

09.06.2017

Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for official respondents No. 1 & 2 also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 10.10.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

10/10/2017

Clerk of counsel for the appellant and Additional AG for the respondents present. Seeks adjournment as counsel for the appellant is not in attendance. To come up for arguments on 12/1/2018 before DB.


Member


Chairman

12.01.2018


Mr. Atta-ur-Rahman one of the appellant in connected appeal present. Mr. Zia Ullah, DDA present. Counsel for the appellant was stated to have been elevated and requested for adjournment to engage another counsel. Adjourned. To come up for argument on 15.03.2018 before D.B.


Member


Chairman

15.03.2018


None present on behalf of the appellant. Learned Deputy District Attorney for the respondents present. Case called for several times but no one appeared on behalf of the appellant. Consequently the present appeal is dismissed in default. File be consigned to the record room.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

19.09.2016

Clerk of counsel for the appellant and Mr. Sultan Shah, Supdt alongwith Addl: AG for official respondents present. Written reply on behalf of respondent No.3 not submitted. Fresh Notice be issued to private respondent No.3. To come up for written reply of respondents No. and 3 on 14.11.2016 before S.B.



Member

14.11.2016

Agent of counsel for the appellant and Asstt. AG for the respondents present. Written reply by respondent No. 3 not submitted. Proceeded ex-parte. The appeal is assigned to D.B for rejoinder and final hearing for 17.01.2017.


Chairman

17.01.2017

Clerk counsel for appellant and Mr. Muhammad Jan, GP for official respondents No. 1 & 2 present. Rejoinder not submitted. Clerk counsel for appellant requested for time to file rejoinder. Adjourned. To come up for rejoinder and arguments on 09.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER
(ASHFAQUE TAJ)
MEMBER

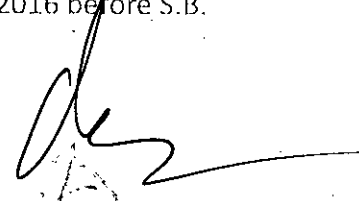
27.4.2016

Agent of counsel for the appellant and Mr. Sultan Shah, Assistant alongwith Addl: A.G for the official respondents present. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 20.05.2016 before S.B.


Chairman

20.05.2016

Clerk to counsel for the appellant and Mr. Sultan Shah, Assistant alongwith Mr. Kabirullah Khan Khattak, Assistant AG for official respondents No. 1 & 2 present. Para-wise comments on behalf of official respondents No. 1 & 2 submitted. None present on behalf of private respondent No. 3. Notice be issued to private respondent No. 3 for submission of written reply/comments for 10.08.2016 before S.B.


Member

10.08.2016

Agent to counsel for the appellant and Addl. AG for respondents present. Written reply of respondent No.3 not submitted. To come up for written reply/comments of respondent No.3 on 19.09.2016.


Member

11.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is a civil servant of Executive Group and terms and conditions of the appellant are governed by the then Provincial Civil Services (Secretariat/Executive Rules 1997. That the appellant was entitled to promotion but ignored constraining him to prefer service appeal for ante-date promotion which was allowed vide judgment dated 13.3.2009 where-against appeal of the department before the august Supreme Court of Pakistan was dismissed on 24.5.2012 and, therefore, on the strength of the said judgments notification dated 25.7.2012 was issued giving ante-date promotion to appellant with effect from 1.2.2005 and there-after appellant was promoted to BPS-18 on 9.2.2012. That on the strength of Rule-8 of the KPK Provincial Management Service Rules, 2007 and amendment dated 12.11.2007, the appellant stood senior to civil servant belonging to PMS Group. That despite seniority of the appellant and the afore-stated rules, respondent No. 3 Amir Afaq (PMS) was appointed in BPS-19 on acting charge basis and with an object to deprive the appellant from his vested right of promotion constraining the appellant to prefer departmental appeal against the impugned notification dated 21.11.2014 on 18.12.2014 which was not responded and hence the instant service appeal on 16.4.2015.

Appellant Deposited
Security Process Fee


That the appellant is entitled to promotion in preference to respondent No. 3 as the appellant belongs to the Executive Cadre while respondent No. 3 belongs to PMS Group and, therefore, the appellant stood senior.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 27.4.2016 before S.B.


Chairman

14.10.2015

Counsel for the appellant, Assistant A.G for official respondents No. 1 and 2 and agent of counsel for private respondent No. 3 present. Reply by private respondent No. 3 submitted while request for adjournment was made on behalf of official respondents No. 1 and 2. To come up for reply to application on behalf of official respondents No. 1 and 2 and arguments on 28.01.2016 before S.B.


Chairman

28.1.2016

Counsel for the appellant, Addl: A.G for official respondents and counsel for private respondent No. 3 present. Arguments heard and record perused.




21-3-21
The appeal was dismissed in default on 2.7.2015. The same was dismissed when fixed for preliminary hearing as such there is no obstacle in restoring the appeal. Therefore, the application is accepted and appeal restored. To come up for preliminary hearing on 11.2.2016 before S.B.


Chairman

FORM OF ORDER SHEET

Court of _____

Misc. Application No. 82/2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/07/2015	<p>The application for restoration of appeal no. 337/2015 submitted by Mr. Naeem Anwar through Mr. Shakeel Ahmad 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-	10-8-15	<p>This Misc. application be put up before S. Bench on <u>13-8-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	13.08.2015	<p>Counsel for the petitioner/appellant present. Notice to respondents be issued for 14.10.2015 before S.B. The original record be also requisitioned.</p> <p style="text-align: right;"> Chairman</p>

Before the Khyber Pakhtukhwa, services Tribunal, Peshawar.

Service Appeal no 337 / 2015 } misc-application no. 82/15
Naeem Anwar }
Additional Secretary Sports }
Civil Secretariate, Peshawar }
Appellant

G.W.F. PROVINCE
Service Tribunal
Diary No. 802
Date 31-7-15

Versus

1. Govt of KPK, through secretary establishment department, Peshawar.
2. Govt of KPK, through Chief Secretary, Civil Secretariat, Peshawar.
3. Amir Afaq (PMS-bS-19) presently serves in P & D department, Civil Secretariat, Peshawar.

Respondents

Petition for the restoration of the

Captioned case dismissed in default

Vide order dated

Respectfully Sheweth:

1. That the captioned case was fixed for hearing for 02-7-15 and was dismissed in default of the same day.
2. That though, the case was noted for hearing on the notice, but, inadvertently and wrongly entered the date in the diary 31-7-15 by the clerk of the counsel for the petitioner (Copy of the diary is annexure A).
3. That the absence of the counsel or the petitioner on the date of hearing was neither intentional nor deliberate, but due to the reason stated above.
4. That the valuable rights of the petitioner is involved, the same would be defeated. If the case is not restored and decided on merits.

5. That even otherwise, law tilts in favour of adjudication on merit, rather than on technicalities.
6. That the application is well within time.

It is therefore prayed that on acceptance of this petition, the captioned case may be restored in the interest of justice.

Petitioner

Through



Shakeel Ahmad

Advocate, Peshawar

AFFIDAVIT

It is stated on oath that all the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Rana
3/17/10



Amir
Deponent.

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Misc: Application No. _____/2015
In Service Appeal No. _____/2015

Naeem Anwar, Additional Secretary Sports, Civil Secretariat Peshawar.
Appellant

VERSUS

Govt of Khyber Pakhtunkhwa and others. Respondents.

REPLY TO THE APPLICATION ON BEHALF OF
RESPONDENT NO. 3

Preliminary Objections:

1. That the application in hand is not maintainable.
2. That the application in hand is hopelessly barred by time, there is no application for condonation of delay, hence the application deserves summary dismissal.
3. That the application in hand is not supported by any application for the condonation of delay, hence the same is liable to be dismissed summarily.
4. That the appellant showed slackness and negligence in pursuing the case hence not entitled to any leniency.
5. That valuable rights have been created in favour of the replying respondents on the dismissal of the appeal, therefore, the appeal cannot be restored.

ON FACTS:

1. Contents need no reply. Neither the appellant nor his counsel was present to have pursued their case.
2. Contents misconceived and incorrect. The appellant though were allowed the date but they remained negligent in pursuing their case, the counsel as well as the appellant remained absent, the explanation given is not based on fact.

3. Contents misconceived and incorrect. The appellant and his counsel were not vigilant enough to pursue their case, therefore, the same was rightly dismissed by this Honorable Tribunal.
4. Contents misleading and incorrect. On the dismissal of the appeal valuable rights are created in favour of the replying respondents, similarly the appellant is required to have explained each day delay while submitting the application.
5. Contents misleading and incorrect. The law of limitation cannot be termed as mere technicalities.
6. Contents misleading and incorrect. The application in hand is hopelessly barred by time.

It is, therefore, prayed that on acceptance of this reply the application in hand be dismissed with costs.

Respondent No. 3

Through


2
IJAZ ANWAR
Advocate Peshawar

Verification

I do hereby solemnly affirm on this 14th day of October, 2015 at Peshawar declare that the contents of the above reply are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent 

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Misc: Application No. _____/2015
In Service Appeal No. _____/2015

Naeem Anwar, Additional Secretary Sports, Civil Secretariat Peshawar.
Appellant

VERSUS

Govt of Khyber Pakhtunkhwa and others. Respondents.

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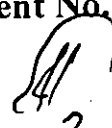
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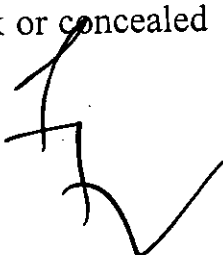
Through


2
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Advocate Peshawar

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Deponent



POWER OF ATTORNEY

In the Court of WPC Service Tribunal Peshawar
Naeem Anwar

- } For
- } Plaintiff
- } Appellant
- } Petitioner
- } Complainant

VERSUS

Govt or WPC and others } Defendant
 } Respondent
 } Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

And Sajid Amin Khan my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Peshawar
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

Accepted
Sajid Amin Khan

Algebraic numbers
with positive total degree

Proof or logic and others

For details see the book

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Algebraic
numbers