitted his written reply and appeared before inquiry officer for personal hearing. As for as the publication in newspaper is concerned, the Appellant was suffering from illness and was not in position to study newspaper on daily basis. So as the

absence of Appellant was not willful but due to serious illness therefore awarding major penalty of removal from service is illegal and against the natural justice.

5. *Not correct, the Appellant had genuine grievances as he was illegally awarded major penalty of removal from service. It is evident from the record of respondent i.e Absence Notice that the Appellant was given medical leave that confirm the stance of the Appellant that his absence from duty was not willful but due to serious illness, so the order of the appellate authority dated 17-3-2021 is illegal and not in line with proper appreciation of record.*
6. *Not correct, the departmental appeal was not responded within stipulated period and that is why the appellant filed a reminder to Respondent No.4 in order to ascertain the fate of his departmental Appeal. And similarly the impugned order never sent to the Appellant Home Address. Moreover rest of the reply is given in para no.5.*
7. *Not correct, whereas para no.7 of the appeal is correct.*

GROUNDS:

- A. *Not correct. The impugned order dated 17-02-2020 is illegal and against the law and facts of the case and not sustainable in the eyes of law.*
- B. *Not correct, whereas Para-B of the Appeal is correct.*
- C. *Not correct, no final show cause etc has ever been served upon the Appellant at his home address nor was intimated in whatsoever manner, had it been so, he would definitely manage to appear before inquiry officer for defending himself.*
- D. *Not correct, elaborated in preceding para that Appellant was suffering from serious illness and was unable to read newspapers on daily basis nor such facility was available to Appellant living in far flung village.*
- E. *Not correct, the appellant was not afforded opportunity to defend himself and all the proceedings were conducted at the back of appellant and was condemn unheard.*
- F. *Not correct, whereas Para-F of the appeal is correct.*

G. Incorrect, the Appellant was suffering from serious illness and it was also covid-19 situation, so the appellant did not violate rules 1082 and 1083 of Khyber Pakhtunkhwa prison rules 2018 in the prevailing situations.

H. Incorrect, the conduct, attitude and performance of the appellant during probationary period was up to the mark and to the entire satisfaction of his seniors that is why the appellant successfully completed his probationary period. Moreover there is no blame and what is mentioned in the ground of appeal is based on truth.

I. That appellant may seeks permission to raise additional grounds at the time of arguments.

It is most humbly prayed that the appeal be allowed as prayed for and a lenient view may please be taken.

Dated: 16/03/2023

APPELLANT

Through:

(WAHEED IQBAL),

(MEHER GUL),

(ANWAR ZEB)

Advocates High Court
Peshawar

Meher Gul Advocate

BC# 10-7354

meher.gul@gmail.com

Cell # 03062981781

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AFFIDAVIT

I, Muhammad Sajid S/O Spin Badhsah (Ex-Jail Warden) R/O Village Asot Kala P/O Ahmed Abad Tehsil Takhti Nasrati District Karrak, do hereby solemnly affirm and declare on Oath that the Contents of the Rejoinder are true and correct to best of my knowledge and belief and nothing has been concealed form this Hon'ble Tribunal.

M- saJid

DEPONENT

14203-6761653-7

Identified



WAHEED IBQAL

Advocate

High Court Peshawar.



16/03/2023

16-3-2023