

Service Appeal No.636/2021 titled "Abdul Bais-vs- Government of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others" and connected Appeal No637/20221 titled "Muhammad Tufail-vs- Government of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others" decided on 28.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.636/2021

Date of presentation of appeal20.01.2021
Dates of Hearing.....27.03.2023
Date of Decision.....27.03.2023

Mr. Abdul Bais, S/o Anwar Ul Haq, Junior Clerk (BPS-11), office of the Advocate General, Khyber Pakhtunkhwa, Peshawar resident of Chamkani Mohallah, Kada Khel, Peshawar.

.....(*Appellant*)

Versus

1. **Govt: of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar.**
2. **The Advocate General, Khyber Pakhtunkhwa, High Court Building, Peshawar.**
3. **The Accountant General, Khyber Pakhtunkhwa, Fort Road, Peshawar Cantt.**

.....(*Respondents*)

Present:

Mr. Muhammad Maaz Madni,
Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 24.08.2020 WHEREBY DIRECTION FOR MAKING RECOVERY OF EMOLUMENTS DRAWN FOR THE PROMOTED PERIOD OF SENIOR CLERK (BPS-14) IS ISSUED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL DATED 22.09.2020 OF

APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY (90) DAY.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No. 637/2021 titled "Muhammad Tufail-vs-Govt: of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar and others" both are decided as both are similar in nature and can conveniently be decided together.

2. Both the appellants are aggrieved of orders dated 24.08.2020, whereby direction for making recovery of emoluments drawn for the promoted period of Senior Clerk (BS-14) is issued and which no action was taken on the departmental appeal of the appellants within the statutory period of ninety days. The prayers in the appeals are that the impugned orders dated 24.08.2020 might be set aside to the extent of making recovery of emoluments and directions might be issued not to make such recovery.

3. According to the facts gathered from the record, the appellants were appointed in the respondent-department as Junior Clerk (BS-11); that the appellants thereafter promoted to the post of Senior Clerk (BPS-14); that one Mr. Izhar Ahmad, Junior Clerk (BPS-11) had challenged the promotion order dated 13.07.2015 of the appellant (Abdul Bais) before this Tribunal in service appeal No. 1316/2018, which was decided vide judgment dated 20.09.2019, "remitted the appeal to the respondents for again placing the case of

promotion of Junior Clerk against the post of Senior Clerk before the departmental promotion committee including the private respondents and the appellant for consideration"; that in pursuance of the judgment, the respondent department issued reversion order dated 24.08.2020, whereby promotion order of the appellants were recalled from the date of passing of the judgment i.e. 20.09.2019 and reverted them back to their original position of Junior Clerk (BPS-11) with a further addition in the impugned order that emoluments drawn in lieu of the promoted post of Senior Clerk (BPS-14) from the date of his promotion be adjusted/recovered; that the appellants feeling aggrieved, preferred departmental appeal which was not responded within the statutory period of ninety days, hence, these service appeals.

4. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

5. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

6. It was contended by the appellant that as the appellants were reverted back to his original post as Junior Clerk, therefore, the respondents were authorize to recover al emoluments from the appellants drawn by them on the post of Senior Clerk (BS-14).

7. Having heard both the sides and after going through the record it appears that the appellants were promoted by the respondents, which promotion was set aside by this Tribunal and as a consequence thereof both the appellants were returned from the post of Senior Clerk (BPS-14) to the post of Junior Clerk (BS-11) and further directed recovery of the emoluments drawn by the appellants during the promotion period. The impugned orders have been perused, which are signed by one Mr. Arshad Khan, Administrative Officer. The orders, as framed and drawn, reveal that these have been passed by the Administrative Officer and not by the worthy Advocate General himself. Besides the orders themselves mentioned the date of recalling of the promotion order to be w.e.f. 20.09.2019, which leads us to hold that it was not from the dates of promotion i.e. 03.07.2015 in case of the appellant Muhammad Tufail and 05.05.2017 in case of the appellant Abdul Bais. Be that as it may, the promotion orders are recalled on the basis of a judgment of the Tribunal passed on 20.09.2019. The judgment was passed in appeal No. 1316/2018 titled "Izhar Ahmad-vs-Government of Khyber Pakhtunkhwa and others" whereby the appeal was remitted to the respondents to again place the case of the appellants for promotion of Junior Clerks against the post of Senior Clerks before the departmental promotion committee including the private respondents and the appellant for consideration. The judgment nowhere required the respondents to recall promotion order are at least to make recovery of any emoluments received by any of the appellants rather the judgment required placement of the case of the appellant in appeal No. 1316/2018 and the appellants (before us) before the departmental promotion

committee for consideration of their promotion to the post of Senior Clerk (BPS-14). The recalling of promotion may though be as a consequence of further consideration but making direction for recovery of emoluments in pursuance of the judgment of the Tribunal was not justified. August Supreme Court of Pakistan in its judgment reported as 2020 SCMR 188 has held as below:

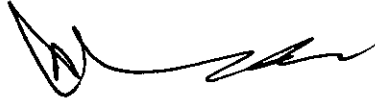
“---Higher selection grade (BPS) granted due to fault of department---Whether salary and benefits paid due to such fault/error could be recovered---Locus poenitentiae, principle of---Estoppel---Petitioner (civil servant) was appointed as senior auditor in BPS-11---Subsequently petitioner was erroneously granted selection grade BPS-15 and stated getting pay of such se4lection grade---Once the department realized its mistake, it reverted the petitioner back to BPS-11 and sought recovery of salary and benefits paid to him on the principle of locus poenitentiae---Held, that for almost 9 years the petitioner served in selection grade-15 was granted to the petitioner by the department itself and the petitioner apparently had no role in obtaining such post---When the petitioner performed the work of a higher post of selection grade BPS-15 for almost 9 years, then on the principle of locus poenitentiae the benefits paid to him, could not be recovered as said principle would not apply---Further the principle of estoppels would be applicable in the present case against the department from recovering the emoluments and benefits of BPS-15 from the petitioner---Petition for leave to appeal was converted into appeal and allowed.”

8. In view of the above discussion, the instant appeals are allowed. The Impugned order dated 24.08.2020 to the extent of recovery of emoluments is set aside. Copy of this judgment be placed in connected appeal No. 637/2021 titled “Muhammad Tufail-vs- Government of Khyber Pakhtunkhwa through

Service Appeal No.636/2021 titled "Abdul Bais-vs- Government of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others" and connected Appeal No637/20221 titled "Muhammad Tufail-vs- Government of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others" decided on 28.03.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others". Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 27th day of March, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

ORDER

27th March, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl: AG for the respondents present.

2. Vide our detailed judgement of today placed on file, the instant appeals are allowed. The Impugned order dated 24.08.2020 to the extent of recovery of emoluments is set aside. Copy of this judgment be placed in connected appeal No. 637/2021 titled "Muhammad Tufail-vs-Government of Khyber Pakhtunkhwa through Secretary, Law, Parliamentary Affairs & Human Rights Department, Civil secretariat, Peshawar and others". Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2023.*



(Kalim Arshad Khan)
Chairman



(Salah Ud Din)
Member(Judicial)