

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 238 /2023

In Service Appeal: 5690/2020

Pir Jan Alam Ex Senior Clerk Paramedical Institute of Technology
(PIMT) Dera Ismail Khan

..... Appellant

VERSUS


1. Secretary Health Khyber Pakhtunkhwa Peshawar.
2. Director General Health (PHSA) Khyber Pakhtunkhwa Peshawar.
3. Principal of Paramedical Institute of Technology (PIMP) Dera Ismail Khan .
4. Principal Public Health School Dera Ismail Khan.

..... Respondents

Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-7
3.	Copy of order dated 25/10/2022	B	8
3.	Wakalat Nama		

Dated 10/04/2023


Appellant/Petitioner

Through


Rooeda Khan



(11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. _____/2023

In Service Appeal: 5690/2020

Pir Jan Alam Ex Senior Clerk Paramedical Institute of Technology
(PIMT) Dera Ismail Khan

..... Appellant

VERSUS

1. Secretary Health Khyber Pakhtunkhwa Peshawar.
2. Director General Health (PHSA) Khyber Pakhtunkhwa Peshawar.
3. Principal of Paramedical Institute of Technology (PIMP) Dera Ismail Khan .
4. Principal Public Health School Dera Ismail Khan.

..... Respondents

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS FOR PROPERLY IMPLEMENT THE
JUDGMENT DATED 18/01/2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

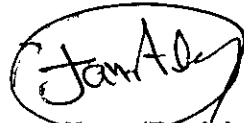
1. That the appellant/Petitioner filed Service Appeal No. 5690/2020 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 18/01/2022. (Copy of Judgment is annexed as Annexure-A).
2. That non-implementation of the above said Judgment the Petitioner filed execution petition No 5690/2020 in response of which the respondent Department submitted implementation report dated 25/10/2022 whereby the Judgment of this Hon' able tribunal has not been properly implemented. (Copy of order dated 25/10/2022 is attached as Annexure-B).
3. That the Petitioner submitted an application to respondent Department on 21/02/2023.

(2)

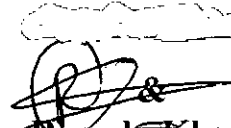
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by treating the Petitioner according to the Judgment passed on 18/01/2023.
5. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal in letter and spirit.

It is therefore requested that on acceptance of this Petition the respondent Department may kindly be directed to treat the appellant according to the Judgment passed by Hon' able Tribunal on 18.01.2022 by reinstating the Petitioner with effect from 18.01.2022 instead of 25/10/2022.

Dated 10/04/2023


Appellant/Petitioner

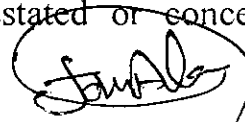
Through


Reeda Khan

Advocates High Court Peshawar

AFFIDAVIT

I, Pir Jan Alam Ex Senior Clerk Paramedical Institute of Technology (PIMT) Dera Ismail Khan do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.


DEPONENT



SA (31)

(1)



BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 3690 /2020

Khyber Pakhtunkhwa
Name of Tribunal
Dairy No. 5016
Dated 10/6/2020

Pir Jan Alam Ex-Senior Clerk Paramedical Institute
of Technology (PIMT) Dera Ismail Khan

Appellant

VERSUS

- ✓ 1. Secretary Health Khyber Pakhtunkhwa Peshawar.
- ✓ 2. Director General Health (PHSA) Khyber Pakhtunkhwa Peshawar.
- 3. Principal of Paramedical Institute of Technology (PIMT) Dera Ismail Khan.
- 4. Principal Public Health School D.I.Khan.

Respondents

admission
5500
10/6/2020
Registrar

SERVICE APPEAL U/S-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 21/02/2020 WHEREBY THE MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN AWARDED TO THE APPELLANT BY THE RESPONDENT DEPARTMENT AGAINST WHICH THE APPELLANT FILLED DEPARTMENTAL APPEAL DATED 06/03/2020 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUARY PERIOD OF 90 DAYS.

ATTESTED

Registrar
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

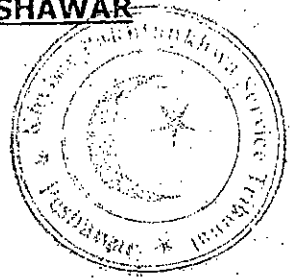
41

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5690/2020

Date of Institution ... 10.06.2020

Date of Decision ... 18.01.2022



Pir Jan Alam Ex-Senior Clerk Paramedical Institute of Technology (PIMT) Dera
Tsmall Khan. ... (Appellant)

VERSUS

Secretary Health Khyber Pakhtunkhwa Peshawar and others.
... (Respondents)

Rozeda Khan,
Advocate ... For Appellant

Javed Ullah;
Assistant Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as a Senior Clerk, was proceeded against on the charges of misconduct and was ultimately awarded with major punishment of removal from service vide order dated 21-02-2020; against which the appellant filed departmental appeal dated 06-03-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 21-02-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that there is no proof and evidence available

STED
MEMBER
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

with respondents against the appellant regarding the allegations leveled against the appellant; that no opportunity of personal hearing or defense has been afforded to the appellant and the appellant was condemned unheard; that neither statement of any witness was recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, thus skipped a mandatory step as prescribed in law; that the appellant is not competent authority to make appointments; that the penalty so awarded is harsh which does not commensurate with gravity of the guilt.

03. Learned Assistant Advocate General for the respondents has contended that disciplinary proceedings against the appellant were initiated on 14-11-2019 and the inquiry committee found the appellant involved in dealing of a fake appointment order/recruitment of one Mr. Muzamil; that the appellant was found working as a middle man in issuance of fake appointment order; that the inquiry committee found that the appellant had taken Rs. 300000/ from father of Muzamil and gave it to other official Fayaz, who provided fake appointment order to father of Muzamil; that role of the appellant was very vital in the issue and he was required to be dealt with accordingly; that before imposition of major penalty, all codal formalities were fulfilled, the appellant was properly charge sheeted, proper inquiry was conducted and the appellant was afforded appropriate opportunity of defense, but the appellant utterly failed to prove his innocence.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was posted as senior clerk in the office of Paramedical Institute of Technology (PITM) DIKhan. A fake appointment order in respect of one Mr. Muzamil, who was son of a retiring class-iv employee and who otherwise, was eligible to be appointed against the post on retired son quota was handed over to him, upon which Mr. Muzamil reported his arrival in the office of Public Health School D.I.Khan, but his appointment order was sent by the

ATTESTED

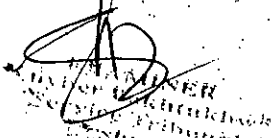


(b)

principal of the school to the appointing authority for verification, which was found bogus. To this effect, a preliminary inquiry was conducted and found involved the appellant as well as others in issuance of the fake appointment order, for which the appellant was served with charge sheet/statement of allegation dated 14-11-2019. The appellant responded and denied all such allegations. The appellant was issued show cause notice dated 08-01-2020, which was also responded by the appellant and inquiry to this effect was also conducted. The inquiry committee neither recorded statement of any witnesses in presence of the appellant nor the appellant was afforded any opportunity to cross-examine such witnesses, thus skipped a mandatory step as prescribed in law and in a manner, the appellant was deprived of an opportunity to defend his cause. The respondents also violated rule 11(1) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. There were no evidences, examination of prosecution witnesses or opportunity of cross-examination, hence the proceedings so conducted were not in accordance with law and such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS) 997 and 2019 SCMR 640.

06. The inquiry officer without any solid proof only based his findings on the statement of a single person i.e. father of Muzamil and that too, without any support of other witnesses. The inquiry committee preferred to consider this single reason enough for holding him responsible based on presumptions; facts however, had to be proved and not presumed, particularly for awarding major penalty of dismissal from service. Reliance is placed on 2002 PLC (CS) 503 and 2008 SCMR 1369. The inquiry officer failed to establish as to how in the absence of any incriminating evidence charges can be established against the accused. It has been held in various judgments of the apex court that regular inquiry is must before imposition of major penalty of dismissal from service, which however was

ATTESTED

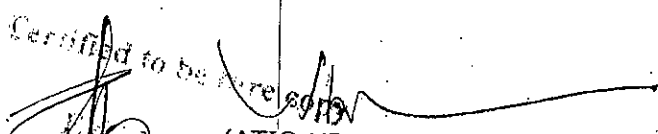

CHIEF EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

not done in case of the appellant. We are of the considered opinion that the respondents badly failed to prove the allegations leveled against the appellant and penalized the appellant only because of presumptions, which however was not warranted. Another interesting aspect of the case is that Mr. Muzamil, who was initially appointed on fake appointment order, was later on regularly appointed against such post, without penalizing him for acquiring his appointment order through illegal means. Father of Mr. Muzamil also confessed that he had received the amount taken from him as bribe, but without mentioning as to who returned such amount to him. Moreover, keeping in view merit of the case, the penalty so awarded appears to be harsh. Competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt, Otherwise the law dealing with the subject would lose its efficacy. Reliance is placed on 2006 SCMR 1120.

07. We are of the considered opinion that though role of the appellant was dubious, but charges were not fully established against him, hence keeping in view the above cited discussion, we are inclined to partially accept the instant appeal by converting the major punishment of removal from service into stoppage of two annual increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
18.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
Kyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 21-3-23

Number of Page 5

Copying Fee 25/-

Urgent 5/-

Total 30/-

Name of Copyist

Date of Copy made

Date of Delivery of Copy 21-3-23

(B 8)



PROVINCIAL HEALTH SERVICES ACADEMY
Government of Khyber Pakhtunkhwa
Department of Health



OFFICE ORDER

WHEREAS Mr. Jan E. Alam Ex-Senior Clerk (BS-14) was removed from service under ESD Rules 2011 vide No. 42/PHSA/Admn/Equity/2019 20-1126 32 dated 21.02.2020

AND WHEREAS (being aggrieved) he filed Service Appeal in Khyber Pakhtunkhwa Service Tribunal Peshawar No. 5690/2020 dated 10.03.2020;

AND WHEREAS, after several rounds of arguments the KP Service Tribunal announced judgment on 18.01.2022 stated as

"We are inclined to partially accept the instant appeal by converting the major punishment of removal from service into stoppage of two annual increments for two years. The intervening period is treated as leave without pay"

AND WHEREAS, in compliance of the above judgment, he submit arrival report on 1.04.2022

AND WHEREAS the department after getting opinion from law department, filed CPLA No. 452-0/2022 in the Apex Court, which is still pending for adjudication,

AND WHEREAS the appellant again filed Execution Petition No. 278/2022 for implementation of judgment dated 18.01.2022

AND WHEREAS Tribunal directed to come up for Implementation report on 27.10.2022;

NOW THEREFORE, in compliance, the judgment dated 18.01.2022 is hereby conditionally implemented subject to the outcome of the ibid CPLA in Supreme Court of Pakistan as follow.

1. Mr. Jan E. Alam Ex-Senior Clerk (BS-14) is hereby re-instated into service with effect from 21.02.2020 with stoppage of two annual increments for two years.
2. The intervening period with effect from 21.02.2020 till 31.03.2022 is hereby converted into leave without pay.
3. The pay with effect from date of his arrival i.e 1.04.2022 till date is hereby adjusted against the vacant post at Paramedical Institute of Medical Technologies (PIMT) DI Khan

Subsequent to the above, Mr. Jan E. Alam Senior Clerk (BPS-14) is hereby posted at PIMT DI Khan against the vacant post of Senior Clerk (BPS-14) in the best public interest.


-Sd-

DIRECTOR GENERAL
PHSA PESHAWAR.
Dated 25/10/2022

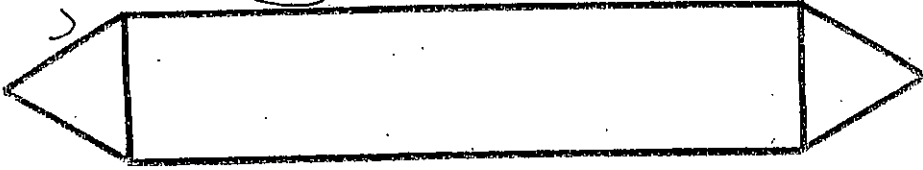
No. 03 /Admn/Office order/2022-23/ 1490

Copy forwarded for information;

- Registrar Service Tribunal Khyber Pakhtunkhwa.
- Chairman Service Tribunal Camp court DI Khan.
- Principal PIMT DI Khan.
- Section Officer Lit-II Health Département Peshawar
- District Accounts Officer DI Khan
- Deputy Director IT PHSA Peshawar
- Litigation Officer PHSA Peshawar.
- PS to Secretary Health Khyber Pakhtunkhwa Peshawar.
- PA to Deputy Secretary (Litigation) Health Department Peshawar.
- Mr. Jan E Alam Senior Clerk PIMT DI Khan
- Personal file.


DIRECTOR GENERAL,
PHSA PESHAWAR.

بعدالت سدوسہ کی سروس کے لئے



2023ء منجانب ایڈووکیٹ

سر جان ایف بیام سلیو

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام پشاور

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 کی تقریر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2023ء

ماہ اپریل

صا

المرقوم

العبد د گ واہ العبد

کے لئے منظور ہے۔

ACCEPTED BY

مقام