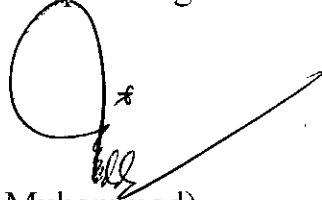


02.01.2023

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel has proceeded for performing of Umra. Adjourned. To come up for arguments on 28.02.2023 before the D.B.

SCANNED
KPST
Peshawar



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

28th Feb. 2023


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

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 03.05.2023 before the D.B. P.P given to the parties.

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member(E)



(Salah-ud-Din)
Member (J)

31.08.2022

Clerk of learned counsel for the appellant present.
Mr. Kabirullah Khattak, Additional Advocate General for
the respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is
on leave, therefore, arguments could not be heard.
Adjourned. To come up for arguments on 14.11.2022
before the D.B.



(Saif-ud-Din)
Member (Judicial)

14.11.2022

Junior to counsel for the appellant present.

Muhammad Riaz Khan Paindakhel, learned Assistant
Advocate General for respondents present.

Learned Member (Judicial) is on leave, therefore,
arguments could not be heard. Adjourned. To come up for
arguments on 02.01.2023 before D.B

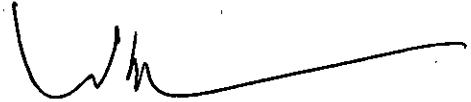


(Fareeha Paul)
Member (E)

SCANNED
KPST
Peshawar

13.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Abdul Bais, Junior Clerk for respondents present and submitted reply/comments which are placed on file. To come up for rejoinder if any, and arguments before the D.B on 11.05.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)

11-5-22

*Proper DB not available in case is
adjourned on 20-6-22*

*Yusuf
Rahman*

20th June, 2022

Appellant present in person. Mr. Naseer Ud Din Shah, Asstt. AG for the respondents present.

The appellant is going to file rejoinder today and also seeks time for arguments. He shall file rejoinder today failing which the appeal will be heard without the rejoinder. Appellant is directed to ensure attendance of his learned counsel on the next date. To come up for arguments on 31.08.2022 before the D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman


Stipulated period passed reply not submitted.


14.10.2021

Appellant in person present.

Javid Ullah, learned Assistant Advocate General for respondents present.

Reply on behalf of respondents is still awaited. Learned A.A.G made a request for time to submit reply/comments; granted with direction to furnish the same within 10 days in office. If the reply/comments are not submitted within stipulated time, right of the respondents for submission of reply shall be deemed as struck off. To come up for arguments on 04.11.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)

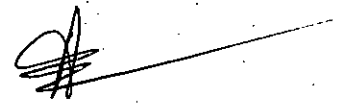

(Rozina Rehman)
Member (J)

04.11.2021

Counsel for the appellant and Mr. Javidullah, Asstt. AG alongwith Gulzad Khan, SI(legal) for the respondents present.

Reply/comments have not been submitted despite extension of time. Last chance is given to the respondents for submission of reply within 10 days in office, failing which the right of the respondents for reply shall be deemed as struck off. To come up for arguments on 18.01-22 before the D.B.


(Rozina Rehman)
Member(J)


Chairman

08.06.2021

Counsel for the appellant present. Preliminary arguments heard.

SCANNED
KPS
PESHAWAR

Points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 14.10.2021 before the D.B.

Appellant Deposited
Security & Process Fee

9/6/21

R

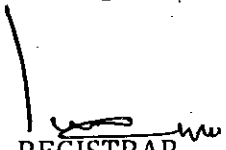



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 508 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/01/2021	<p>The appeal of Mr. Sher Khan resubmitted today by Qazi Jawad Ehsanullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/02/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	22.02.2021	<p>The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 08.06.2021.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Sher Khan Computer Operator received today i.e. on 31/12/2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Appeal has not been flagged/ marked with annexures' marks.
- 3- Memorandum of appeal may be got signed by the appellant.

No. 07 /S.T,

Dt 4/01 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Qazi Jawad Ehsanullah Adv. Pesh.

Re-Submmitted after necessary
Correction in appeal filed on 31/12/2020.


05.01.21
Mian Zakeer Hussain
Advocate High court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

508
Service Appeal No...../2020

Sher Khan

Versus

The Secretary & another

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2	Dismissal Order Nos. 7767-69/A.G & 7771-73/A.G dated 30-04-2014	B	11-12
3	Copy of order/ Judgment of Service Tribunal in Service Appeal No. 1211 & 1212/2014 dated 16-02-2018	C	13-18
4	Copy of order/Judgment of Supreme Court in Civil Petition No. 1120/2018 dated 10-01-2019	D	19-21
5	Copy of order/Judgment of Supreme Court Civil Petition No. 1131 & 1415/2018 dated 18-10-2019	E	22-23
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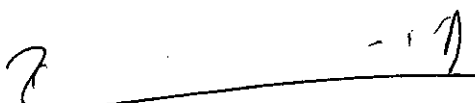
Dated:

APPEALLAT

Sher Khan

Computer Operator,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar

Through


QAZI JAWAD EHSANULLAH
Advocate Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No...../2020

Sher Khan

Computer Operator,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar
R/O Lala Zar Colony University Campus,
Peshawar

.....APPELLANT

Versus

1. The Secretary

Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs Department,
Peshawar

2. The Advocate General

Govt. of Khyber Pakhtunkhwa, Peshawar
Office at Peshawar High Court Peshawar

.....RESPONDENTS

SERVICE APPEAL under section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act, 1974, against
the order No. 15315/AG/PF/Sher Khan/2020 dated
09.12.2020 passed by Respondent No. 2 on the
Departmental Appeal of the appellant, whereby
latter was denied back benefits no legal and valid
grounds

Respectfully sheweth;

1. That the appellant joined the office of the Advocate General Khyber Pakhtunkhwa on 28.05.2003 as Data Processing Supervisor BPS-14 (presently upgraded *vide* Notification dated 29.07.2016 as Computer Operator BPS-16). This appointment of the appellant had taken place after selection through Khyber Pakhtunkhwa Public Service Commission, Peshawar. Since then the appellant had been performing his duties efficiently and with honesty till date.
2. It is as back as in the year 2014 that the issue of the late filing of appeals etc. in different cases by the office of Advocate General Khyber Pakhtunkhwa had cropped up before Respondent No. 2. And it was in that context the appellant herein was made a scapegoat. He was served with two different Show Cause Notices No. 4775/AG dated 08.03.2014 and No. 6327/AG dated 01.04.2014. To the aforesaid two Show Cause Notices, the appellant had duly responded by way of filing his detail reply. However, the competent authority had issued two different orders bearing Nos. 7767-69/A.G and 7771-73/A.G both dated 30.04.2014, whereby in both these cases major penalty of "*dismissal from service*" was inflicted upon the appellant.
3. Against this, the appellant did file departmental appeals before the competent authority, and because no response was made to his appeals, he was constrained to approach this august Tribunal by way of filing two different Service Appeals which had been registered and numbered as Service Appeal Nos. 1211 and 1212 of year 2014. Both these appeals were decided by this august Tribunal on 16.02.2018, whereby major penalty of '*dismissal from service*' in both these cases was done away with, and was converted into minor penalty of (i) withholding 2 Annual Increments for a period of two years and (ii) of issuance of *censure* respectively.

4. The appellant as well as respondents have questioned the aforesaid two judgments dated 16.02.2018 of this august Tribunal before the apex court by way of filing different Civil Petition Nos. 1120, 1131 and 1415 of 2018. These petitions had come up for hearing before the apex court on 10.01.2019, whereby an order / judgment was passed in CP No. 1120 of 2018 directing the learned Advocate General of the province to conduct fresh inquiry into the allegations against the appellant after confronting him with the specific details of the cases in which he was alleged to have been negligent or in breach of duty. As regard Civil Petition No. 1131 and 1415 of 2018 the matter was remanded back to the Tribunal to decide the same afresh after examining the record of fresh inquiries and evidence recorded therein *vide* judgment and order of the apex court dated 18.10.2019.
5. In post-remand proceedings, this august court had examined the entire record and scrutinized the same with the able assistance of departmental representative as well as counsel for the appellant. And it was found that there was no documentary evidence to support the charges leveled against the appellant. Thus, the appellant was reinstated into service and the impugned order of dismissal from service was set-aside. Nevertheless, The respondents were held to be at liberty to conduct *de novo* inquiry in accordance with law and rules. As regard the issue of back benefits, the same were held subject to the final outcome of *de novo* inquiry.
6. Consequently, *de novo* inquiry was also conducted by the office of Advocate General Khyber Pakhtunkhwa in which the appellant was held not guilty and was also held entitled for reinstatement. Resultantly two office orders bearing Nos. 8677-83/AG and 8684-90/AG dated 13.08.2020 were passed, whereby warning was issued to

the appellant and no order as regards his entitlement to back benefits was passed.

7. Against the aforesaid two orders both dated 13.08.2020, the appellant had filed departmental appeals and claimed that he was fully entitled for back benefits not only because he was held not guilty in the inquiry but also for the reason that he was fully entitled under the law to be granted the same in view of the peculiar facts and circumstances of the case. Said departmental appeal was turned down by Respondent No. 2 *vide* his order No. 15315/AG/PF/Sher Khan/2020 dated 09.12.2020, which order was communicated to the appellant on the following day i.e. on 10.12.2020.

8. Placed in the aforesaid predicament, the appellant herein seeks indulgence of this august Tribunal in the matter against the order dated 09.12.2020 passed on departmental appeal by respondent No. 2 *inter alia* on the following

G r o u n d s

A. It is a matter of record that thrice there had been inquiries conducted into the allegations leveled against the appellant. In the last few of them no tangible nexus of the appellant was found as regards accusations raised against him. Therefore, not only this august Tribunal but even the apex court had held that inflicting of major penalty of dismissal from service was not at all justified. Not only this, but inflicting of minor penalties was also held not sustainable and it was ordered that there should be *de novo* inquiry in to the matter so as to reach to a just conclusion.

B. Once it had been categorically held that inflicting of major penalty of dismissal from service was not sustainable in law and there was no denying the fact that the petitioner did not remain in any gainful employment during the period he was

unjustifiably kept out of service, his entitlement for back benefits was / is fully established.

- C. Even issuance of any kind of warning was / is also not justified in the matter because the *de novo* inquiry report itself concludes quite unequivocally that appellant was not responsible for the delay in filing cases which he was accused of.
- D. This august Tribunal has already decided in its post-remand order dated 07.01.2020 that the issue of back benefits will be subject to the final outcome of the *de novo* inquiry. However, the record shows that although the appellant was in substance exonerated in the *de novo* inquiry, yet no finding on the plea of appellant claiming back benefits was rendered by the competent authority.
- E. The order passed by Respondent No. 2 on the Departmental Appeal is also against the settled principles of law and natural justice. This order in appeal refers to few applications of the appellant, the contents whereof reveal that appellant did make certain requests for reinstatement and craved that no further inquiry into the matter be held so as to alleviate his long drawn suffering due to the fact that he had been out of job for quite a long time and was under immense financial constraints. The record further unfolds that these requests of the appellant were never ever considered and were rather turned down because in pursuance thereof neither was the appellant reinstated nor were *de novo* inquiries ordered to be dispensed with. In view thereof, the respondents are *estopped* by their own conduct to press into service those applications / requests of the appellant or any offer made by him which at the relevant time was not at all considered or entertained.

F. As per settled principle of law in the matters of back benefits, the prime considerations are that the removal / dismissal from service is held to be not sustainable in law and that the civil servant had not remained in any gainful employment during the period he was unjustifiably kept out of job. Because these two legal requirements are fully met in the present case, therefore, the appellant is fully entitled for grant of back benefits and there is no valid reason why he should be issued with a warning to remain vigilant in future.

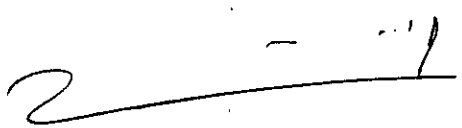
G. Any other legal ground that may be raised at the time of arguments with the prior permission of the court


It is, therefore, humbly prayed that on acceptance of this Service Appeal, the impugned order No. 15315/AG/PF/Sher Khan/2020 dated 09.12.2020 passed on the departmental appeal of the appellant may please be set aside and the respondents may be directed to allow / grant to the appellant all his back benefits in terms of salaries, allowances, promotions etc. during the period he was unjustifiably kept out of service.

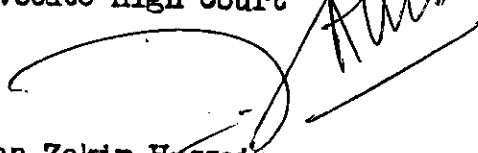
Dated: 31-12-2020

Appellant

Through


Qazi Jawad Ehsanullah
Advocate Supreme Court of Pakistan

& 
Salman Fayyaz Mir
Advocate High Court


Mian Zakir Hussain
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

6/A

Service Appeal No...../2020

Sher Khan

Versus

The Secretary & another

ADDRESSES OF THE PARTIES

APPELLANT

Sher Khan

Computer Operator,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar
R/O Lala Zar Colony University Campus,
Peshawar

RESPONDENTS

1. The Secretary

Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs Department,
Peshawar

2. The Advocate General

Govt. of Khyber Pakhtunkhwa, Peshawar
Office at Peshawar High Court Peshawar

Appellant

Through


Qazi Jawad Ehsanullah
Advocate Supreme Court of Pakistan

"A" 7

**OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.**

No. 4775 /AG

dated Peshawar, the 8-3-2014

SHOW CAUSE NOTICE

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, Peshawar as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Sher Khan, Data Processing Supervisor of this office, as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing on 01-02-2014; and
- (ii) On going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee,-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) That the cases of various departments/offices of the Provincial Government, as displayed in the annexed list, have not been processed in time to be filed in the august Supreme Court of Pakistan & thus have become badly barred by time.
- (b) That the section you are posted in, needs full attention and devotion towards your official duties. However, you have proved to be inefficient and having non-serious attitude in discharging your official responsibilities.
- (c) That your negligence and inefficiency within the meaning of 3 (a) (b) & (c) of the Khyber Pakhtunkhwa Govt: Servants (E&A) Rules, 2011 have rendered the Government exchequer to suffer a lot in terms of money.
- (d) The District Health officer, Mardan submitted a case in this office titled as "Govt: of KPK Vs Rabnawaz" on 01-07-2013 which was entrusted to you on the same date for filing the same in the Supreme Court of Pakistan Registry Branch at Peshawar. A sum of Rs. 4500/- (Four thousand and five hundred only) was also received by you as expenses for Court fee and other relevant expenditures in the instant CPLs. Similarly another case titled as "Govt: of KPK Vs Jehandar Shah" was also submitted in the Record section on 15-07-2013 which was also given on the same day. Court Fee including other relevant charges for Rs. 12000/- (Twelve thousand) has also been received in the said case. Both the cases have not yet been filed in the Supreme Court in spite of fulfillment of all the requirements. You have by your said act have time barred the cases and thus committed a gross misconduct with the meaning of E&D Rules, 2011.

Handwritten note: 2/2/2014 it show cause



2. ✓ As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the **major penalty of dismissal from service** under rule 4 of the said rules.
3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. A copy of the findings of the inquiry committee is enclosed.

ADVOCATE GENERAL,
Khyber Pakhtunkhwa,
Peshawar.

✓
Mr. Sher Khan,
D.P.S of this office.

Appeal 1211 Record

"A" (9)

**OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.**

No. 6327/AG

dated Peshawar, the 14 /2014

SHOW CAUSE NOTICE

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, Peshawar as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Sher Khan, Data Processing Supervisor of this office, as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the inquiry Officer for which you were given opportunity of hearing on 10-03-2013; and
- (ii) On going through the findings of the Inquiry Officer, the material on record and other connected papers including your defence before the inquiry Officer,-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.
- (b) On 04-02-2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07-2-2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10-02-2014, the learned AOR submitted the report which is reproduced as: "Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr. Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filling CPLA the record of the case is also missing and not available in our office";
- (c) On 17-02-2014, your explanation was called and directed to explain your position within three (03) days. Your reply was received on 20-02-2014. After having gone through whole record of the matter, I am not satisfied with your reply to the explanation. Hence I have decided to hold proper inquiry into your misconduct in accordance with law and Rules.

(10)

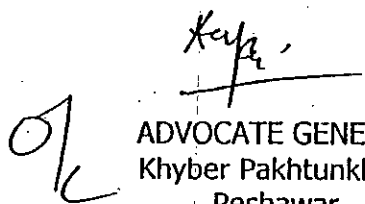
(d) That your said act amount to negligence, carelessness and delinquent behaviour thus you have committed misconduct which falls under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the **major penalty of dismissal from service** under rule 4 of the said rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the Inquiry Officer is enclosed.


ADVOCATE GENERAL,
Khyber Pakhtunkhwa,
Peshawar.

Mr. Sher Khan,
D.P.S of this office.

(11)
B Amkt: "B"

(20)

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA PESHAWAR

ORDER

Whereas vide order No. 73-77/AG dated 01-01-2014 an Inquiry Committee was appointed to inquire into the allegations made in the charge sheet served upon Mr. Sher Khan, Data Processing Supervisor (BPS-14) of this office.

And whereas, the Inquiry Committee in his report has found the charges leveled against the accused official as proved.

And whereas, Show Cause Notice was issued to him vide letter No. 4775/AG dated 08-03-2014.

And whereas, opportunity of personal hearing was given to him on 28-04-2014.

Now, therefore, the competent authority, after having considered the charges, evidence on record the explanation of the accused official and defence offered by the accused official during personal hearing and exercising his power under Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, has been pleased to impose major penalty of "dismissal from service" on Mr. Sher Khan, Data Processing Supervisor (PBS-14) with immediate effect.

Amir

dh

ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

Endst. No. 7767-69 /A.G

Dated Peshawar the 30 / 04 /2014

Copy for information and necessary action to:-

1. The Accountant-General, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent (Budget and Accounts) of this office.
3. Mr. Sher Khan, Data Processing Supervisor of this office.
4. Relevant file
5. Personal file.

Amir

dh

ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

12

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA PESHAWAR

ORDER

Whereas on the complaint of Mst. Sultana D/O Muhammad an Inquiry Officer was appointed vide order No. 4521-23/AG dated 28-02-2014 to inquire into the allegations made in the charge sheet served upon Mr. Sher Khan, Data Processing Supervisor (BPS-14) of this office.

And whereas, the Inquiry Officer in his report has found the charges leveled against the accused official as proved.

And whereas, Show Cause Notice was issued to him vide letter No. 6327/AG dated 01-04-2014.

And whereas, opportunity of personal hearing was given to him on 28-04-2014.

Now, therefore, the competent authority, after having considered the charges, evidence on record the explanation of the accused official and defence offered by the accused official during personal hearing and exercising his power under Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, has been pleased to impose major penalty of "dismissal from service" on Mr. Sher Khan, Data Processing Supervisor (PBS-14) with immediate effect.

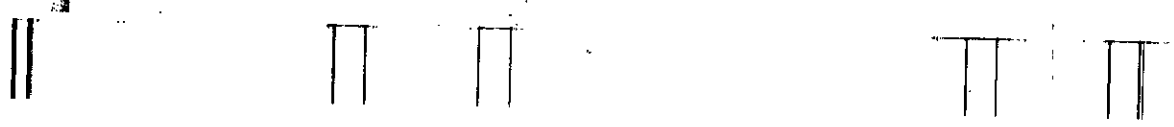
Asghar
ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

Endst. No. 7771-73/A.G Dated Peshawar the 30 / 04 /2014

Copy for information and necessary action to:-

1. The Accountant-General, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent (Budget and Accounts) of this office.
3. Mr. Sher Khan, Data Processing Supervisor of this office.
4. Relevant file
5. Personal file.

Asghar
ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

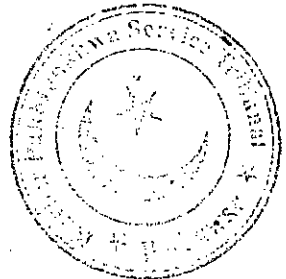


Amn* - (C) (13) 17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1211/2014

Date of Institution ... 26.09.2014
Date of Decision ... 16.02.2018



Sher Khan, Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/O Lalazar Colony, University Campus, Peshawar.

... (Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary
Affairs and Human Rights Department Peshawar & others.

... (Respondents)

Mr. Khush Dil Khan,
Advocate

--- For appellant.

Mr. Muhammad Jan
Deputy District Attorney

... For respondents.

MR. GUL ZEB KHAN
MR. MUHAMMAD HAMID MUGHAL

... MEMBER
... MEMBER

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.09.2014 has been lodged by Sher Khan, Ex-Data Processing Supervisor, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the office order dated 30.04.2014 vide which he was dismissed from service. The appellant preferred departmental appeal on 30.05.2015 which was not responded.

3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor on 28.5.2003 on the recommendations of Khyber Pakhtunkhwa Public Service Commission and was performing his duties efficiently and honestly. That one lady (named Mst. Sultana) complained against

him for misplacing her documents earlier given by her to the Advocate General Khyber Pakhtunkhwa for the purpose of filling CPLA in the Supreme Court of Pakistan. That on this issue, an enquiry was conducted in which neither any statement of any witness was recorded, nor any opportunity of cross examination was extended to the appellant. That even the statement of the then AOR (Mr. Shaukat Hussain) was also not recorded because he was the incharge officer for all CPLA cases in the office of Advocate General Khyber Pakhtunkhwa. That the allegation in the charge sheet/statement of allegation was totally wrong and ill conceived as the appellant has no concern at all with the CPLA cases of private individuals/litigants. That respondent No. 2 has mala fide and deliberately held him responsible for a criminal case of private party and initiated disciplinary proceedings against him which has no legal sanctity and not sustainable under the rules on subject. Further argued that the inquiry officer has conducted inquiry in slipshot manner as no cogent evidence was produced against the appellant. That the impugned order based on such erroneous and fallacious charges is of no legal effect and liable to be set aside. That the impugned order has been passed at the back of appellant as no opportunity of personal hearing was provided to him to defend his case which is violation of the fundamental rights and the principle of natural justice.

ATTORNEY
Khyber Pakhtunkhwa
[Signature]

4. On the other side learned Deputy District Attorney argued that the charge leveled against the appellant was initiated on a complaint having Diary No. 939 dated 04.02.2014 of a lady. That the report was sought by respondent No. 2 from the Advocate On Record, who confirmed the contents of the complainant. That during the inquiry, statement of the complainant lady was examined in the presence of the appellant. Further argued that the case has its own facts and evidence and there is no malafide or ill-will on the part of the respondent No. 2 against the appellant. Further argued that in criminal cases the Respondent No. 2,

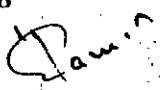
being Principal Law officer of the Province is fully competent to filling of appeal before the Apex Court. That specific allegation has been leveled against the appellant. That charge sheet, statement of allegation were served upon the appellant. Inquiry proceedings were conducted and show cause notice were also to be issued to the appellant which he also replied. The inquiry was conducted in fair and transparent manner. That the appellant was given ample opportunities to defend himself, therefore the appeal may be rejected.


5. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.

6. Learned counsel for the appellant remained unable to substantiate his plea that the impugned order was passed without fulfillment of codal formalities and adherence to legal requirements. But on the other hand the inquiry officer has not recorded the statements of relevant staff or at least those who are working in the chain of command within the organization. The AOR concerned also shared the responsibility to dispose of office work in time however the inquiry officer has not bothered to associate the AOR concerned with the inquiry proceedings, nor given any reason as to why his statement was not recorded. In the stated circumstances this Tribunal is of the view that the impugned punishment is excessive. Consequently for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due. The present appeal is disposed of accordingly. Parties are left to bears their own cost. File be consigned to the record room.

ANNOUNCE
16.02.2018

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(Muhammad Hamid Mughal)
MEMBER


MEMBER


(Gul Zeb Khan)
MEMBER

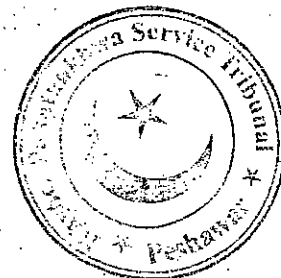
Annex - C

16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1212/2014

Date of Institution ... 26.09.2014
Date of Decision ... 16.02.2018



Sher Khan,
Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/O Lalazar Colony, University Campus, Peshawar.

(Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary
Affairs and Human Rights Department Peshawar & others.

(Respondents)

Mr. Khush Dil Khan,
Advocate

For appellant.

Mr. Muhammad Jan
Deputy District Attorney

For respondents.

MR. GUL ZEB KHAN

MEMBER

MR. MUHAMMAD HAMID MUGHAL

MEMBER

ATTESTED

EMANUJAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.09.2014 has been lodged by Sher Khan, Ex-Data Processing Supervisor, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act 1974, wherein he has impugned the office order dated 30.04.2014 vide which he was dismissed from service. The appellant preferred departmental appeal on 30.05.2014 which was not responded.

3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor in the office of Respondent No.2 on recommendations of the Public Service Commission vide order dated 28.05.2003 and has performed his duties honestly and efficiently with unblemished service

ord for more than 10 years. That the appellant, while working in the office of Advocate on Record (AOR), was charge sheeted on the allegation of delaying / time barring the filing of CPLA in the Supreme Court of Pakistan of about 36 court cases of various administrative departments. That a very prejudiced and defective enquiry was conducted wherein no opportunity of cross examination was provided to the appellant. That the appellant was allegedly held responsible for a task, which, under the job description of the organization, was not assigned to him. That the enquiry committee has not bothered to record the statement of the then AOR who was the directly supervising officer of the appellant. That the appellant is basically functioning as a data processing supervisor which is a computer related job and not a legal hand. That technically speaking it is the sole responsibility of the AOR to draft or dictate the case first, and not the task of the appellant. As regards the four specific cases at Serials No 4, 20, 31 and 34 of the list, the enquiry committee has not been able to put forth any evidence for it, rather those responsible have very clearly been mentioned in the last column of the list. That the impugned order being illegal and not entertain able under the law, may be set aside.

MSJ

4. On the other side learned Deputy District Attorney argued that the impugned punishment was awarded after consulting all the facts and record vis-à-vis the gravity of the charges and in accordance with law. That the due process of providing opportunity of personal hearing has been duly provided. That the appeal may be rejected with cost.

5. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.

ATTESTED

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Khyber Pakhtunkhwa
Sindh

6. Mainly charge against the appellant is that he did not process the cases in time to be filed in the august Supreme Court of Pakistan and thus the same became badly barred by time.

7. In the present case charge sheet and statements of allegation were admittedly served upon the appellant. The appellant also attended the inquiry proceedings. Show cause notice was also issued and replied by the appellant. The inquiry officer in the inquiry report held that the charges against accused stood proved. However it is also an admitted fact that the inquiry committee has not recorded the statement of then AOR, under whom the appellant was directly working and whose statement would have been of a deciding nature in the instant enquiry. The statement of the then AOR was also essential due to the fact that under the prevailing circumstances it was their joint responsibility to dispose of their office work, because the nature of very drafting of the CPLA cases require technical and legal input of the AOR. In the light of stated circumstances this Tribunal is of the view of that the impugned punishment is excessive/harsh. Resultantly for the purpose of safe administration of justice the impugned punishment is converted to minor penalty of censure. The intervening period shall be treated as leave of the kind due. The present service appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCE
16.02.2018

SD/-
(Muhammad Hamid Mughal)
Member

SD/-
(Gul Zeb Khan)
MEMBER

Certified to be true copy
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Khuzdar
Service Tribunal,
Peshawar

Date of Presentation of Application 16-02-2018
Number of Words 1250
Copying Fee 8.00
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Total 8.00
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Date of Completion of Copy 20-03-18
Date of Delivery of Copy 20-03-18

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Annex - D

19

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE YAHYA AFRIDI

CIVIL PETITIONS NO. 1120, 1131 & 1415 OF 2018

(On appeal against the judgment dated 16.02.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1212 of 2014.)

Secretary Govt. of KPK, Law Parliamentary (in CPs 1120 and
Affairs & Human Rights Department, 1131/18)
Peshawar & another
Sher Khan

(in CP1415 /18)
...Petitioner(s)

VERSUS

Sher Khan

(in CPs 1120 and
1131/18)

Secretary Govt. of KPK, Law Parliamentary (in CP1415 /18)
Affairs & Human Rights Department,
Peshawar & another

...Respondent(s)

For the Petitioner(s):

Mr. Qasim Wadood, Addl. AG, KPK.
(in C.Ps. 1120 & 1131/2018)
Mr. Misbahullah Khan, ASC:
(in C.P. 1415/2018)

For the Respondent(s):

Mr. Misbahullah Khan, ASC.
(in C.Ps. 1120 and 1131/2018)

Date of Hearing: 10.01.2019

ORDER

UMAR ATA BANDIAL, J.— Civil Petition No. 1120 of 2018: The respondent is a Data Processing Supervisor working in the office of the learned Advocate General, KPK since 2003. In the year 2007 he was assigned to AOR section in the said office. A number of government cases that were to be filed in the Supreme Court of Pakistan were alleged to have been neglected by the respondent rendering their filing to be time barred. An inquiry into the causes of a large number of time barred cases was conducted by the

ATTESTED

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learned Additional Advocate General. His report dated 26.09.2013 did not affix any responsibility upon the respondent. Subsequently, another inquiry was conducted resulting in a report dated 18.01.2014 by a committee headed by another Additional Advocate General. This report squarely acknowledges that the AOR in the Advocate General office had not been drafting cases in time. The previous report had noted that he had been ill most of the time and had been away for *Umrah* when he was well. The finding against the respondent is that he did not inform the Advocate General, KPK about the absence/unavailability or disinterest of the AOR.

2. A show cause notice dated 24.12.2013 confronted the respondent with delay in the filing of two cases. It is accepted by the learned Additional Advocate General appearing for the petitioners that both these cases were time barred when the files were delivered to the Advocate General's office. He adds that a number of other cases were also time barred and these have been noted in the inquiry report dated 18.01.2014. The respondent was dismissed from service vide order dated 30.04.2014. His appeal before the learned Tribunal has been partly accepted and his punishment has been reduced to 'censure'. Learned Additional Advocate General seeks the restoration of the punishment imposed by the employer office.

3. We consider that the inquiry report dated 18.01.2014 is vague in identifying the wrong committed by the respondent. We cannot therefore ascertain whether a punishment commensurate to the misconduct committed has been awarded to the respondent or not. The other cases noted in the inquiry report dated

ATTESTED

Court Associate

(21)

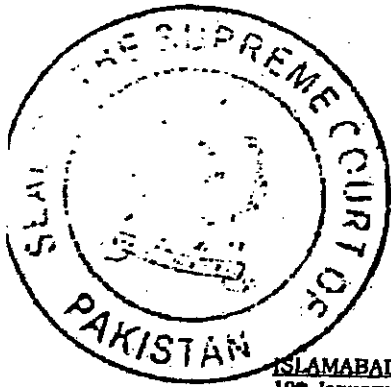
18.01.2014 are not detailed nor their particulars were provided either to the respondent or on the record.

4. In the circumstances, we do not consider either dismissal of the respondent or his virtual exoneration in the terms directed by the learned Tribunal is appropriate. Accordingly, the impugned judgment dated 16.02.2018 of the learned Tribunal and the dismissal order dated 30.04.2014 are set aside. This petition is converted into an appeal and allowed in the terms noted above.

5. Office of the learned Advocate General shall conduct fresh inquiry into the allegations against the respondent after confronting him with the specific details of the cases in which he is alleged to have been negligent or in breach of duty.


Civil Petitions No:1131 & 1415 OF 2018:

Adjourned.



ISLAMABAD.
10th January, 2019.
Naveed Ahmad/*

Sd/-J
Sd/-J
Sd/-J
Certified to be True Copy


Court Associate
Supreme Court of Pakistan
Islamabad

"Not approved for reporting"

1343/19

GR No: _____

Date of Presentation: 10-1-19

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Date of Completion of Copy: 28/1/19

Date of delivery of Copy: _____

Compared by/Prepared by: F

Checked by: _____

Annex - E (22)

(22)

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Yahya Afridi

Civil Petitions No.1131 & 1415 of 2018

(on appeal against the judgment of Khyber Pakhtunkhwa Service Tribunal,
Peshawar dated 16.02.2018, passed in Appeal No.1211/2014)

Secretary Government of KPK Law, (in C.P.1131/2018)
Parliamentary Affairs & Human Rights
Department, Peshawar & another

Sher Khan

(in C.P.1415/2018)

...Petitioners

Versus

Sher Khan

(in C.P.1131/2018)

The Secretary Govt. of KPK, Law, (in C.P.1415/2018)
Parliamentary Affairs and Human Rights
Department, Peshawar & another

...Respondents

Civil Petition No.1131 of 2018:

For the petitioners: Barrister Qasim Wadood, Add.LAG.KPK

For the respondents: Mr. Misbahullah Khan, ASC
Mr. M.S. Khattak, AOR

Civil Petition No.1415 of 2018:

For the petitioner: Mr. Misbahullah Khan, ASC
Mr. M.S. Khattak, AOR

Respondents: N.R.

Date of hearing: 18.10.2019

ORDER

Civil Petition No.1415 of 2018: We have
straightaway observed that the Tribunal has taken a contradictory
position in the concluding paragraph (para 6) of the impugned
judgment dated 16.02.2018. On the one hand it holds that all the
codal formalities were complied with at the time of passing of the

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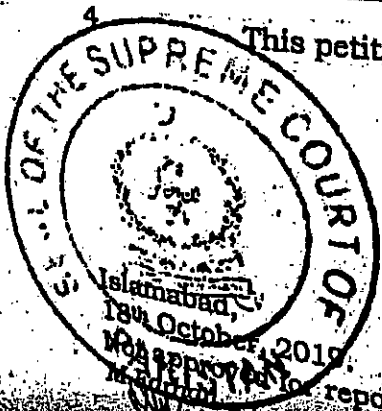
dismissal order dated 30.04.2014 and in the same breath states that the inquiry officer has not recorded the statements of relevant staff or those working in the chain of command within the organization. In this background, the petitioner could not have been visited with a penalty. Learned Additional Advocate General representing the petitioner submits that the statements of all the relevant staff has been recorded and the Tribunal has erred in holding that some more statements had to be recorded. Be that as it may, the contradiction within the impugned order renders it unsustainable.

2. We, therefore, set aside the impugned judgment and remand this case to the Tribunal for a fresh decision on merits after examining the inquiry reports, the evidence on the record and submission of the parties.

3. The appeal of the petitioner will be deemed to be pending before the Tribunal, with the direction to the Tribunal to decide the same within a period of two months from the date of receipt of this order. This petition is converted into an appeal and allowed accordingly.

Civil Petition No.1131 of 2018:

This petition is disposed of in terms of the above order.



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Annex - F

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1211/NEEM/2014

Date of Institution ... 26.09.2014

Date of Decision ... 07.01.2020

Sher Khan, Ex-Data Processing Supervisor, Office of the Advocate General, Khyber Pakhtunkhwa, Peshawar. R/O Lalazar Colony, University Campus, Peshawar.
... (Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department Peshawar and others. ... (Respondents)

MR. RIZWANULLAH,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that previously, the appellant filed service appeal no. 1211/2014 decided on 16.02.2018 against the impugned order dated 30.04.2014, where-under major penalty of dismissal from service was awarded to the appellant. This Tribunal modified the penalty, however, the respondents challenged the said judgment in the august Supreme Court of Pakistan through Civil Appeal no. 1131-1415/2018. Through judgment dated 18.10.2019, the apex court remanded the appeal back to the Tribunal for decision a fresh. He further argued that enquiry was not conducted in the mode and manner prescribed in the

rules. For reasons best known to the enquiry officer. Neither statement of Advocate on Record (Mr. Shoukat Hussain) was recorded nor of other concerned working in the office of Advocate General, Khyber Pakhtunkhwa. Moreover, opportunity of cross examination was also not afforded to the appellant. He further stressed that Learned Additional Advocate General gave a wrong statement before the apex court in which it was claimed that statements of all concerned were recorded. Moreover, it was not the job of the appellant as per job description to file the CPLA in the august Supreme Court of Pakistan.

03. Learned DDA argued that proper enquiry was conducted against the appellant and thereafter penalty was awarded to him after observance of all codal formalities. The appellant was treated fairly and justly and no grudge or illwill could be attributed to the respondents against the appellant.

CONCLUSION:

04. As a sequel to a complaint lodged by Mst. Sultana, disciplinary proceedings were initiated against the appellant through order dated 28.02.2014. After conducting enquiry major punishment of dismissal from service was awarded to him through impugned order dated 30.04.2014. The appellant assailed this order through service appeal no.1211/2014 decided on 16.02.2018. This Tribunal modified the penalty into stoppage of two annual increments for two years. The parties challenged the judgment of this Tribunal in the august Supreme Court of Pakistan. The Supreme Court of Pakistan vide judgment dated 18.10.2019 remitted the appeal to this Tribunal for decision afresh.

05. We have carefully examined the enquiry report and noticed numerous deficiencies/shortcomings. Mst. Sultana leveled allegations that due to delaying tactics/ failure of the appellant that her case/CPLA could not be filed before the

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal

(26)

25/11

August Supreme Court of Pakistan. It merits to mention here that only statements of the complainant and the appellant were recorded by the enquiry officer. The appellant as well as complainant in their written statements repeatedly mentioned the role of Advocate on Record (Mr. Shoukat Hussain) but astonishingly his statement was not recorded by the enquiry officer for reasons best known to him. To reach to a just conclusion, the enquiry officer was under obligation to have recorded the statements of all concerned including the Advocate General, Khyber Pakhtunkhwa. There is a set procedure for disposal of official business in government departments/offices. We understand that if an application was submitted by the complainant, it must have been entered in the diary/dispatch register maintained in the office of the Advocate General, Khyber Pakhtunkhwa. It was the sole barometer for fixing responsibility of delay on the appellant. However, no such record was either available /scrutinized by the enquiry officer to confirm that onus of using delaying tactics could be attributed to the appellant. In the absence of any incriminating evidence, it could be termed as mere oral assertion on the part of the complainant. In the absence of these statements enquiry report just contained one side of the story and any conclusion drawn on it was flawed and against the spirit of the laid down procedure. The enquiry officer prima facie, deliberately deviated from the procedure contained in Rule-11 of E&D Rules 2011 for unknown reasons and the final outcome in the shape of enquiry report was vague, evasive, perfunctory superficial and based on surmises and conjectures.

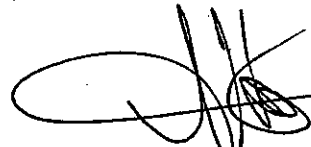
06. Apparently, it was not part of his job description and in the absence of documentary evidence he could not be held accountable for the fault of others. It is also a common practice in our system that juniors are made scapegoat to save the skin of seniors. We tend to agree with the claim of the learned counsel for the appellant that statement given by the then Additional Advocate General in the apex

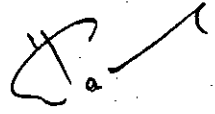
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court regarding recording of statements of all concerned was against the available record and could be termed a misstatement. In nutshell in the absence of any documentary evidence, we hold that charge leveled against was not proved during the enquiry.


07. As a sequel to the above, the instant appeal is accepted, impugned order dated 30.04.2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
Member



(MUHAMMAD HAMID MUGHAL)
Member

ANNOUNCED
07.01.2020

Central Board of Secondary Education

Secretary

Date of 10-01-2020
Number of 1600
Case No. 18-02
Urgent
T 18-02
Name
Date of 15-01-2020
Date of 15-01-2020

Subject: INQUIRY AGAINST SHER KHAN DPS FOR NEGLIGENCE AND WILLFUL WITHHOLDING OF A CASE FILE THAT OUGHT TO HAVE BEEN FILED UNDER KHYBER PAKHTUNKHWA GOVERNMENT SERVICES (E&D RULES 2011).

Background

The enquiry in hand arises from the order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 07-01-2020 titled "Sher Khan, Ex-Data Processing Supervisor, Office of the Advocate General Khyber Pakhtunkhwa, Peshawar Vs The Secretary Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department Peshawar" and the Hon'ble Tribunal observed as under:-

"As a sequel to the above, the instant appeal is accepted, impugned order dated 30/04/2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room".

After which the Hon'ble Advocate General decided to serve showcause notice to Sher Khan on 05/03/2020 and enquiry assigned to Mr. Atif Ali Khan, Additional Advocate General, Khyber Pakhtunkhwa, Peshawar and Mr. Umar Farooq, Additional Advocate General, Khyber Pakhtunkhwa, Peshawar through letter No.3849-52/AG dated 05/03/2020.

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FACTS

The facts of the case are as under:-

- 1- That, the Defendant was appointed as Data Processing Supervisor in BPS-14 through Public Service Commission on 28.05.2003 by the office Advocate General N.W.F.P. (hereinafter "**AG Office**"). In the year 2007 vide office order dated 17.05.2007 he was designated to work with Advocate On Record ("AOR"). During the Defendant's tenure at the office of the AOR it is alleged that the Defendant had suppressed a file in contrivance of his duties and against explicit orders of his superiors and resultantly an appeal, which ought to have been filed on behalf of one Mst. Sultana, became time barred. It is further alleged that the AOR was asked by the AG Office to file the Appeal in personal capacity due to lack of relevant sanctions and as such the file was ready to be filed and should have been filed but the Defendant for his mala fide and connivance with the accused in the Mst. Sultana case suppressed the case against explicit orders. For such dereliction of duty the Defendant was dismissed from service vide impugned order dated 30.04.2014.

- 2- That the case illustrates that the Defendant was proceeded against after a complaint was filed against him by one Mst. Sultana for deliberately suppressing case file destined for appeal and that too with mala fide intentions and in connivance with the accused. The AG Office conducted an inquiry under the Khyber Pakhtunkhwa Government Servant Services (E&D) Rules 2011 and found him guilty of charges of negligence, carelessness, delinquent behavior and inefficiency. The Defendant preferred an appeal against the said order of the AG Office and filed a Service Appeal before the Khyber Pakhtunkhwa Services Tribunal (hereinafter the "**Tribunal**"). The Tribunal vide order dated 16.02.2018 modified the order of the AG Office into *'withholding of two annual*

increments for a period of two years'. Both parties preferred an appeal against the order of the Tribunal and the Supreme Court on 18.10.2018 held that the order of the Tribunal dated 16.02.2018 was unsustainable due to the contradictions contained therein and the petition was converted into an appeal and remanded to the Tribunal to decide the same within a period of two months from the receipt of order. Upon remand the Tribunal vide order dated 07.01.2020 held that in absence of documentary evidence, the charge against Sher Khan was not proved during the enquiry and reinstated him into service, all the while allowing the AG Office the liberty to conduct a de novo enquiry strictly in accordance with the law - hence this enquiry.

- 3- That during the Enquiry Mst. Sultana (hereinafter "**Complainant**") as well as the Defendant (Sher Khan) were summoned and their statements were recorded and the Defendant was allowed an opportunity to cross examine however, remaining witnesses and persons relevant to the enquiry e.g. the AOR at the time was neither summoned nor his statement was recorded. From the evidence recorded in the earlier enquiry it was held that on account of the statement recorded by the Complainant it is evident that file was handed over to the Defendant by Mian Shaukat Hussain the worthy AOR at the time however, due to non-compliance on part of Defendant the Cr.PLA could not be filed. In defense the Defendant totally denied allegations against and it was stated that the Defendant never received explicit orders from the worthy AOR and filing of the Cr.PLA was the discretion/duty of the AOR and not the Defendant moreover, he also argued that the AOR never issued any directions to him to file the said appeal and reliance in this respect is placed on the claim that the AOR at the time had raise objections over the lack of sanction by the Home or Law Department, lack of Power of Attorney, lack of attested

judgment etc. and lack of paper book expenses. Factually the defendant claims that at the relevant time the worthy AOR had proceeded for umrah and had fallen ill and upon return to duty some cases assigned to the AOR were already time barred and the AOR due to the work load filed the cases that were on time and delayed the time barred cases even further.

- 4- That it is revealed from the record that no proper procedure was adopted for the movement of any type of any of file or documents like paper under consideration (PUC) or fresh receipt (FR), therefore, there is no iota of evidence that the case file regarding Mst. Sultana received with which office on which table and for how long.
- 5- That in previous inquiry the statement of Ex-AOR (Mian Shaukat Hussain) was not recorded in which he alleged the negligence of the said Mr. Sher Khan, which is not convincing one, however, as per practice when the file come to the office of any law officer the concerned staff remained vigilance for the process of the same.
- 6- That in written defense the said Mr. Sher Khan never stated that he was ignored from the complaint file of Mst. Sultana, and he stated different deficiencies like sanction from the Govt., attested documents etc, in our view it is the headache of the than AOR (Mian Shaukat Hussain) who had already been passed away on 25/02/2017 and were not available in the present inquiry in hand, but for staff of office it is necessary to obey the order of officer instead of objected the same.

Conclusion:-

Relevant aspects of the case have been perused.

- 1- Under the Government Servants (Efficiency and Discipline) Rules 2011 (hereinafter "**2011 Rules**"), proceedings can be initiated against an accused under rule 3 of the 2011 Rules and penalty as contained in Rule 4 may be imposed. Moreover, in order to impose particular penalty proceedings are to be initiated under Rule 5 of the 2011 Rules and an inquiry, if conducted, must comply with the parameters contained in Rule 11 of the 2011 Rules. Relevant Rules are reproduced as follows:

Rule 3: Grounds for proceeding: A Government servant shall be liable to be proceeded against under these rules, if he is-

inefficient or has ceased to be efficient for any reason; or

guilty of misconduct; or

guilty of corruption; or

guilty of habitually absenting himself from duty without prior approval of leave; or

engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or

entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. Penalties.---(1) The following are the minor and the major penalties, namely:

Minor penalties:

censure;

(ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in

accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

(iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

reduction to a lower post or pay scale or to a lower stage in a time scale.

(ii) compulsory retirement;

(iii) removal from service; and

(iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings. ---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or

(ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the

charges of corruption which have led to a sentence of fine or imprisonment; or

(iii) a Government servant is involved in subversive activities; or

(iv) it is not reasonably practicable to give such an opportunity to the accused; or

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or

(ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment

shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

2- In order to reach a just conclusion, allegations against the Defendant ought to be thoroughly evaluated in the light of the above said rules. Upon the transfer of the Defendant to AOR his duties included typing, document setting, composing letters, maintaining computer work. It is common practice that in the Supreme Court of Pakistan cases are filed through an Advocate on Record and not through a lowly Data Processing Supervisor. Thus, in order to establish any negligence and/or malafide on part of the Defendant, deposition of the learned AOR of the time is critical to the outcome of the case. The inquiry has not recorded the statement of the Shaukat Hussain AOR at the time and neither any

written deposition was requisitioned from him and the lack of such is fatal to the credibility of the allegations against the Defendant. More importantly, documents available on the file do not show any effort that was made during the inquiry to get a valid opinion/deposition from the worthy AOR at the time and the Defendant cannot be put to the sword for any lethargy on part of the inquiry.

- 3- The defendant has repeatedly stated that he bears no grudge against Mst. Sultana and that the complaint so filed against him is a classic case of scapegoating a junior officer. AG Khalid Khan on 25.01.2013 sent the case to Shaukat Hussain, AOR and the said AOR raised several objections wherein he inquired into the lack of Power of Attorney and lack of sanction by the Home or Law Ministry. In return it is stated that the worthy AG at the time requested the AOR to file the same in personal capacity. Such a request causes ambiguity, as it is not clear as to which legal framework authorizes the worthy AG or the government AOR to file a government case in personal capacity. Any case of charity ought to be clearly founded and filed through legal aid and not through the official channel. Moreover, it is not clear as to how an offence under the 2011 Rules can be constituted in case of 'personal capacity'.
- 4- Hence, charges/allegations against the Defendant are not proven for want of compliance of Rule 11 of 2011 Rules and allegations against the Defendant have not been factually established and as such the Defendant is exonerated of the charges/allegations against him.

RECOMMENDATION:

After perusal of the record as there is no strong evidence against Mr.Sher Khan only to the extent that he has the knowledge of complaint of Mst. Sultana, therefore, we cannot charge for mauls, misuse of authority or to deliberately delayed the case of the complainant (As per record of the case already time badly barred) but as a staff of the law officer which is very sensitive branch he should be remained vigilant, therefore, we recommended warning to the said Mr. Sher Khan.

It is also recommended that a proper procedure regarding the movement of file should be adopted in the in office to avoid such like situations.

- Encls: 1-Showcause notice diary No.2837 Dated 12/03/2020
 2- Inquiry Report
 3- Written defence with annexure
 4- Personal hearing dated 25/04/2020
 5- Statement of Administrative Officer
 6- Record of the Previous inquiry

<p>(Atif Ali Khan) Additional Advocate General Khyber Pakhtunkhwa, Peshawar</p>	<p>(Umar Farooq) Additional Advocate General Khyber Pakhtunkhwa, Peshawar</p>
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Annex - H

38



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8677-83 /AG

Dated Peshawar, the 13-Aug-2020

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 091-9213833
Fax No. 091-9210270

OFFICE ORDER

1. Whereas, Mr. Sher Khan was appointed as Data Processing Supervisor (BPS-14) in this office vide office order bearing No. 3041-95/AG, dated 28/05/2003;
2. And whereas, he was proceeded against departmentally and dismissed from Govt. service vide this office order bearing No. 7771-73/AG, dated 30/04/2014;
3. And whereas, he challenged / impugned his dismissal order, dated 30/04/2014 before the Khyber Pakhtunkhwa Services Tribunal through Service Appeal No. 1212/2014 (Sher Khan-vs-Govt. of Khyber Pakhtunkhwa) which was decided on 16/02/2020 and the punishment was converted into minor penalty of "censure";
4. And whereas, the Govt. challenged Judgment of the Services Tribunal, dated 16/02/2020 in the august Supreme Court of Pakistan which through its Judgment, dated 10/01/2019 directed the learned Advocate General, Khyber Pakhtunkhwa to hold fresh enquiry into the allegations against the respondent;
5. And whereas, he was re-instated as Stenographer (BPS-14) vide this office order No. 3680-82/AG, dated 12/02/2020 for the purpose of fresh inquiry in light of para-5 of Judgment, dated 10/01/2019 of the Hon'ble Supreme Court of Pakistan in Civil Petition No. 1120/2018.
6. And whereas, an Enquiry Committee was constituted vide office order No. 19316-19/AG, dated 28/09/2019 for conducting fresh enquiry which exonerated the official, under enquiry, as is evident from the report, dated 30/10/2019;
7. And whereas, the official under enquiry, through his humble requests, dated 15/03/2019 and 22/03/2019 undertook that he would never go into litigation in any Court if lenient view is taken and further that his intervening period from 01/05/2014 till his reinstatement may be treated as leave without pay;
8. And whereas, he, through another request diary No. 496, dated 15/01/2020, further undertook that he would never challenge Notifications of promotions as Computer Programmer and Web Administrator bearing No. E&A/LD/2-12/2019/18688-93, dated 08/10/2019 and No. E&A/LD/2-12/2019/18682-87, dated 08/10/2019 respectively.

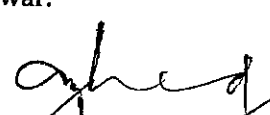
Now, in view of the foregoing, the undersigned, as the Competent Authority, after having perused at length Judgments of the Hon'ble Courts / Tribunal, report of the Enquiry Committee and requests of the official, under enquiry, is pleased to order re-instatement of Mr. Sher Khan, Stenographer (BPS-14) against the post of Computer Operator (BPS-16) w.e.from 12/02/2019. However, the intervening period w.e.f. 01/05/2014 to 11.02.2019 is hereby treated as leave without pay. The official shall not be entitled to any back benefits.

Sd/-
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
(Competent Authority)

Endst. No. & date even

Copy for necessary action to the:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Syed Sikandar Hayat Shah, Additional Advocate General/Enquiry Officer, Peshawar.
4. Mr. Arshad Ahmad, Additional Advocate General/Enquiry Officer, Peshawar.
5. Budget & Accounts Officer of this office.
6. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.
7. Mr. Sher Khan, Computer Operator (BPS-16) of this office.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

39



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8684-90 /AG

Dated Peshawar, the 13-Aug-2020

Address: High Court Building, Peshawar.
Tel. No.091-9210119

Exchange No. 091-9213833
Fax No. 091-9210270

OFFICE ORDER

1. Whereas, Mr. Sher Khan was appointed as Data Processing Supervisor (BPS-14) in this office vide office order bearing No. 3041-95/AG, dated 28/05/2003;
2. And whereas, he was proceeded against departmentally and dismissed from Govt. service vide this office order bearing No. 7771-73/AG, dated 30/04/2014;
3. And whereas, he challenged / impugned his dismissal order before the Khyber Pakhtunkhwa Services Tribunal through Service Appeal No. 1211/2014 which was decided on 16/02/2018 and the punishment was converted into withholding of two (02) annual increments for a period of two (02) years;
4. And whereas, the Govt. challenged Judgment of the Services Tribunal, dated 16/02/2018 in the august Supreme Court of Pakistan which remanded, vide Judgment, dated 18/10/2019 the Appeal back to the Services Tribunal for a fresh decision on merit within two (02) months;
5. And whereas, the Khyber Pakhtunkhwa Services Tribunal decided the remanded Appeal on 07/01/2020, accepted the Service Appeal, set aside the impugned order dated 30/04/2014 and re-instated the appellant into service with further directions to the respondents to hold a denovo enquiry if they so desire;
6. And whereas, the Govt. conducted denovo enquiry vide office order No. 3849-52/AG, dated 05/03/2020 which recommended a formal warning to the appellant.

Now, in view of the foregoing, the Competent Authority, after having perused at length judgments of the Hon'ble Court / Tribunal and the enquiry report, is pleased to order re-instatement of Mr. Sher Khan, Stenographer (BPS-14) against the post of Computer Operator (BPS-16) w.e.from 12/02/2019, because of pending enquiry in another matter, also now concluded in terms of office order bearing No. 8677-83/AG, dated 13/08/2020 (contents whereof may be read as part of this office order as well).

Sd/-
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
(Competent Authority)

Endst. No. & date even

Copy for necessary action to the:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Mr. Atif Ali Khan, Additional Advocate General/Enquiry Officer, Peshawar.
4. Mr. Umar Farooq, Additional Advocate General/Enquiry Officer, Peshawar.
5. Budget & Accounts Officer of this office.
6. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.
7. Mr. Sher Khan, Computer Operator (BPS-16) of this office.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

Annex - I

1

To

40

**The Secretary,
Government of Khyber Pakhtunkhwa,
Law, Human Right and Parliamentary Affairs
Department Peshawar**

Through: Proper Channel

Subject: DEPARTMENTAL APPEAL UNDER SECTION 22 OF KHYBER
PAKHTUNKHWA CIVIL SERVANT ACT, 1973 READ WITH RULE 3
OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES,
1986 AGAINST THE IMPUGNED ORDERS DATED 13/08/2020
THEREBY I HAVE BEEN REINSTATED INTO SERVICE WITHOUT
BACK BENEFITS.

Respected Sir,

I have the honour to submit this departmental appeal on the following facts and grounds for your kind consideration and sympathetic and favourable action:-

- 1- That I joined the office of learned Advocate General Khyber Pakhtunkhwa on 28/05/2003 as Data Processing Supervisor BPS-14 (now upgraded vide notification dated 29/07/2016 as Computer Operator BPS-16) after my selection through Khyber Pakhtunkhwa Public Service Commission, Peshawar and since then I was performing my duties efficiently till the date of passing the impugned order of dismissal dated 31/04/2014 having ten (10) years and 9 months service at my credit with splendid service record.
- 2- That after my dismissal from service dated 31/04/2014 I filed departmental appeals to the Learned Secretary Law & Advocate General KP, Peshawar which were undecided, therefore I filed Service Appeal No.1212/2014 & 1211/2014 against the dismissal orders of the same date and same allegations which were accepted as by the courts mentioned as under:-

Court	Decision
-------	----------

❖ **Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. 1211/2014 filed by the applicant on 26/09/2014

Accepted on 16/02/2018 after 4 years:- Major Penalty of Dismissal was converted into "Censure"

Service Appeal No. 1212/2014 filed by the applicant.

Accepted on 16/02/2018 after 4 years:- Major Penalty of Dismissal was converted into "withholding two increments & intervening period was treated as leave without pay"

❖ **Supreme Court of Pakistan, Islamabad**

Civil Petition No. 1120/2018 filed by the Advocate General against the reinstatement order dated 16/02/2018.

Dismissed on 10/01/2019 with direction for De-novo inquiry where as appellant was reinstated as Junior Scale Stenographer (BPS-14) in non cadre post as my own post was filled on **promotion illegally and unlawfully on 06/06/2014 by the Ex-Advocate General whereas my cases were pending before the courts.**

De-novo Enquiry was conducted by the following Law Officers:

- 1- Syed Sikandar Hayat Shah, Addl. Advocate General KP, Peshawar.
- 2- Arshad Ahmad Addl. Advocate General, KP, Peshawar

Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and exonerated the appellant from all charges leveled against appellant ***without any penalty.***

Civil Petition No. 1131/2018 filed by the Advocate General against the reinstatement order dated 16/02/2018.

Dismissed on 18/10/2019 as the august Court order that if there is no any charges leveled against the appellant then why 2 annual increments were stopped by the Ld. Service Tribunal and hence remanded the case for fresh Decision.

Civil Petition No. 1415/2018 Filed by the appellant against the KP Service Tribunal of stoppage of two annual increments and the period leave without pay.

Accepted:- The Hon'ble Supreme Court accepted the appellant appeal and remanded the case to KP Service Tribunal for **rectification** that why the two increments were stopped if there was no charges leveled against the appellant.

(42)

**Remanded Service Appeal
No.1211/NEEM/2014.**
Remanded by the august
Supreme Court of Pakistan.

Accepted:- The appeal of the appellant was accepted as prayed for and the department was directed that De-novo inquiry at the liberty of the Department if they do the de-novo inquiry or not. The Advocate General constitute Fresh inquiry of two members comprising:-

- 1- Mr. Atif Ali Khan, Addl. Advocate General KP, Peshawar .
- 2- Mr. Umar Farooq, Addl. Advocate General KP, Peshawar

Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and awarded a minor penalty of formal warning which does not come under the E&D Rules.

- 3- That the impugned order dated 13/08/2020 in paras No. 7 & 8 is the violation Rules and deprivation/constitution rights of the appellant as the letters dated 30/10/2019 & 15/03/2019 were taken from the appellant forcedly not willingly as the appellant was dismissed from service, having no job if the Ex-Advocate General, KP (Abdul Latifeef Yousafzai) ordered to the appellant for taking written for accepting the reinstatement order as Sweeper, the appellant must be accepted as the appellant was jobless. Judgments of Supreme Court are available on such points that if a competent authority take such written forcedly it would not be acceptable.
- 4- That the reinstatement order dated 13/08/2020 was totally followed in the light of judgment of KP Service Tribunal, Peshawar dated 16/20/2018 which was challenged by the appellant in its CP No.1415/2018 as well by the Advocate General also challenged in CP No.1131/2018 before the august Supreme Court of Pakistan which were clubbed and decided as under:-

"We, therefore, set aside the impugned judgment and remanded this case to the Tribunal for a fresh decision on merits after examining the inquiry reports, the evidence on the record and submission of the parties."

- 5- That the said judgment of KP Service Tribunal has been set aside and a fresh decision of the KP Service Tribunal had already been delivered in Remand case which have been accepted as prayed for and gave option for inquiry which was conducted exonerated the appellant without any penalty except "Formal Warning" which is not come under the E&D Rules 2011, hence no charges leveled against the appellant.

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- 6- That the appellant faced very difficult situations economically and paid 8 (Eight Lacs) approximately on litigation charges of KP Service Tribunal and august Supreme Court of Pakistan in both the cases (Service Appeal NO.1211/2014, 1212/2014, Civil Petition No. 1120/2018, 1131/2018 & 1415/2018) KP Service Tribunal, august Supreme Court of Pakistan respectively.
- 7- That the appellant sold his wife gold and even his own residential house for the said litigation cost as well for house expenses and now living on rent. Similarly my children education was also suffered and they were waiting for admission fees and other needs for education up till now.

It is humbly prayed that on acceptance of this departmental appeal the impugned orders dated 13/08/2020 thereby the appellant was reinstated into service may be modified and reinstated the appellant with all back benefits.

Yours obediently

Sher Khan, Computer Operator (BPS-16)
Advocate General Office, KP, Peshawar

Dated 10/09/2020

Annex - J

44



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 15315 /AG/PF/Sher Khan/2020

Dated Peshawar, the 09-Dec-2020

Address: High Court Building, Peshawar.
Tel. No.091-9212681

Exchange No 9213833
Fax No. 091-9210270

To

Mr. Sher Khan,
Computer Operator of this office.

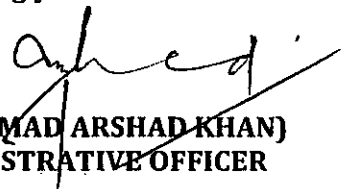
Subject:

DEPARTMENTAL APPEAL UNDER SECTION 22 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 READ WITH RULE 3 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 AGAINST THE IMPUGNED ORDERS DATED 13/08/2020 THEREBY I HAVE BEEN REINSTATED INTO SERVICE WITHOUT BACK BENEFITS

Memo:

I am directed to refer to the subject noted above and to state that as you have yourself undertaken through two (02) applications titled as "humble request", dated 15/03/2019 and 22/03/2019 that the intervening period from 01/05/2014 to 11/02/2019 may be treated as leave without pay, therefore, based on these two (02) applications as well as expert opinion on the subject matter, dated 26/10/2020, the Competent Authority has not acceded to your request of back benefits as requested for through the Departmental Appeal, dated 10/09/2020.

I am, therefore, directed to inform you accordingly.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

Endst. No. & date even

Copy to PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.

ADMINISTRATIVE OFFICER

Annex - K

45

To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Sir,

With due respect I beg to submit the following humble submissions in your honour for your kind perusal and treating them on compassionate grounds:-

1. That I was dismissed from service on 30.04.2014 on account of 36 cases which came to the office time barred.
2. That I am repentant on what occurred on my part and now request for taking a lenient view in my case as I am totally destroyed financially.
3. Since fresh inquiry is about to be launched against the undersigned as per the orders of the august Supreme Court of Pakistan judgment dated 10/01/2019, therefore, it is, humbly requested that the same may not be conducted strictly as I have already suffered and remained jobless during the last five years.
4. That, I have five schools going children dependent on me and have no other source of income except this job and all children are under education in different classes.
5. That during my jobless period of five (05) years, I got suffered financially to the maximum due to the litigation issues, house hold expenses, education of my children etc, for which I even sold out my personal home and now have been living in a rented house for the last four (04) years.
6. That I was appointed in Education Department (FATA) in 2000 and then through proper channel I applied for the post of DPS in the Advocate General's office through Public Service Commission in 2003, worked since 2013 in the said office. Now I am the age of 41 years and cannot apply to any service due to age limit.
7. That due to my jobless period, my children are suffering educationally, socially and economically.

It is, therefore, requested that I may kindly be pardoned at this time. As I have five (05) minor school going children, wholly dependent upon me and for the sack of their future. I also under take that I will never go into litigation in any Court and lenient view be taken. I may kindly be re-instated against any post.

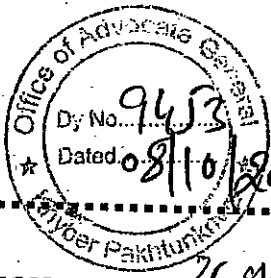
Yours obediently,

(Sher Khan)

Junior Scale Stenographer

Annex - L

46



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

Peshawar dated the 08/10/2019.

NOTIFICATION

No: E & A/LD/2-12/2019:

2/08/10/19

On the recommendation of the Departmental Promotion Committee, the Competent Authority is pleased to promote Mr. Ahmad Khan, Computer Operator (BPS-16) office of the Advocate General Khyber Pakhtunkhwa to the post of Computer Programmer (BPS-17) on regular basis with immediate effect.

2. The Officer on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule-15 of Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules, 1989.

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

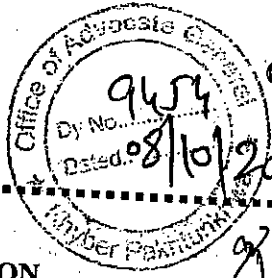
ENDST. OF EVEN NO. & DATE / 18088-93

Copy is forwarded to:-

1. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General Khyber Pakhtunkhwa.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. The PS to Minister for Law, Parliamentary Affairs and Human Rights.
5. The PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
6. The Officer concerned.

Mun Khan
SECTION OFFICER (GENERAL)

47



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

Peshawar dated the 08/10/2019.

NOTIFICATION

No: E & A/LD/2-12/2019:

97- 08/10/19

On the recommendation of the Departmental Promotion Committee, the Competent Authority is pleased to promote Mr. Zia Ullah, Computer Operator (BPS-16) office of the Advocate General Khyber Pakhtunkhwa to the post of Web Administrator (BPS-17) on regular basis with immediate effect.

2. The Officer on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule-15 of Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules, 1989.

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

ENDST. OF EVEN & DATE.

Copy is forwarded to:- /18682-87

1. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General Khyber Pakhtunkhwa.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. The PS to Minister for Law, Parliamentary Affairs and Human Rights.
5. The PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
6. The Officer concerned.

Omman
SECTION OFFICER (GENERAL)

VAKALATNAMA

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BC-10-1667

Sher Khan

Versus

The Secretary & another

I, **Sher Khan S/o Lal Muhammad** do hereby appoint, **QAZI JAWAD EHSANULLAH ADVOCATE SUPREME COURT, SALMAN FAYYAZ MIR, MUHAMMAD WAQAS & MIAN ZAKIR HUSSAIN ADVOCATES HIGH COURT**, in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
- 2- To sign and verify and file or withdraw all proceeding, petitions, appeals, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
- 3- To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of the proceedings.

AND hereby agree:-


That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remain unpaid.


In witness whereof I/We have signed this vakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this
day of _____, 2020


Signature of Executant


QAZI JAWAD EHSANULLAH
Advocate Supreme Court


SALMAN FAYYAZ MIR


Muhammad Waqas Khan
Advocate High Court


Mian Zakir Hussain
Advocate High Court

BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 508/2021

Sher Khan

.....

Appellant

Versus

Govt. of Khyber Pakhtunkhwa etc

.....

Respondents

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 508/2021

Sher Khan.....appellant

Versus

Govt of Khyber Pakhtunkhwa, Law,
Parliamentary Affairs Department, etc..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections:

- I. That the appellant has neither locus standi nor for that matter cause of action to file the instant appeal.
- II. The appeal is bad due to its faulty format in violation of the law.
- III. The appeal in hand is also time-barred, hence cannot proceed further.
- IV. That because of the conduct of the appellant he is estopped to prefer this appeal. Appellant himself provided undertaking, dated 19.03.2019 (*Annex;- A*) repenting on his past conduct, seeking pardon and committing not to enter into further litigation if lenient view was taken in his case. He also undertook and requested that the period during which he remained out of service may be treated as leave without pay. It is pertinent to mention here that Annex-K (Page-45), annexed with Appeal has neither been submitted to this office nor processed rather this has been added only to misguide the Hon'ble Tribunal. It is totally fabricated and not relevant. Actual copy, received in this office on 19/03/2019 is at Annex-A of this reply. It means that the appellant has intentionally tried to mislead the Tribunal to get undue favor of the Tribunal. Appellant was again asked by the Competent Authority whether the undertaking provided was true or it was under some pressure vide letter dated 21.03.2019 (*Annex;- B*) to which he replied dated, 22.03.2019 (*Annex;- C*) owning the same in toto. Consequently he was reinstated as per his commitment after obtaining legal opinion, dated 26.10.2020 (*Annex;-D*) from the Expert.

- V. That in view of two separate set of charges and separate disciplinary proceedings and separate litigations, two separate orders were passed by the Competent Authority vide office order No.8677-83/AG dated 13.08.2020 and office order No.8684-90/AG dated 13.08.2020 reinstating the appellant without back benefits against which appellant filed a combined Departmental appeal on 10.09.2020 which is in stark violation of Section-22(2) of the Khyber Pakhtunkhwa Service Tribunal Act, 1973 read with Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 further read with Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules-1986 whereunder separate Department Appeals/Representations against separate orders are the requirement of law. Thus the Departmental appeal as well as the instant appeal are not legally sustainable.
- VI. That appellant has never been reinstated into service by this Hon'ble Tribunal as well as august Supreme Court of Pakistan rather the matter was referred to the Department for de novo proceedings and during de novo inquiry, warning was proposed. The Competent Authority by taking a lenient view as per the undertaking of appellant passed the impugned order. Thus appellant cannot claim the back benefits.
- VII. That under the well-entrenched principle of law "*no work no pay*" appellant is not entitled to any back benefits particularly in view of the proposal of enquiry committee for conversion of major penalty into warning.

FACTS:

1. Needs no reply.
2. Not admitted. Being a responsible official of the Department, appellant was supposed to be cautious and vigilant due to the nature of his duties but he failed in his responsibilities. He deliberately got delayed CPLAs which became time barred resulting into loss to the Exchequer inspite of the fact that he was provided all record and even expenses for filing the cases.
- 3&4. Not admitted. Appellant being aggrieved of dismissal orders approached this Tribunal in service appeals which stood adjudicated on 16.02.2018 by holding in Service Appeal No.1211/2014 that the impugned punishment is excessive which was converted into withholding of two annual increments

for a period of two years and the intervening period was treated as leave of the kind due. In Service Appeal No.1212/2014, the Tribunal held that *the impugned punishment is excessive/harsh* which was also converted into minor penalty of Censure. The judgments were called in question by the answering Respondents in CPLAs before the Supreme Court wherein the matter was remanded to the Tribunal vide judgments dated 10.01.2019 and 18.10.2019.

5&6. Misconceived. The Tribunal judgements were found by the Supreme Court as self-clashing and thus set aside. The Tribunal maintained the charges but reduced the punishments on account of procedural lapses and in the post-remand proceedings the Tribunal rightly referred the matter to the Department for de novo proceedings. Moreover in the de novo proceedings warning was proposed to the appellant. Thus there was no complete exoneration of the appellant as claimed.

7&8. Absolutely misleading. The enquiry committee did not recommend back benefits to the appellant nor the recommendations of the enquiry committee were binding on the Competent Authority but a lenient view was taken due to compassionate grounds raised by the appellant on the one hand and undertaking not to claim back benefits and file further litigation on the other in written request. Moreover, appellant has clearly contravened the contents of Rule-3 of the Khyber Pakhtunkhwa (Appeal) Rules-1986 as explained hereinabove..

GROUND:-

A&B Misleading. In the post-remand proceedings the Tribunal remanded the case to the Department for de novo proceedings instead of allowing the appeals in toto. Appellant is blowing hot and cold in the same breath. The Supreme Court in a case reported as 2021 SCMR 962 held:

In case, where there was some fault of the civil servant, including a situation where concession of reinstatement was extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty was modified but not wiped off in a way that the civil servant was restored to his position, he may be denied a portion of back benefits/back pay, while maintaining a proportion between the gravity of the fault of the civil servant and special/extenuating circumstances of the case.

Moreover. The appellant was not completely exonerated by the enquiry committee as alleged rather warning was proposed to him.

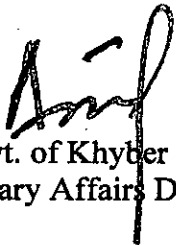
C&D. Not admitted as narrated by the appellant. Appellant was not reinstated into service rather he was recommended for warning by taking a lenient view. Moreover, appellant has not served the Department, during the intervening period nor the enquiry committee recommended back benefits in its report. (Annexed herewith as Annex-E). Therefore, he is not entitled for the subject relief as reflected in the impugned appellate order dated 09.12.2020 wherein solid reasons have been vouchsafed.

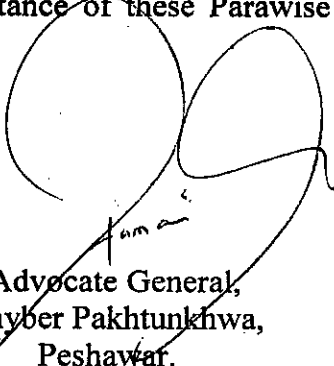
E. Incorrect hence vehemently denied. The appellant committed to his request till the end when expert opinion was given on 26.10.2020. Moreover, appellant never withdrew from his request verbally nor in writing even after enquiry report was submitted. He is estopped by his own conduct.

F. Not admitted. The law has provided discretion to the Competent Authority to pass any order with regard to back benefits and the Competent Authority passed the order keeping in view the facts and circumstances of the case and requests of the appellant.

G. The answering Respondents will also raise additional grounds at the time of arguments.

It is, therefore, respectfully prayed that on acceptance of these Parawise Reply, the appeal may graciously be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs Department,
Peshawar.
(Respondent No.1)


Advocate General,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.2)

**BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR**

Service Appeal No. 508/2021

Sher Khan

Appellant


VERSUS

Govt. of Khyber Pakhtunkhwa & others

Respondents

AFFIDAVIT

I, Muhammad Arshad Khan, Senior Administrative Officer, Advocate General Office, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the **parawise comments** on behalf of **Respondents No. 1 & 2** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent
CNIC # 17101-0252231-1

Annex - A

(6)

To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Sir,



92-19/03

With due respect I beg to submit the following humble submissions in your honour for your kind perusal and treating them on compassionate grounds:-

1. That I was dismissed from service on 30.04.2014 on account of 36 time barred cases.
2. That I am repentant on what occurred on my part and now request for taking a lenient view in my case as I am totally destroyed financially.
3. Since fresh inquiry is about to be launched against the undersigned as per the orders of the august Supreme Court of Pakistan judgment dated 10/01/2019, therefore, it is, humbly requested that the same may not be conducted strictly as I have already suffered and remained jobless during the last five years.
4. That, I have five schools going children dependent on me and have no other source of income except this job and all children are under education in different classes.
5. That during my jobless period of five (05) years, I got suffered financially to the maximum due to the litigation issues, house hold expenses, education of my children etc, for which I even sold out my personal home and now have been living in a rented house for the last four (04) years.
6. That I was appointed in Education Department (FATA) in 2000 and then through proper channel I applied for the post of DPS in the Advocate General's office through Public Service Commission in 2003, worked since 2013 in the said office. Now I am the age of 41 years and cannot apply to any service due to age limit.
7. That due to my jobless period, my children are suffering educationally, socially and economically.

It is, therefore, requested that I may kindly be pardoned at this time. As I have five (05) minor school going children, wholly dependent upon me and for the sack of their future. I also under take that I will never go into litigation in any Court and lenient view be taken. I may kindly be re-instated against any post. I further undertake that the period from 30/4/2014 till my reinstatement may please be treated as leave without pay.

Yours obediently,

(Sher Khan)
Junior Scale Stenographer

15/03/19

Seen by me
Cd. AG. KP.

92-19/03/2019

Annex-B

(7)



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 7003-34 /AG

Dated Peshawar, the 21-Mar-2019

Address: High Court Building, Peshawar.
Tel. No. 091-9212681

Exchange No 9213833
Fax No. 091-9210270

To

Mr. Sher Khan,
Stenographer (BPS-14),
Advocate General Office,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Reference your request, dated 15/03/2019 on the subject noted above.

It is to inform you that your request, dated 15/03/2019 has been received on 19/03/2019 and perused by the Competent Authority. The Competent Authority has desired to confirm that each and every word, contained in paras 1 to 7, alongwith concluding para as well as the signature, recorded on the request are owned and written by you.

You are, therefore, directed to apprise this office within three (03) days about your confirmation of what have been written in the humble request. You are also directed to inform as to whether the request has been written under any sort of pressure or in your complete senses?


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

Endst. No. & date even

Copy to PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.

ADMINISTRATIVE OFFICER

Annex. C (8)

To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

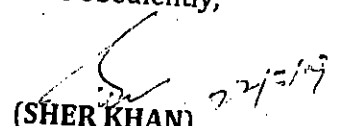
Subject: **HUMBLE REQUEST**

Dear Sir,

Reference this office letter No. 7703-04/AG, dated 21/03/2019 on the subject noted above.

It is submitted that I hereby undertake that all the words as well as the signature in the humble request, dated 15/03/2019 are owned by me and there was no pressure on me to write the humble request. I was in my complete senses.

Yours obediently,


(SHER KHAN)
Stenographer (B-14)

Annex-D

(9)



OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. _____/AG

dated _____/2020

Address: High Court Building, Peshawar.
Tel. No.091-9210119

Exchange No 9213833
Fax No. 091-9210270

OPINION

Mr. Sher Khan Computer Operator (BS 16) of this office was dismissed from the service on **31/04/2014** and was subsequently re-instated, for the purpose of inquiry afresh, after rounds of litigation, in pursuance to the Judgment dated 10/01/2019 of the Apex Court in **CP No. 11/20/2018**, vide order dated 12/02/2020.

Accordingly, an inquiry was conducted and the official was exonerated from the charges as is evident from its report dated 30/10/2019. Pertinent to highlight here that, official himself made different humble requests dated 15/03/2019 & 22/03/2019, that lenient view may be taken and he may be re-instated- the intervening period of his dismissal may be treated as without pay. Now after exoneration from inquiry and re-instatement, the official is requesting for back benefits for the intervening period of his dismissal from the service etc.

In the given scenario, I am of the view that, he is not entitled for the relief claimed (Back Benefits) as the official himself made different requests for lenient view and that intervening period of his dismissal may be treated as without pay.

Even otherwise, this is an admitted fact that, he has not served the department during the period of his termination and by now this is a settled principle that "**where there is no work- there is no pay**".

This Opinion is subject to approval of worthy Advocate General Khyber Pakhtunkhwa.

Submitted for kind perusal please.

Ld. Advocate General,
Khyber Pakhtunkhwa,
Peshawar

(Zafar Abbas Mirza)
Law Officer

26th OCT
2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.508/2021

**Sher Khan,
Computer Operator ,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/o Lalazar Colony, University Campus,
Peshawar**

.....Appellant

Versus

**Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar etc**

-----Respondents

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Through **Appellant**

**Qazi Jawaz Ehsanullah,
Advocate Supreme Court of Pakistan
&
Mian Zakir Hussain
Advocate High Court**

Dated: _____ / 05/ 2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.508/2021

Sher Khan,
Computer Operator ,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/o Lalazar Colony, University Campus,
Peshawar

.....Appellant

Versus

1. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar.
2. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.....Respondents

REJOINDER ON BEHALF OF PETITIONER

Respectfully Sheweth,

Preliminary objections:

- I. Incorrect
- II. Incorrect
- III. The appeal is within time.
- IV. Incorrect: The undertaking attributed to the appellant was taken under duress and not out of free consent. Moreover, **no lenient view was taken** by the respondent as the learned Service Tribunal Judgment /order dated 07/01/2020 in its concluding para as under:

“As a sequel to the above, the instant appeal is accepted, impugned order dated 30/04/2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back befits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.”

The Advocate General constituted Fresh inquiry of two Hon'ble members comprising:-

- 1- Mr. Atif Ali Khan, Addl. Advocate General KP, Peshawar
- 2- Mr. Umar Farooq, Addl. Advocate General KP, Peshawar

Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and awarded a minor penalty of formal warning which does not come under the E&D Rules.

V- **Incorrect.** The appellant filed Department Appeal/Service Appeal against the office orders No.8677-83/AG dated 13/08/2021 and 8684-90/AG 13/08/2021 of same day orders on the following reasons:

KP Service Tribunal	Decision	Remarks
Service Appeal No. 1211/2014 filed by the applicant	Accepted on 16/02/2018	Major Penalty of Dismissal was converted into "withholding two Annual increments & intervening period was treated as leave without pay"
Service Appeal No. 1212/2014 filed by the applicant.	Accepted on 16/02/2018	Major Penalty of Dismissal was converted into "Censure"

The respondents did not comply the orders/Judgments of KP Service Tribunal and challenged the above said judgments in Hon'ble Supreme Court of Pakistan as under:

Supreme Court of Pakistan	Decision	Remarks
Civil Petition No. 1131/2018 filed by the respondents against the Service Appeal No.1211/2014	<u>Dismissed/ Remanded</u> on 18/10/2019	The civil Petition filed by the respondents was remanded and directed the respondent that if there is no any charges leveled against the appellant then why 2 annual increments were stopped by the Ld. Service Tribunal and hence remanded the case for fresh Decision.
Civil Petition No. 1120/2018 filed by the respondents against the Service Appeal No. 1212/2014	<u>Dismissed</u> on 10/01/2019	The civil Petition filed by the respondents was dismissed and directed the respondent for conducting De-novo inquiry. De-novo Enquiry was conducted by the following Law Officers: 1- Syed Sikandar Hayat Shah, Addl. Advocate General KP, Peshawar. 2- Arshad Ahmad Addl. Advocate General, KP, Peshawar Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and exonerated the appellant from all charges leveled against appellant without any penalty.
Civil Petition No. 1415/2018 Filed by the appellant against the KP Service Tribunal of stoppage of two annual increments and the remaining period leave without pay.	<u>Disposed off</u> On 10/01/2019	<u>Accepted:-</u> The Hon'ble Supreme Court accepted the appellant appeal and remanded the case to KP Service Tribunal for <u>rectification</u> that why the two increments were stopped if there was no charges leveled against the appellant.

KP Service Tribunal	Decision	Remarks
Remanded Service Appeal No.1211/NEEM/2014. Remanded by the august Supreme Court of Pakistan against CP No.1131/2018 and 1415/2018	Accepted on 07/01/2020	<p><u>Accepted:-</u> The appeal of the appellant was accepted as prayed for and the department was directed that De-novo inquiry at the liberty of the Department if they do the de-novo inquiry or not. The Advocate General constitute Fresh inquiry of two members comprising:-</p> <ol style="list-style-type: none"> 1- Mr. Atif Ali Khan, Addl. Advocate General KP, Peshawar 2- Mr. Umar Farooq, Addl. Advocate General KP, Peshawar <p>Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and awarded a minor penalty of <u>formal warning</u> which does not come under the E&D Rules.</p>

Now the respondents department raised objection the appellant should file separate departmental/service appeal against both the office orders dated 13/08/2020. It is pertinent to mentioned here that the CP No.1120/2018 (Service Appeal No.1212/2014) was dismissed by the august Supreme Court of Pakistan with direction for conducting fresh inquiry whereas inquiry was conducted and the appellant was exonerated without any penalty. Then the appellant was not required to file any departmental appeal/service appeal against above CP No.1120/2018.

Secondly the back benefits of appellant case was decided by the august Supreme Court of Pakistan in CP No.1131/2018 & 1415/2018 which were remanded back to the Hon'ble Service Tribunal in its case Service Appeal No. **No.1211/NEEM/2014 dated 07/01/2020** and the Hon'ble Service Tribunal decided the case of the appellant as following:

"As a sequel to the above, the instant appeal is accepted, impugned order dated 30/04/2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back befits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room."

It is very clear and crystal that the Back Benefits of the appellant was totally related to the above cited case and there is no need to challenge the others/unnecessary departmental appeals/service appeals in any form.

V. **Incorrect.** Warning is not come under punishment (E&D Rules 2011).

2002 PLC (C.S) 391

2007 PLC (C.S) 536

VII. **Incorrect.** Whenever no charge was established against the Civil Servant, the Civil Servant is entitled to all back benefits.

FACTS:

- 1- **Incorrect.** All the judgments of august Supreme Court of Pakistan (Civil Petition No. 1120/2018, Civil Petition No.1131/2018, Civil Petition No. 1415/2018), Hon'ble KP Service Tribunal (Service Appeal No. 1112/2014, 1212/2014, 1211/NEEM/2014) Six numbers judgments if keenly observed there will no single line about the responsibility of the appellant that the delay of filing CPLAs is due to the appellant. Also six (06) numbers of Inquiries conducted against the appellant also show that no such responsibility leveled against the appellant about the delay filing of time barred cases.
- 2- **Incorrect.** The judgment of Service Tribunal in Service Appeal No.1211/2014 had been set aside in the light of appellant appeal in august Supreme Court of Pakistan in CP No.1415/2018 while the respondent petition CP No.1131/2018 was remanded to KP Service Tribunal for rectification in its judgment which was also decided as under:-

“As a sequel to the above, the instant appeal is accepted, impugned order dated 30/04/2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back befits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.”

- 3&4. **Incorrect.** The judgment of Supreme Court of Pakistan dated 18/10/2019 in CP 1131/2018 (Service Appeal No. 1112/2014) had been set aside whereas the KP Service Tribunal awarded the punishment of with holding two annual increments and the remaining period is considered kind leave which had been set aside and remanding the subject case for fresh decision which is also decided as above. Hence in light of CP 1415/2018 the said punishment i.e. with holding 2 annual increment had been vanished.
- 5&6. **Incorrect.** Warring is not come under punishment under E&D Rules 2011.
- 7&8. **Incorrect.** The De-novo inquiry was completely silent about back benefits of the appellant whereas the Service Tribunal strictly ordered that the issue of back **benefits of the appellant would be the outcome of the departmental De-novo** inquiry which was not done in the light of judgment dated 07/01/2020 of Hon'ble Service Tribunal which comes **under contempt of Court.**

Grounds:-

A&B- Incorrect. That the Judgment **2021 SCMR 962** whereas no leniency or compassion was taken by the respondent after the judgment/order dated 07/01/2020 of KP Service Tribunal as the Hon'ble Service Tribunal directed the respondent to decided the matter of back benefits with fresh De-Novo Inquiry (optional). This optional inquiry come under the preview of leniency or compassion if the respondent does not proceed whereas the respondent constituted a formal inquiry and the inquiry officer proposed a warning which is not become hurdle in between the back benefits of the petitioner. Moreover, there are numbers of decided cases in Supreme Court clear cut reinstated the civil servant with all back benefits as mentioned below:

- 1- 2018 SCMR 376
- 2- 2002 SCMR 1634
- 3- 2007 SCMR 855
- 4- 2019 SCMR 640
- 5- 2002 PLC (CS) 391
- 6- 2014 PLC 164

C&D- Incorrect. Warring? During that dismissal period the appellant had never done any job in Private Sector or Govt. Sector except only following the litigation of cases fixed before Service Tribunal and Supreme Court of Pakistan by paying huge money and time.

E- Incorrect. The said request for reinstatement of petitioner without back benefit is totally under pressure without the consent of petitioner as the petitioner was jobless and due to socio-economic situation the appellant was compel by the competent authority to do so and proof of the said act in form of **letters are annexed.** Moreover, there are numbers of judgments of Supreme Court as well as Service Tribunal that Binding effect, Admission wrong in fact, was not binding. Judgments are as under:


- (i) PLD 1989 Supreme Court 749
- (ii) PLD 1975 Supreme Court 311
- (iii) 2001 MLD 427
- (iv) PLJ 2016 Tr.C (Services) 321 Punjab
Service Tribunal Lahore

It is therefore humbly prayed that on acceptance of this service appeal the impugned orders dated 13/08/2020 thereby appellant was reinstated into service without back benefits may please be modified by reinstated the appellant with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to appellant.

Through

Appellant


Qazi Jawaz Ehsanullah,
Advocate Supreme Court of Pakistan

&

Mian Zakir Hussain
Advocate High Court

Dated: _____ / 05/ 2022

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

A

7

Subject: HUMBLE REQUEST

Sir,

With due respect I beg to submit the following humble submission in your honour for your kind perusal and treating then on companionate grounds:-

- 1- Since fresh inquiry is about to be launched against the undersigned as per the order of the August Supreme Court of Pakistan's judgment dated 10/01/2019, therefore it is humbly requested that the same may be conducted judicially and sympathetically being already suffered and remained jobless during the Last five years.
- 2- That, I have never worked as employee under your esteemed setup, supervision and guideline; therefore I wish to work under your kind control.
- 3- That, I have five schools going children dependent on me and have no other source of income except this job and all are under education in different classes.
- 4- That, during my jobless period of 5 years, I got suffered financially to the maximum due to the litigation issues, house hold expenses, education of my five children etc, for which I even sold out my personal home and have been living in a rented house for the last four years.
- 5- That I was appointed in Education Department (FATA) in 2000 and then through proper channel I applied for the post of DPS in the Advocate General's office through public Service Commission in 2003, worked since 2013 in the said office. Now I am the age of 41 years and did not apply to any service due to age limit.
- 6- That due to my jobless, my children are suffering educationally, socially and economically.

It is, therefore, requested that I may please be re-instated into service in any post available in this office and I assure your lordship that I will never proceed to any court and keep concentration on my duty and will never give any complaint in future.

Yours obediently

Sher Khan,
Junior Scale stenographer

1. That I was removed from service on account of some 36 cases which got time barred.
2. That I am repentant on what occurred on my part & now request for lenient view in my case as I have totally destroyed financially.

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

18
8

Subject: HUMBLE REQUEST

Sir,

With due respect I beg to submit the following humble submission in your honour for your kind perusal and treating them on companionate grounds:-

- 1- Since fresh inquiry is about to be launched against the undersigned as per the orders of the August Supreme Court of Pakistan's judgment dated 10/01/2019, therefore it is humbly requested that the same may be conducted judicially and sympathetically being already suffered and remained jobless during the last five years.
- 2- That, I have never worked as employee under your esteemed setup, supervision and guideline; therefore I wish to work under your kind control.
- 3- That, I have five schools going children dependent on me and have no other source of income except this job and all are under education in different classes.
- 4- That, during my jobless period of 5(05) years, I got suffered financially to the maximum due to the litigation issues, house hold expenses, education of my children etc, for which I even sold out my personal home and have been living in a rented house for the last four years.
- 5- That I was appointed in Education Department (FATA) in 2000 and then through proper channel I applied for the post of DPS in the Advocate General's office through Public Service Commission in 2003, worked since 2013 in the said office. Now I am the age of 41 years and cannot apply to any service due to age limit.
- 6- That due to my jobless, my children are suffering educationally, socially and economically.

It is, therefore, requested that I may please be re-instated into service in any post available in this office and I assure your lordship that I will never proceed to any court of law and keep concentration on my duties and will never give any complaint in future.

Yours obediently

Sher Khan,
Junior Scale stenographer

It is, therefore, requested that I may be pardoned this time, as I have five (05) minor school going children, wholly dependent upon me & for the sake of their future. I also undertake that I shall never go into litigation in any court if lenient view is taken & I am re-instated against any post.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.508/2021

**Sher Khan,
Computer Operator ,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/o Lalazar Colony, University Campus,
Peshawar**

.....Appellant

Versus

**Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar etc**

-----Respondents

APPLICATION FOR ADJOURNMENT

Respectfully Sheweth:

- 1- That the above subject case is pending before this Hon'ble Court and fixed for 28/02/2023.
- 2- That the Counsel for petitioner is engaged in Supreme Court of Pakistan in case titled CP No. 3292/2021 Peshawar Cantonment Board thr: CEO, Peshawar Vs State Bank. (Supreme Court Cause List is annexed)

It is therefore, requested that above subject case may kindly be adjourned to nearest date of this month or as appropriate to this Court.

Through

Appellant


**Qazi Jawaz Ehsanullah,
Advocate Supreme Court of Pakistan**

**&
Mian Zakir Hussain
Advocate High Court**

Dated: 28 / 02/ 2023

Mr. Rashid-ul-Haq Qazi, ASC
(Enr#2574)
R - Notice
Syed Rifaqat Hussain Shah, AOR (Rwp)
(Enr#239)
Sh. Inikhar Ahmed, ASC (Enr#2531)(Rwp)

12	C.P.3072-L/2017 (Tax / Income Tax) [-] Mr. Justice Ijaz ul Ahsan, J (Sec. 62 & 136(2) of Income Tax Ordinance 2001) (S.J.) (D.B.)	The Commissioner Inland Revenue, Lahore v. M/s. Riaz Bottlers (Pvt.) Ltd., Lahore	Mrs. Tasneem Amin, AOR (Enr#227)(Lhr) Ch. Muhammad Zafar Iqbal, ASC (Lhr) (Enr#2977) Mr. Muhammad Ozair Chughtai, AOR (Enr#193) Mr. Ali Sibtain Fazli, ASC (Lhr) (Enr#1774)
and(2)	C.P.3073-L/2017 (Tax / Income Tax) [-] Mr. Justice Ijaz ul Ahsan, J (D.B.)	The Commissioner Inland Revenue, Lahore v. M/s. Riaz Bottlers (Pvt.) Ltd., Lahore	Mrs. Tasneem Amin, AOR (Enr#227)(Lhr) Ch. Muhammad Zafar Iqbal, ASC (Lhr) (Enr#2977) Mr. Muhammad Ozair Chughtai, AOR (Enr#193) Mr. Ali Sibtain Fazli, ASC (Lhr) (Enr#1774)
and(3)	C.P.3135-L/2017 (Tax / Income Tax) [-] Mr. Justice Ijaz ul Ahsan, J (D.B.)	Commissioner Inland Revenue, Lahore v. M/s. Riaz Bottlers (Pvt.) Ltd., Lahore	Mrs. Tasneem Amin, AOR (Enr#227)(Lhr) Ch. Muhammad Zafar Iqbal, ASC (Lhr) (Enr#2977) Mr. Muhammad Ozair Chughtai, AOR (Enr#193) Mr. Ali Sibtain Fazli, ASC (Lhr) (Enr#1774)
13	C.P.17/2019 (Service / Removal from Service) (S.J.) (C.O.)	Muhammad Younas v. The Secretary School Education, Lahore and another	Syed Rifaqat Hussain Shah, AOR (Rwp) (Enr#239) Mr. Razaq A. Mirza, ASC (Rwp) (Enr#2505) R - Notice
4	C.P.3292/2021 (Tax / Property Tax) (Sec. 99 of the Cantonment Act 1924) (D.B.) (C.O.)	Peshawar Cantonment Board, through Cantonment Executive Officer, Peshawar v. State Bank of Pakistan through Chief Manager, Peshawar and others	Haji Muhammad Zahir Shah, AOR (Pesh) (Enr#186) Mr. Ihsanullah, ASC (Enr#3819) (Pesh) Attorney General for Pakistan R - Notice
	C.P.231/2022 (Service / Appointments) (D.B.) (C.O.)	Ayaz and others v. Mustafa Saeed and others	Chaudhry Akhtar Ali, AOR (Rwp) (Enr#94) M. M. Aqil Awan, Sr. ASC (Enr#289) R - Notice
2)	C.P.183-K/2022 (Writ Petition / Others) (D.B.)	The Province of Sindh through its Secretary Forest & Wildlife Department, Government of Sindh & others v. Mustafa Saeed & others	Advocate General, Sindh (Kcl) Mr. Ghulam Rasool Mangi, AOR (Kcl) (Enr#248) R - Notice