# FORMOF ORDERSHEET

Court of _____

Misc. application No. 346/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|---|---|---|
| 1 | 2 | 3 |
| 1 | 30/05/2023 | The Misc. application in appeal no. 77/2019 submitted today by Mr. Mufariq Shah Advocate. It is fixed for hearing before Single Bench at Peshawar on 01-06-2023. Original file be requisitioned.<br><br>REGISTRAR |

Before the Khyber Pukhtunkhwa, Services Tribunal, Peshawar

CM No. 346 /2023

In Re;

**Service Appeal No. 77/2019**

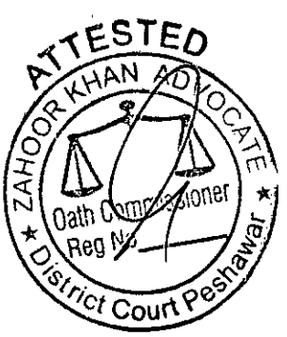


Muhammad Saleem _____ Appellant

VERSUS

Govt. of KPK _____ Respondents

Application for Rectification of the Judgment rendered in Service ***Appeal no. 77/2019, instituted on dated 17-01-2019, Decided on dated 13-12-2022***, to the extent of mentioning the correct name of the ***Advocate/Counsel i.e. Mr. Mufariq Shah Advocate*** instead of ***Ibrahim Khan Afridi Advocate***.




Respectfully Sheweth,

1. That the above mentioned titled appeal was decided on dated 13-12-2022 by this worthy service tribunal.

2. That when the judgment was taken to the department to act upon as per the judgment, the department at once pointed out, that the case had been submitted and argued by Mr. Mufariq Shah Advocate but the name of the advocate had been wrongly mentined/typed as Mr. Ibrahim Khan Afridi Advocate which is the legal counsel of the LRH, hence this application for the rectification of the counsel/advocate name in the judgment dated 13-12-2022. (Copy of judgment in service appeal no. 77/2019 dated 13-12-2022 is annexed)

Place before the bench along case file

30/05/23

3. That there is no legal bar in allowing this application, rather it is in the best interest of justice.

It is therefore, humbly prayed that by allowing and accepting this application, the name mentioned wrongly as ***Mr. Ibrahim Khan Afridi Advocate*** may kindly be replaced with ***Mr. Mufariq Shah Advocate.***

Applicant/Appellant

Through

Mufariq Shah
Advocate High Court.
Office No. 15, Hazrat Shah Plaza, Shoba Bazar, Peshawar.
Mobile: 0314-9175656.
Email:mufariq_shah@hotmail.com

**Certificate/Affidavit;**

It is certified that as per instruction imparted upon me by my client, no such like application has earlier been moved before this or any other court. Nothing concealed nor stated false anything from this worthy Tribunal.

ATTESTED
ZAHOOR KHAN ADVOCATE
Oath Commissioner
Reg No
District Court Peshawar

30/5/2023
Deponent

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.77/2019

Date of Institution ... 17.01.2019
Date of Decision ... 13.12.2022

Muhammad Saleem, S/O Muqarab Khan R/O Class -IV Association Office LRH, Peshawar.

... (Appellant)

VERSUS

The Government to Khyber Pakhtunkhwa through Secretary Health Department, Peshawar and two others.

... (Respondents)

Ibrahim Khan Afridi
Advocate ... For appellant

Naseer Ud Din Shah
Assistant Advocate General ... For respondents

Mrs. Rozina Rehman ... Member (J)
Miss Fareeha Paul ... Member (E)

JUDGMENT

ROZINA REHMAN,MEMBER (J):The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

**"On acceptance of the instant service appeal, the impugned order dated 22.02.2018 may please be set aside/turned down and the deducted salary of the appellant may kindly be reimbursed back to the appellant."**

2. Brief facts of the case are that appellant is provincial civil servant who was performing his duties in Leady Reading Hospital Peshawar as ward orderly. His salary was withheld without any reason

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

and plausible explanation which was released vide order dated 22.02.2018, while respondents deducted salary of 127 days. He then submitted an application/departmental appeal on 05.04.2018 regarding deduction of his salary but the same was not responded to, hence the present service appeal.

3. We have heard Ibrahim Khan Afridi, Advocate learned counsel for the appellant and Naseer Ud Din Shah learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Ibrahim Khan Afridi, Advocate learned counsel for the appellant submitted that the impugned order is against law and facts as the appellant was not treated according to law, rather he was treated in a discriminatory manner which was not warranted in the eyes of law. He submitted that the appellant was not treated at par with his colleagues as envisaged in Article 4 of the Constitution of Islamic Republic of Pakistan. That as per Article 25 of Constitution of Islamic Republic of Pakistan there shall no discrimination but in the instant case whole process was done partially according to the will of the respondent No. 2. Learned counsel further contended that well settled principle of law "Audi alteram partem" was violated and that appellant was not given an opportunity before issuance of impugned order. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Assistant Advocate General submitted that the salary of the appellant was withheld due to non-performance of his duty. He submitted that appellant was transferred to the office of

Assistant Director (Legal) vide office order dated 09.10.2017 but he failed to join his duty, therefore, explanation was called but no response was tendered, therefore, show cause notice was issued for his long absence on 15.01.2018 but he failed to submit any reply. He resumed his duty on 10.01.2018. In consequence respondent No. 2 issued letter dated 22.02.2018 vide which salary for the period of absence from duty i.e 127 days was ordered to be deducted. Lastly, he submitted that there was no discrimination and that appellant was treated in accordance with law and procedure.

6. From the record it is evident that the appellant was provincial civil servant who was performing his duties in Leady Reading Hospital Peshawar as ward orderly. Allegations against the present appellant are that he remained absent for 127 days, therefore, salary for the said period was ordered to be deducted and after fulfillment of all requirements his salary was released which had already been stopped. Record shows that the respondents blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner. No proper procedure as envisaged in E&D Rules, 2011 was followed. No charge sheet alongwith statement of allegations was issued to the appellant. No proper inquiry was conducted in order to bring on record the absence of the appellant without the permission of the competent authority. It is astonishing as to why the department kept mum for a long period of 127 days without initiating proper proceedings against the appellant. Absence for 127 days was not proved through cogent evidence. The appellant was discriminated which is evident from the

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

record that one Muhammad Waris, ward orderly was also charged for 43 days of absence and his salary was accordingly deducted. Reportedly he filed service appeal which was later on withdrawn because his salary for the said period was refunded vide office order dated 18.01.2019. No cogent reason was shown as to why the appellant was discriminated and why his salary was not refunded.

7. For the above mentioned facts and circumstances, this appeal is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.12.2022

(Fareeha Paul)
Member (E)

(Rozina Rehman)
Member (J)

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar