

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

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeals No. 1570/2022

Diary No. 5312  
Dated 15/5/2023

Mr. Abdul Munir Khan.....Appellant

**VERSUS**

Chief Secretary, Khyber Pakhtunkhwa & Others ..... Respondents

**INDEX**

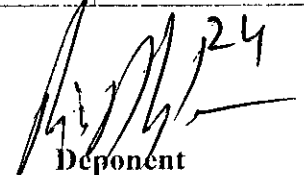
Sr. No:	Description of Documents	Annex	Pages
1.	Joint Parawise Comments		2-5
2.	Affidavit		6
4.	Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment Dated 13.10.2009	I	7-9
5.	Supreme Court Of Pakistan Order/Judgment Dated 11.03.2010	II	10-11
6.	Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment Dated 24.12.2018	III	12-16
7.	Supreme Court Of Pakistan Order/Judgment Dated 28.03.2022	IV	17
8.	Establishment Department Letter 17.08.2022	V	18
9.	Absences Notice Dated 11.09.2002 alongwith Notice Two Leading Newspaper	VI	19-23

10 Authority letter

Dated: 06.02.2022

Peshawar

16/5/2023

  
24

Deponent

CNIC No: 17301-6272682-3

Mobile: 0315-5737137

2

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**  
**Service Appeal No. 1570/2022**

Abdul Munir Khan, ex-EAC BS-17, ex-Land Acquisition Collector, NHA, Bara Banda,  
Risalpur.

.....(Appellant)

**Versus**

1. The Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.  
.....(Respondents)

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS:**

1. The appeal is not maintainable being hit by the Principle of res judicata. The appellant filed first Service Appeal No.729/2009, that being without merit and time barred, was dismissed by the honourable Tribunal vide its judgment dated 13.10.2009 (**Annex-I**). The judgment of the Tribunal was upheld by the Apex Court vide its verdict dated 11.03.2010 (**Annex-II**). His second Service Appeal No.1436/2015 was also dismissed by the honourable Tribunal declaring the same non-maintainable being already adjudicated upon and hit under Rule, 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, vide its judgment dated 24.012.2018 (**Annex-III**). A Civil Petition No.673/2019 was filed there against by the appellant in the august Supreme Court of Pakistan which was dismissed as not pressed vide order dated 28.03.2022 (**Annex-IV**). **Hence, a matter which has already been adjudicated upon by the competent courts (The Hon'ble Tribunal and Supreme Court of Pakistan), cannot be pursued by the appellant by filing a fresh appeal on the same question of law as it is a matter fait-accomplis and has already gained finality, therefore, warrants dismissal in limine.**
2. That the instant appeal is hit by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.
3. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
4. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
5. That the appeal is barred by law/time.
6. That the appellant has concealed material facts from the Tribunal.
7. That the appellant has not come to the Tribunal with clean hands.
8. That the appellant is estopped by his own conduct to file the instant appeal.
9. That the appeal is hit by laches.

**Reply to Facts:**

1. Need no Comments.
2. Incorrect as laid. Departmental Proceedings against the appellant were initiated for his wilful absence and not as a result of NAB Inquiry or his family enmity. The appellant, while posted on deputation basis to NHA as LAC Islamabad-Peshawar Motorway Project, Bara Banda Risalpur, proceeded on ten (10) days medical leave on 07.01.2002 and thereafter he wilfully absented himself from duty w.e.f.

17.01.2002 without any intimation. Resultantly, disciplinary proceedings were initiated against the officer under the then NWFP Removal from Service (Special Powers Ordinance) 2000 read with rule-8A of E&D Rules, 1973 and major penalty of "Removal from Service" was imposed upon him for his wilful absence from duty w.e.f 17.01.2002 vide order dated 04.03.2003. He filed departmental appeal against the penalty which was regretted by competent authority being bereft of merit and barred by law. There against, the appellant filed first Service Appeal No.729/2009, that being without merit and time barred, was dismissed by the honourable Tribunal vide its judgment dated 13.10.2009 (**Annex-I**). The judgment of the Tribunal was upheld by the Apex Court vide its verdict dated 11.03.2010 (**Annex-II**). His second Service Appeal No.1436/2015 was also dismissed by the honourable Tribunal declaring the same non-maintainable being already adjudicated upon and hit under Rule, 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, vide its judgment dated 24.12.2018 (**Annex-III**). A Civil Petition No.673/2019 was filed there against by the appellant in the august Supreme Court of Pakistan which was also dismissed as not pressed vide order dated 28.03.2022 (**Annex-IV**). Hence, a matter which has already been adjudicated upon by the competent courts (The Hon'ble Tribunal and Supreme Court of Pakistan), cannot be pursued by the appellant by filing a fresh appeal on the same question of law as it is a matter fait-accompli and has already gained finality, therefore, warrants dismissal in limine.

3. Need no Comment.
4. Correct to the extent that the departmental appeal submitted by the appellant was rejected by the competent authority being badly time barred and devoid of merit. Moreover, on the same grounds his first Service Appeal No.729/2009 was also dismissed by the honourable Tribunal vide its judgment dated 13.10.2009 (**Annex-I**). The assertion of the appellant is misleading that the Tribunal dismissed his appeal due to the reason that his conviction by the Accountability Court in NAB reference No.8/2007 as nowhere in its judgment the Tribunal makes reference to his conviction in NAB Reference.
5. Incorrect as laid. The Hon'ble Supreme Court of Pakistan dismissed the civil appeal of the appellant against the judgment dated 13.10.2009 of Hon'ble Tribunal for the reasons as recorded in Para-2 of the Apex Court's verdict dated 11.03.2010 (**Annex-II**).
6. Pertains to record.
7. Correct to the extent that the appellant submitted another departmental appeal on 07.10.2015 requesting therein to reinstate him in service on the plea that Peshawar High Court, Peshawar has acquitted him from the charges of corruption and set aside sentence awarded to him by the Accountability Court. The appeal of the officer dated 07.10.2015 was rejected as the penalty of "Removal from Service" was imposed upon him due to his wilful absence from duty which is a totally separate issue. There against he filed another Service Appeal No.1435/2015 before the Hon'ble Tribunal which was also dismissed vide judgment dated 24.12.2018, on the ground that the same is not maintainable being res judicata and hit under Rule, 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 (**Annex-III**).
8. Correct to the extent that CPLA against the judgment dated 24.12.2018 of the Hon'ble Tribunal was withdrawn by the appellant with his sweet will and

accordingly, the same was disposed of by the Apex Court in terms "dismissed as not pressed". However, withdrawal of the Civil Appeal, which was pending adjudication before the Apex Court, does not provide another cause of action to file a fresh appeal before the Hon'ble Tribunal when the same is barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.

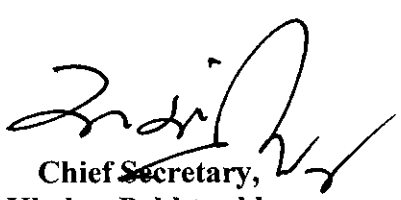
- 9. Correct to the extent that the appellant preferred departmental appeal which was duly processed and in view of the Khyber Pakhtunkhwa Service Tribunal judgments' dated 13.10.2009, 24.12.2018 and Apex Court's judgment dated 11.03.2010, the competent authority filed/regretted the same. However, it is misleading to assert that order (which, in fact, is an intimation letter to Chief Minister's Secretariat) passed on the appeal, was not provided to the appellant as the same was dispatched on his postal address as it was provided in his appeal (**Annex-V**).
- 10. Incorrect. As already explained in the preceding paras.

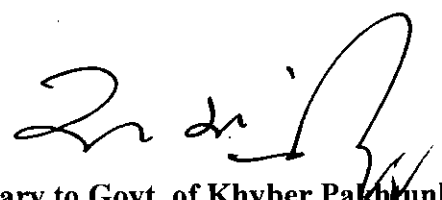
**Reply to Grounds:**

- A. Incorrect. As already explained in the preceding paras.
- B. Incorrect as laid. Major penalty of Removal from Service was imposed upon the appellant after adopting the procedure as laid down in Removal from Service (Special Powers) Ordinance, 2000. Hence, violation of legal/constitutional rights has not taken place as all codal formalities under the rules/law have been fulfilled. This fact is discernible from the Courts judgments referred to herein above paras.
- C. Incorrect. As already explained in the preceding paras.
- D. Incorrect as laid hence, denied. Ex-party action was not taken against the appellant because proper procedure was adopted as prescribed in the rules where wilful absence from duty is involved; a notice to the appellant was issued on his home address and thereafter a notice in two leading newspapers was published, thereby directing him to resume duty within fifteen days, failing which the competent authority proceeded against him under the rules (**Annex-VI**). The Hon'ble Supreme Court of Pakistan also dismissed his petition & upheld his sentence of "Removal from Service".
- E. Incorrect. As already explained in the preceding paras.
- F. Incorrect. As already explained in the preceding paras.
- G. Incorrect, misperceived and misinterpreted. The appellant was proceeded against under Removal from Service (Special Powers) Ordinance, 2000 read with Rule-8 of the Govt. Servants (E&D) Rules, 1973.
- H. Incorrect. As already explained in the preceding para "D".
- I. Incorrect, misperceived and misinterpreted. Every case has got its own peculiar facts and circumstances: consequences of a specific case cannot be generalized to all other cases.
- J. Incorrect. As already explained in the preceding para "I".
- K. Incorrect. As already explained in the preceding paras.

- L. Incorrect as laid. Charges of corruption and NAB Reference had no bearing on the departmental proceedings against the appellant as the same was initiated on the sole ground of wilful absence from duty which is a totally separate issue.
- M. Incorrect. As already explained in the preceding Para "L".
- N. As already explained in the preceding Para "D".
- O. Incorrect as laid. The fact of the matter is crystal clear from the judgments so far passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar and Hon'ble Supreme Court of Pakistan in the matter in question.
- P. Incorrect as laid. Charge Sheet and Show Cause Notice were not required to be issued to the appellant under the rules as it was a case of wilful absence. As explained in the preceding Para-2 of "Facts".
- Q. Incorrect. As explained in the preceding Para-2 of "Facts".
- R. Incorrect as laid. As explained in the preceding paras.
- S. The respondents seek permission to adduce additional grounds/documents at the time of arguments.

It is, therefore, humbly prayed that on acceptance of these Parawise comments, the instant appeal being devoid of merit may very graciously be dismissed with cost in limine.

  
**Chief Secretary,**  
**Khyber Pakhtunkhwa**  
**(Respondent No. 1)**

  
**Secretary to Govt. of Khyber Pakhtunkhwa,**  
**Establishment Department**  
**(Respondent No. 2)**

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

Service Appeal: 1570/2022

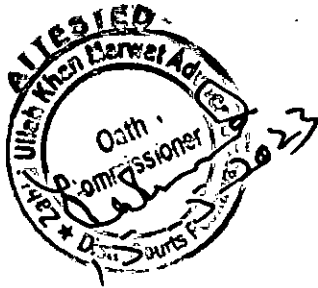
Mr. Abdul Munir Khan.....Appellant

**VERSUS**

Chief Secretary Khyber Pakhtunkhwa & Others .....Respondents

**AFFIDAVIT**

I, Riaz Khan Superintendent (Litigation-III Section) Establishment Department do hereby solemnly affirm and declare that the contents of the accompanying parawise comments is true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.



**DEPONENT**

CNIC No. 17301-6272682-3  
Contact: 0315-5737137

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

E  
Annex "E"

Appeal No. 729/2009

Date of institution - 04.05.2009  
Date of decision - 13.10.2009

35

Abdul Munir Khan, P.C.S (EG) Ex. LAC National Highway Authority Motorway Bara Banda District Nowshera. .... (Appellant)

VERSUS

1. Government of NWFP through Chief Secretary, NWFP, Peshawar.
2. Secretary Establishment, Government of NWFP, Peshawar..... (Respondents)

Appeal against Respondents order of 7<sup>th</sup> April 2009 whereby the appellant's departmental appeal/ representation against order No. SOEII (ED)2(38)/92, dated 4.3.2003 was not entertained.

Mr. Muhammad Zafar, Advocate..... For Appellant.  
Mr. Ghulam Mustafa, ..... For Respondents.

MR. SULTAN MAHMOOD KHATTAK..... MEMBER.  
MR. BISMILLAH SHAH..... MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER: This appeal has been filed by the appellant against Respondents order of 7<sup>th</sup> April, 2009 whereby the appellant's departmental appeal/ representation against order No. SOEII (ED)2(38)/92, dated 4.3.2003 was not entertained. He has prayed that the impugned orders may be set aside and the appellant be re-instated in service with all back benefits.

2. Brief facts of the case are that the appellant being qualified and eligible had initially joined service in 1980 as Inspector, Income tax under the Federal Government. He was selected and appointed Tehsilder by the Government of NWFP in 1982 on the recommendation of NWFP Service Public Commission and the appellant promoted and appointed as an Officer in the regular PCS (Executive Group) BS.17 on 25<sup>th</sup> November 1992. Since then he has been serving as a regular PCS (EG) officer under the Government of NWFP. While serving on deputation with the National Highway Authority (NHA) as LAC in the office of Director (LM&IS) NHA a family enmity cropped up causing

Attested  
M.Y. 15/10/09

36

danger to his life. Under the circumstances the appellant was constrained to stay long with his family exile for some time and during that period he was unable to attend his official duties for the obvious reason. In the meanwhile, the respondent department initiated disciplinary proceedings against the appellant and removed from service vide order dated 4.3.2003 against which he preferred departmental appeals on 19.2.2009 and 17.3.2009 which was rejected on 7.4.2009. Hence, the instant appeal.

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the impugned order of termination of appellant from service was passed on 4.3.2003 without informing him on his residential address of Hayatabad, (Peshawar) as confirmed by the S.S.P D.I Khan. He further argued that the appellant having put in more than twenty one years of blotless service before his alleged absence from duty, was entitled to an equitable and just treatment for the blotless service already rendered prior to the unfortunate incidence. His third point was that an identical case of absence from duty without leave, the appeal was allowed by this Service Tribunal by setting aside the order of his removal from service. The last of arguments was that removal from service could not be made under Removal from Service Special Power (Ordinance 2000) without appointment of an Inquiry Officer and without conducting a proper inquiry in accordance with the law laid down by the Hon'ble Supreme Court of Pakistan in several cases as the appellant has completed more than 21 years of service before the alleged absence from duty and there is nothing adverse in his service record during that period.

5. The learned A.G.P argued that the penalty was imposed upon the appellant after adopting the procedure as laid down in Removal from Service (Special Powers) Ordinance, 2000 and he was given an opportunity to defend himself. The appellant was aware of the proceedings initiated against him but he absconded himself for fear of arrest by NAB authorities. No discrimination has been made with the appellant and all codal formalities under the rules/law have been fulfilled. The appellant proceeded on medical leave for 10 days w.e.f 7.1.2002 and after expiry of the said leave, he neither requested for extension in medical leave nor resumed his duty, rather he absconded himself due to his involvement in a corruption case and fear of arrest by the NAB authorities. All codal formalities were

*Atty Genl  
Muz  
12/8/09*



37

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against the appellant. Removal from Service notification was issued on 4.3.2003.  
pugned action was taken under the existing rules of law and according to the  
les of justice. He prayed that the appeal may be dismissed.

After hearing the arguments on both sides, the Tribunal while agreeing with the  
arguments put forth by the learned A.G.P dismiss the appeal being without merit and time  
barred.

ANNOUNCED.  
13.10.2009.

*Bismillah Shah*  
(BISMILLAH SHAH)  
MEMBER.

*Sultan Mahmood Khattak*  
(SULTAN MAHMOOD KHATTAK)  
MEMBER.

*Ali...*  
*...*  
*...*

Annex-11 10

SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present:  
Mr. Justice Jawwad S. Khawaja  
Mr. Justice Khilji Arif Hussain

CIVIL PETITION NO. 2-P OF 2010

(On appeal from the judgment of the Peshawar High Court,  
Peshawar dated 13.10.2009 passed in Appeal No. 729/2009)

Abdul Munir Khan ... Petitioner(s)

Versus

Government of NWFP through  
Chief Secretary and another ... Respondent(s)

For the petitioner(s): Mr. Riaz Ahmed Khan, ASC  
Mr. Mir Adam Khan, AOR

For the respondent(s): N.R.

Date of hearing: 11.3.2010

ORDER

JAWWAD S. KHAWAJA J.- The petitioner Abdul Munir Khan was Land Acquisition Collector. He impugns the judgment of the NWFP Service Tribunal, Peshawar dated 13.10.2009 whereby an appeal filed by him, has been dismissed. It is evident from the impugned judgment that the petitioner had absconded and had remained absent from duty. He was also subsequently tried and convicted in a corruption case prosecuted by the National Accountability Bureau. In the said case, he was convicted and sentenced to four years R.I.

2. The learned Tribunal has given cogent reasons for dismissing the petitioner's appeal. Learned counsel for the petitioner was not in a position to advert to any jurisdictional error or legal infirmity in the impugned judgment which would justify interference therein by this Court while exercising jurisdiction under Article 212(3) of the Constitution. However, in order to ensure completeness of this

ATTESTED

*(Signature)*  
Official Seal  
Supreme Court of Pakistan  
Peshawar

*Attested by [Signature]*  
*[Signature]*

*(Circular stamp)*

judgment, we have noted the contention advanced by learned counsel that departmental inquiry was not held before the removal of the petitioner from service. We have considered the provisions of Section 5(4) of the Removal from Service (Special Powers) Ordinance, 2000, which stipulate as under:-

*"5(4) The competent authority may dispense with the inquiry under sub-section (1) if 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 of holding an inquiry."*

We also note that the petitioner stands convicted for corruption of an amount of Rs.8,41,88,000/-. In the circumstances, we are not inclined to exercise jurisdiction in this case. More so, because no substantial question of law of public importance has been pointed out. This petition, as a consequence, is dismissed and leave to appeal is declined.

*Edy Jawwad S. Khawaja, J*  
*Edy Khidji Amir Hussain, J*

Peshawar  
11.3.2010  
NOT APPROVED FOR REPORTING

*Ejaz Goraya*  
*(Signature)*

*Certified to be true copy*

*(Signature)*  
Supreme Court of Pakistan  
Peshawar  
*17/3/10*

*(Handwritten notes)*  
*Amir Hussain*  
*17/3/10*

12  
Annex-III

76

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

SERVICE APPEAL NO. 1436/2015

Date of institution ... 31.12.2015

Date of judgment ... 24.12.2018



Abdul Munir Khan S/o Jehangir Khan,  
R/o House No. 103-B, Street No. 5, Sector K2,  
Phase-III Hayatabad, Peshawar.  
Ex-Extra Assistant Commissioner, Peshawar

(Appellant)

VERSUS

1. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
  2. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO. SOE-II(ED)2(381)/92 DATED 30.12.2015 OF RESPONDENT NO. 1, WHEREBY REPRESENTATION DATED 07.10.2015 OF APPELLANT WAS FILED/REGRETTED FOR NO LEGAL REASON.

Mr. Arbab Saif-ul-Kamal, Advocate.

Mr. Riaz Ahmad Paindakhel, Assistant Advocate General

For appellant.  
For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI  
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Appellant

alongwith his counsel present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving as Extra Assistant Commissioner, Peshawar. He was deputed to the National Highway Authority as Land Acquisition Collector on 15.04.1998. The

(ESTABLISHMENT-II)

*Attested  
24/12/2018*



appellant was imposed major penalty of removal from service by the competent authority vide order dated 04.03.2003 with effect from 17.01.2002 on the allegation of absence from duty being involved in corruption cases. The appellant filed departmental appeal on 17.03.2009 which was rejected on 07.04.2009 being time barred therefore, the appellant filed service appeal on 04.05.2009. The service appeal of the appellant was dismissed by this Tribunal vide detailed judgment dated 13.10.2009. The appellant also challenged the judgment of this Tribunal dated 13.10.2009 before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan also declined the leave to appeal vide judgment dated 11.03.2010. It is also pertinent to mention here that the appellant was convicted by the Accountability Court NWFP, Peshawar in reference No. 8/2007 for the offence of corruption and corrupt practices punishable under section 9/10 of National Accountability Ordinance, 1999 and sentenced to rigorous imprisonment for four years and to pay a fine of Rs. 8,25,00,000/- or in default to undergo for two years S.I, the benefits of section 382-B Cr.P.C has also been extended vide judgment dated 25.07.2007. The appellant challenged that aforesaid judgment of the Accountability Court Peshawar in the worthy Peshawar High Court and the worthy Peshawar High Court vide detailed judgment dated 22.09.2015 acquitted the appellant from the aforesaid case. The appellant again filed departmental appeal on 07.10.2015 against his removal order which was rejected on 30.12.2015 hence, the present service appeal on 31.12.2015.

*M. Aslam  
24/12/2018*

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the absence of the appellant was not intentional but the appellant was involved in corruption cases by the NAIB authority. It was further contended that the Accountability Court

**ATTESTED**

*[Signature]*  
Secretary (General),  
Peshawar

*Attested  
M. Aslam  
24/12/2018*  
(ESTABLISHMENT-II)

(78)

Peshawar convicted the appellant but the appellant filed appeal before the worthy Peshawar High Court against the judgment of the Accountability Court and the worthy Peshawar High Court accepted the appeal of the appellant and acquitted the appellant from the charges leveled against him vide detailed judgment dated 22.09.2015. It was further contended that after his acquittal by the worthy Peshawar High Court, the appellant filed departmental appeal but the same was rejected hence, the present service appeal. It was further contended that since the appellant was acquitted by the worthy Peshawar High Court therefore, the removal order of the appellant was illegal and liable to be set-aside and prayed for acceptance of appeal with all back benefits.

*M. Amin*  
 24.12.2018

5. On the other hand, learned Assistant advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was removed from service vide order dated 04.03.2003 with effect from 17.01.2002 by the competent authority on the allegation of absence from duty being involved in corruption cases. It was further contended that the appellant submitted departmental appeal against the removal order on 17.03.2009 which was badly time barred and the same was rejected on 07.04.2009 being time barred. It was further contended that the appellant also filed service appeal before this Tribunal and this Tribunal also dismissed the appeal of the appellant vide detailed judgment dated 13.10.2009. It was further contended that the appellant also challenged the judgment of this Tribunal dated 13.10.2009 before the august Supreme Court of Pakistan, and the august Supreme Court of Pakistan has also maintained the judgment of this Tribunal and the petition was dismissed and leave to appeal was declined vide detailed judgment dated 11.03.2010. It was further contended that the appellant was also convicted by the Accountability Court Peshawar but on his acquittal by the worthy Peshawar High Court, he again filed departmental appeal as well

WITNESSED

*[Signature]*

*Attested by [Signature]*

79

service appeal. It was further contended that since this Tribunal has already dismissed the appeal of the appellant vide detailed judgment dated 13.10.2009 and the august Supreme Court of Pakistan has also maintained the judgment of this Tribunal vide judgment dated 11.03.2010 therefore, it was contended that the present service appeal is not maintainable and is hit under rule 23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was further contended that the first departmental appeal of the appellant was also time barred therefore, prayed for dismissal of appeal.

6 Perusal of the record reveals that the appellant was imposed major penalty of removal from service by the competent authority vide order dated 04.03.2003 with effect from 17.01.2002 on the allegation of absence from duty being involved in corruption cases. The record further reveals that the appellant filed departmental appeal against the impugned order on 17.03.2009 which was badly time barred and the departmental appeal was also rejected by the departmental authority vide order dated 07.04.2009 being time barred. The appellant filed service appeal before this Tribunal and the service appeal of the appellant was also dismissed by this Tribunal vide detailed judgment dated 13.10.2009. The appellant also challenged the judgment of this Tribunal before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan vide detailed judgment dated 11.03.2010 maintained the judgment of this Tribunal and petition of the appellant was dismissed and leave to appeal was declined. The record further reveals that the appellant was convicted by the Accountability Court Peshawar and the appellant challenged the same before the worthy Peshawar High Court and the worthy Peshawar High Court set-aside the judgment of Accountability Court Peshawar and acquitted the appellant vide detailed judgment dated 22.09.2015. Though the appellant again filed departmental appeal after his acquittal and thereafter the service appeal before

*M. Amin*  
24.12.2015

ATTESTED

*Attested*  
*Asst. Secy*  
*BBT/Secy*

80

this Tribunal but in the first round of litigation the appellant was removed from service vide order dated 04.03.2003 and he filed departmental appeal on 17.03.2009 after a delay of about six years which was also rejected vide order dated 07.04.2009 being time barred. Moreover, the service appeal of the appellant was also dismissed by this Tribunal vide judgment dated 13.10.2009 and the appellant also challenged the same before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan also maintained the judgment of this Tribunal and leave to appeal was declined vide detailed judgment dated 11.03.2010. Therefore, we are of the considered view that the present service appeal is not maintainable being re-judicata and is hit under Rule-23 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED  
24.12.2018

*Muhammad Amin Khan Kundi*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

*Hussain Shah*  
(HUSSAIN SHAH)  
MEMBER

*copy*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Filing of Application 24-12-18  
 Number of Pages 2400  
 Copying Fee 14  
 Original 14  
 Total 14  
 Name of Applicant [Signature]  
 Date of Presentation of Copy 24-1-19  
 Date of Filing of Copy 24-1-19

*Attached  
[Signature]  
[Signature]*

(ESTABLISHMENT-II)



**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**  
MR. JUSTICE UMAR ATA BANDIAL, CJ  
MRS. JUSTICE AYESHA A. MALIK

**CP No. 673/2019**  
(Against the judgment dated 24.12.2018 passed in Service Appeal No. 1436/2015)

Abdul Munir Khan ...Petitioner(s)

**Versus**

Secretary, Government of KP, Establishment Department, Peshawar & another ...Respondent(s)

For the Petitioner(s) : Mr. Salahuddin Malik ASC along with petitioner in person

For the Respondent(s) : NR

Date of Hearing : 28.03.2022

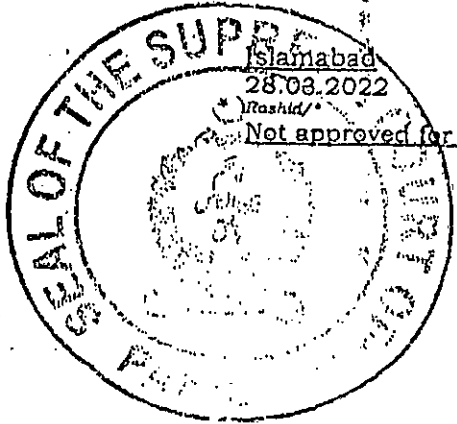
**ORDER**

**UMAR ATA BANDIAL, CJ:** - The learned counsel for the petitioner does not press this petition against the judgment dated 24.12.2018 passed by KP Service Tribunal, Peshawar in order that the petitioner may seek some remedy before Provincial Government. Request allowed. Dismissed as not pressed.

Sd/-CJ  
Sd/-J

Secured to be True Copy

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



6550/2022  
28.3.2022

300  
3  
500  
1086  
6-06

16/5/22

*Handwritten signatures and initials:*  
Mukherjee  
Sudhakar  
Sudhakar

SECTION OFFICER  
(ESTABLISHMENT-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO.SOE-II(ED)/2(381)92  
Dated Peshawar the August 17, 2022

To

The Section Officer (Lit/Estt.),  
Chief Minister's Secretariat, Khyber Pakhtunkhwa.

Subject:

APPEAL AGAINST OFFICE ORDER NO.SOE-II(ED)2(381)92  
DATED 04.03.2003 OF THE SECRETARY GOVT. OF KP, ESTT  
DEPARTMENT PESHAWAR, WHEREBY APPELLANT WAS  
REMOVED FROM SERVICE RETROSPECTIVELY

I am directed to refer to your letter No.SO(Lit/Estt)CMS/KP/4-1/Appeals/2022/4562 dated 23.06.2022 on the captioned subject and to state that the appeal of the subject appellant was examined in light of relevant rules and filed as the same has already gained finality.

2 Furthermore, the appeal of the appellant is badly time barred for 18 years and it is a matter fait accompli; has no ground for reconsideration being twice dismissed by the Khyber Pakhtunkhwa Service Tribunal and upheld by the August Supreme Court of Pakistan vide its judgment dated 11.03.2010.

Encl: As above.

SECTION OFFICER  
(ESTABLISHMENT-II)

ENDST: NO & DATE EVEN

Copy forwarded to the:-

- 1) PS to Secretary Establishment Department, Khyber Pakhtunkhwa
- 2) PS to Special Secretary (Estt:), Establishment Department.
- 3) Mr. Abdul Munir Khan S/O Jehangir Khan, Village and Post office Bahadri, Tehsil and District D.I. Khan in response to his appeal.
- 4) PA to Additional Secretary (Estt:), Establishment Department
- 5) PA to Deputy Secretary (Estt:), Establishment Department.

SECTION OFFICER  
(ESTABLISHMENT-II)

Attested  
by  
B. S. Khan  
G. P. Khan

Annex - VI

**(Registered)**  
**(IMMEDIATE)**

**GOVERNMENT OF NWFP**  
**ESTABLISHMENT DEPARTMENT**

No. SOE-II(ED)2(381)92.  
Dated: Peshawar the 11.9.2002

To  
The District Coordination Officer,  
District D.I.Khan.

Subject:- ABSENCE FROM DUTY

Dear Sir,

I am directed to enclose "notice" on the cited subject (in duplicate) addressed to Mr. Abdul Munir Khan, PCS(EG), BS-17, the then LAC, National Highway Authority, resident of Village Bahadri D.I.Khan.

It is requested that arrangement may be made to deliver the notice to the concerned officer at his home and obtain his or one of his close family member's signature on duplicate copy of notice as a token of receipt and forward the same to this Department for record.

Yours Faithfully,

*o/c*  
  
(Rashid Khan)  
Section Officer (E-II)

*Attested by B. S. Khan*

**(Registered)**  
**(IMMEDIATE)**

**GOVERNMENT OF NWFP**  
**ESTABLISHMENT DEPARTMENT**

No.SOE-II(ED)2(381)92.  
Dated Peshawar the 11.9.2002

To  
The District Coordination Officer,  
District D.I.Khan.

Subject:- ABSENCE FROM DUTY

Dear Sir,

I am directed to enclose "notice" on the cited subject (in duplicate) addressed to Mr. Abdul Munir Khan, PCS(EG), BS-17, the then LAC, National Highway Authority, resident of Village Bahadri D.I.Khan.

It is requested that arrangement may be made to deliver the notice to the concerned officer at his home and obtain his or one of his close family member's signature on duplicate copy of notice as a token of receipt and forward the same to this Department for record.

Yours Faithfully,

*R. I. Malik*  
(Rashid Khan)  
Section Officer (E-II)

*ACD*

*Dr. 9/6/02*  
*13/9/02*

*7868*  
*6/9*  
*Esth*

*14-09-02*

*Attached  
with  
B8/43 subdt*

**GOVERNMENT OF NWFP  
ESTABLISHMENT DEPARTMENT**

**NOTICE**

I, Lt.Gen.(R) Syed Iftikhar Hussain Shah, Governor, North-West Frontier Province, as Competent Authority under the NWFP Removal from Service (Special Powers) Ordinance, 2000 read with Rule 8-A of the Efficiency & Discipline Rules, 1973 do hereby issue you notice, Mr.Abdul Munir Khan, PCS(EG) BS-17 the then LAC, NHA that;

While serving as LAC in the office of Director (LM&IS) NHA, Bara Banda, Risalpur, you have absented yourself from duty since 17.1.2002 without intimation to the borrowing Organization or Establishment Department.

2- You are, therefore, directed to resume duty within 15 days of receipt of this notice and intimate the cause of your absence or apply for leave according to rules. In case of failure, further action will be taken against you under the relevant law/rules.

*[Handwritten Signature]*  
06 Sep 2002

**LT.GEN.(R) SYED IFTIKHAR HUSSAIN SHAH  
GOVERNOR, NORTH-WEST FRONTIER  
PROVINCE**

**Mr.Abdul Munir Khan,  
PCS(EG) BS-17,  
LAC/NHA.**

*Abdul Munir Khan  
28/9/02*

روزنامہ آج لاہور حوالہ نمبر 15-12-2002

حوالہ نمبر 192/ (381) 2 (ED) II SOE. II مورخہ دسمبر 2002ء

عنوان:- نوٹس برائے غیر حاضری

آپ سہی عبدالعزیز پی سی ایس (ایگزیکٹو گروپ) بی پی ایس 17 مستقل باشندہ گاؤں بہادری ضلع ڈیرہ اسماعیل خان کو بذریعہ نوٹس بذراطلاع کیا جاتا ہے کہ آپ ڈائریکٹر (LMXIS) نیشنل ہائی وے اتھارٹی بارہ بانڈہ رسالپور کے دفتر میں بطور L.A.C ڈیوٹی سرانجام دے رہے تھے مورخہ 17/11/02 سے غیر حاضر ہیں۔

آپ کو چھٹی نمبر 92/ (381) 2 (ED) II SOE. II تاریخ 11 ستمبر 2002ء آپ کے گھر کے پتہ پر بذریعہ ڈی سی او صاحب ضلع ڈی آئی خان نوٹس دیا گیا تھا کہ آپ 17 جنوری 2002ء سے غیر حاضر ہیں اور آپ کو ہدایت کی گئی تھی کہ آپ اس نوٹس کی وصولی کے 15 یوم کے اندر اپنی ڈیوٹی پر حاضر ہو جائیں بصورت دیگر مروجہ قانون / ضوابط کے تحت آپ کے خلاف یکطرفہ انضباطی کارروائی عمل میں لائی جائے گی مگر آپ تا حال نہ خود حاضر ہوئے اور نہ کوئی تحریری جواب دے سکے۔ آپ کو بذریعہ (نوٹس) ہدایت کی جاتی ہے کہ آپ اس اشاعت کے 15 دنوں کے اندر اندر اسٹیٹسمنٹ ڈیپارٹمنٹ میں ڈیوٹی پر حاضر ہو جائیں اور اپنی غیر حاضری کی وجوہات بیان کریں بصورت دیگر آپ کے خلاف مروجہ قانون اور ضوابط کے تحت ملازمت سے غیر حاضری کی بناء پر یکطرفہ کارروائی عمل میں لائی جائے گی جو آپ کی ملازمت سے ختمی ہوگی۔

INF(P)2335

منکاب - سیکرٹری اسٹیٹسمنٹ صوبہ سرحد

Attested  
by  
Egtaab GSD dt

DAILY "STATESMAN" PESHAWAR

DATED 15-12-2002

Gadoon Amazai,  
N.W.F.P. Pakistan

University of Peshawar - Statesman

GOVERNMENT OF NWFP, ESTABLISHMENT DEPARTMENT  
No: SOE-II (ED)2(381)92  
Dated Peshawar the, 12.12.2002

**NOTICE**

1- You Mr. Abdul Munir Khan, PCS(EG) BS-17 permanent, resident of village Bahadari District while serving as LAC in the office of Director (LM&IS) NHA, Bara Banda, Risalpur absented yourself from duty since 17.1.2002 without intimation to the Borrowing Organization or Establishment Department.

2- A notice was issued to you through DCO D.I.Khan vide letter No: SOE-II (ED)2(381)92 dated 11.9.2002 directing you to resume duty within 15 days, failing which action would be taken against you under the relevant law and rules. However, you have not resumed duty so far.

3. Now you are directed through this notice, Mr. Abdul Munir Khan, PCS(EG) BS-17 the then LAC, NHA to resume duty in the Establishment Department, NWFP within fifteen (15) days of the publication of this notice and intimate the cause of your absence failing which ex-parte decision of your removal from service will be taken against you under the relevant law/rules.

**SECRETARY TO GOVT OF NWFP, ESTABLISHMENT DEPARTMENT**

Permanent address: Mr. Abdul Munir Khan,  
PCS(EG) BS-17, the then LAC, NHA, R/O Village Bahadari, D.I. Khan.  
Present address: House No.371, Street No.22, Sector 2-  
E,Phase-5, Hayatabad, Peshawar.

INF(P)2335

*Attested  
by  
B. S. S. S. S.*

24



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(JUDICIAL WING)**

**AUTHORITY LETTER**

Mr. Riaz Khan, Superintendent (BS-17), Litigation-III Section, Establishment Department is hereby authorized to submit and attend the Khyber Pakhtunkhwa Service Tribunal in connection with all cases of Establishment Department on the behalf of the Secretary, Establishment Department.

A handwritten signature in black ink, appearing to be 'Riaz Khan', written over a horizontal line.

**SECRETARY,  
ESTABLISHMENT DEPARTEMENT.**