

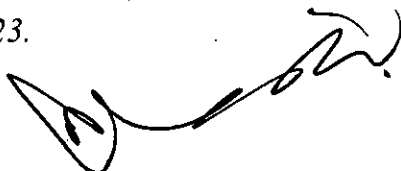
**particular branch of the service, to his re-employment in some other branch of the service. The rules in such a case as to refunding gratuity, drawing pension, and counting service, the same as in the case of re-employment after compensation pension.”**

So bare perusal of this Rule 519 reveals that any government servant who was declared invalidated by medical board and getting invalid pension after regaining health could be re-employed and there exist no bar in respect of his re-employment/reinstatement. When there is no bare upon re-employment into service then in such a situation refusal to constitute medical board for medical check-up of the appellant for the purpose of determination of his regaining health and to declare him fit or otherwise for re-employment/reinstatement into service by the respondent are unjustified and against law, rules and arbitrary in nature. Learned counsel for the appellant relied upon 1994 PLC (C.S) 957, which is applicable to the facts and circumstances of the appellant case, so far as plea taken by the respondents is concerned, that same is not in accordance with rules and law on subject, therefore, has no force in it and cannot be relied upon.

8. As a sequel to the above discussion, we allow this appeal with direction to respondents to constitute medical board for medical check-up of appellant within 30 days of the receipt of this judgment and if appellant was declared fit by the medical board then he may be reinstated/re-employed strictly in accordance with relevant rules and law. Costs shall follow the event. Consign.

9. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 3<sup>rd</sup> day of July, 2023.*

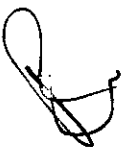
  
(RASHIDA BANO)  
Member (J)

  
(KALIM ARSHAD KHAN)  
Chairman

5. The learned Deputy District Attorney argued that on the request of the appellant he was invalidated out from service on the opinion of Standing Medical Board. He contended that the appellant was treated in accordance with law and rules. He further argued that the appellant is retired police personnel and he is no more at the strength of Police Department he has been granted all pensionary benefits and his re-instatement in service is not admissible under the rules.

6. Perusal of record would reveals that appellant was appointed as constable in the respondent department on 02.06.2006, who qualified lower school course A1 and B1 examination. Appellant was allowed to retire from service w.e.f 15.09.2020 on medical grounds vide order dated 04.10.2020. After regaining health and being found fit by his doctor, appellant applied for his reinstatement with request to constitute medical board for his medical examination but his application was rejected /filed by respondent No.3 vide order dated 13.09.2021 and revision petition against said order was also rejected by respondent No.2 on 26.01.2022. Perusal of both the impugned orders reveals that no reason for rejection /filing of it was given by respondents No. 2 & 3 but in reply it is mentioned that the appellant himself applied for medical board and as such he has not challenged the proceedings of medical board within stipulated time. It is also mentioned that after retirement on medical grounds appellant remains no more government servant and he got all pensionary benefits and also getting his pension regularly. Appellant's main contention is that after gaining health and being declared fit by his doctor he was entitled to be examined by medical board and reinstatement in service on the strength of Rule 519 of Civil Service Regulation which says that:

**"There is no bar to the re-employment of an officer who has regained health after obtaining invalid pension, or if an officer is invalidated as being incapacitated from employment in a**




**may please be reinstated in service, in accordance with law with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as constable in police department on 02.06.2006. The appellant performed his duties to the entire satisfaction of his high-ups and also qualified lower school course A1 and B1 examinations. That during service the appellant fell ill, a medical board was constituted as a result of which he was retired from service on 04.10.2020 on medical grounds. The appellant continued his treatment and after regaining his health, he submitted application for his reinstatement with a request to constitute a medical board for his medical examination which was rejected by respondent No.3 vide order dated 13.09.2021. He filed revision against said order was also rejected by respondent No.2 on 25.01.2022, hence the present service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders passed by the respondents are against law and justice hence liable to be set aside. He further contended that under the rules if any civil servant who had been invalidated during service could be reinstated if subsequently it was declared that he could efficiently his duty, even if he had availed his pension and dues. He argued that the appellant has fundamental right under constitution for his medical checkup by constituting medical board. Lastly, he submitted, that the appellant has not been treated in accordance with law and rules, therefore, he requested for acceptance of the instant service appeal.



KHYBER PAK HTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 182/2022

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN  
MRS. RASHIDA BANO ... MEMBER (J)

Asif Khan S/O Wasil Khan, R/O Mohallah New Abadi, Jungle Khel,  
Kohat. .... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police/Regional Police Officer, Kohat.
4. District Police Officer, Kohat.

.... Respondents)

Mr. Hasan U.K Afridi  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

-----  
Date of Institution.....08.02.2022  
Date of Hearing.....03.07.2023  
Date of Decision..... 03.07.2023

JUDGEMENT

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of the instant service appeal both the impugned orders may kindly be set aside and the respondents may kindly be directed to order for constitution of fresh medical board for examination of appellant and if appellant medically fit, then the appellant**

