

19.05.2017

Counsel for the petitioner and Addl: AG alongwith Mr. Muhammad Ibrar, Assistant Secretary for respondents present. Counsel for the petitioner requested for adjournment. Adjourned. To come up for further proceedings on 28.07.2017 before S.B.

  
(Ahmad/Hassan)  
Member

28.07.2017

petitioner in person and Asstt. AG for the respondents present. petitioner submitted before the court that he has been reinstated and judgment of this Tribunal has been implemented. .


In view of the above, the execution petition is filed as duly executed. File be consigned to the record room.

ANNOUNCED  
28.07.2017

  
Chairman

23.12.2016

Petitioner in person and Mr. Mukhtiar Ali, Supdt alongwith Asst: AG for respondents present. Representative of the respondents submitted that the CPLA in the instant case has already been filed, hence adjournment be granted. Request accepted. To come up for further proceedings on 27.1.2017.

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

27.01.2017

Petitioner with counsel and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned counsel for petitioner requested that admittedly CPLA has been filed but no restraining order has been issued by the apex Supreme Court of Pakistan so, respondents are duly bound to extend relief as sought. Request seems proper. The respondents are directed to pass a reinstatement order subject to decision of the apex Supreme Court of Pakistan. To come up for submission of implementation report on 31.03.2017 before S.B.

  
(ASHFAQUE TAJ)  
MEMBER

31.03.2017

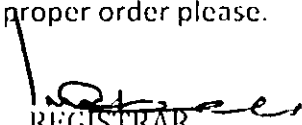

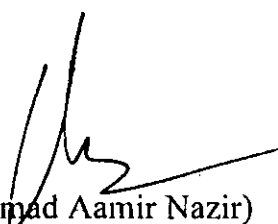

Petitioner in person M/S Muhammad Ajmal Khan, Deputy Secretary & Muhammad Ibrar, Asstt. Secretary alongwith Addl. AG for the respondents present.

According to notification dated 29.03.2017 produced by representative of the respondents, petitioner has been reinstated in service w.e.f. removal from service i.e. 14.10.2014 and adjusted as Computer Operator in Commissioner Office Mardan till availability of post of Assistant subject to decision of the august Supreme Court of Pakistan. The petitioner seeks adjournment to consult his counsel. To come up for further proceedings on 19.05.2017 before S.B.

  
Chairman

FORM OF ORDER SHEET

Execution Petition No. 182/2016

S No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28.09.2016	<p>The Execution Petition of Mr. Asfandyar Khan submitted to-day by Mr. Fazal Shah Mohmand Advocate may be entered in the relevant Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29.9.2016	<p>This Execution Petition be put up before S. Bench on <u>05-10-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	05.10.2016	<p>Counsel for the petitioner and Addl: AG for respondents present. Notices be issued to the respondents. To come up for implementation report on 11.11.2016 before S.B.</p> <p style="text-align: right;"> (Muhammad Aamir Nazir) (Member)</p>
	11.11.2016	<p>Counsel for the petitioner and Additional AG for respondents present. Learned AG requested for further time to submit implementation report. Request allowed. To come up for implementation report on 23.12.2016 before S.B.</p> <p style="text-align: right;"> (ABDUL LATIF) MEMBER,</p>

**BEFORE THE SERVICE TRIBUNAL KPK**  
**PESHAWAR.**

Implementation Petition No 182 /2016

In

Service Appeal No 830/2015.

Asfandyar Khan .....Applicant/Appellant.

**V E R S U S**

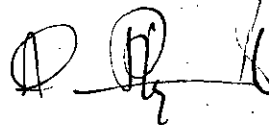
Commissioner Mardan Division Mardan. And another

.....Respondents

**INDEX**

S.No	Description of documents	Annexure	Pages
1.	implementation Petition with Affidavit		1-3
2.	Copy of the Order and Judgment dated 03-08-2016	A	4-8
5.	Wakalt Nama		9

**Dated:-28-09-2016**



**Applicant / Appellant**

**Through**



**Fazal Shah Mohmand**

**Advocate Peshawar.**

**OFFICE:-** Cantonment Plaza Flat 3/B Khyber Bazar Peshawar. Cell# 0301  
8804841

①

**BEFORE THE SERVICE TRIBUNAL KPK  
PESHAWAR.**

Implementation Petition No 182 /2016

In

Service Appeal No 830/2015

Khyber Pakhtunkhwa  
Ser

Diary No 987

Dated 28-9-16

Asfandyar Khan, Office Assistant, Commissioner Office Mardan Division  
Mardan. ....Applicant/Appellant.

**V E R S U S**

1. Commissioner Mardan Division Mardan.
2. Senior Member, Board of Revenue, Govt. of KPK Peshawar.

.....Respondents

**PETITION FOR THE IMPLEMENTATION OF  
ORDER/JUDGMENT DATED 03-08-2016 PASSEDBY THIS  
HONORABLE TRIBUNAL IN THE ABOVE TITLED SERVICE  
APPEAL.**

**Respectfully Submitted:-**

1. That the applicant/appellant earlier filed Service Appeal No 830/2015 for his reinstatement in service which was accepted vide Order and Judgment dated 03-08-2016. (Copy of the Order and Judgment is enclosed as Annexure A).
2. That the applicant/appellant time and again approached respondents for the implementation of the Order and Judgment dated 03-08-2016 of this honorable Tribunal thereby reinstating him in service but of no avail.
3. That the respondents have are not ready to implement the Order and Judgment of this honorable Tribunal dated 03-08-2016 for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 03-08-2016 of this honorable Tribunal.

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It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 03-08-2016 passed in Service Appeal No 830/2015.

Dated:-28-09-2016



**Applicant/Appellant**

**Through**



**Fazal Shah Mohmand**

**Advocate Peshawar.**

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**BEFORE THE SERVICE TRIBUNAL KPK  
PESHAWAR.**

Implementation Petition No \_\_\_\_\_/2016

In

Service Appeal No 830/2015.

Asfandyar Khan .....Applicant/Appellant.

**V E R S U S**

Commissioner and others.....Respondents

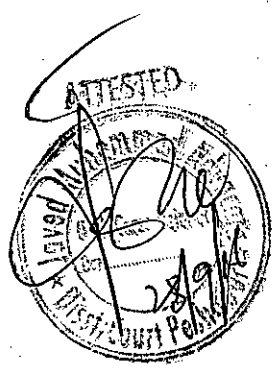
**AFFIDAVIT**

I, Asfandyar Khan Office Assistant Commissioner, Mardan Division Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**Identified by**

**DEPONENT**

  
**Fazal Shah Mohmand**  
**Advocate Peshawar**

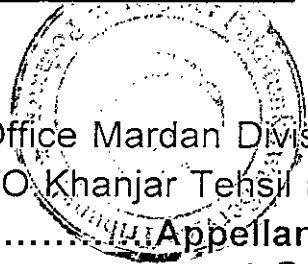


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**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 830 /2015

Asfandyar Khan Ex Office Assistant Commissioner Office Mardan Division,  
Mardan S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and  
District Mardan. ....Appellant.



**N.W.F. Province  
Service Tribunal**

Diary No. 820  
Dated 10-7-15

**V E R S U S**

1. Senior Member Board of Revenue Govt. of KPK Peshawar.
2. Commissioner, Mardan Division Mardan.

~~.....~~ Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 09-07-2015 PASSED BY  
RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF  
THE APPELLANT FILED AGAINST THE ORDER DATED 18-05-2015  
OF RESPONDENT NO 2 HAS BEEN DISMISSED.**

**PRAYER:-**

On acceptance of this appeal the impugned order dated 09-07-2015 of respondent No 1 and Order dated 18-05-2015 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to have attended the office. (Copy of FIR is enclosed as Annexure C).

Filed to-day  
Registrar  
10/5/15

Ke-submitted to-day  
and filed.

Registrar  
22/7/15

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



(8)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEALS NO. 830/2015

Date of institution ... 10.07.2015  
Date of judgment ... 03.08.2016.



Asfandyar Khan, Ex-Office Assistant Commissioner Office Mardan Division, Mardan  
S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and District Mardan.

... (Appellant)

VERSUS

1. Senior Member Board of Revenue Govt. of KPK Peshawar.
2. Commissioner, Mardan Division Mardan.

... (Respondents)

\_\_\_\_\_

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 09.07.2015  
PASSED BY RESPONDENT NO.1 WHERE BY DEPARTMENTAL APPEAL OF  
THE APPELLANT FILED AGAINST THE ORDER DATED 18.05.2015 OF  
RESPONDENT NO.2 HAS BEEN DISMISSED.

\_\_\_\_\_

Mr. Ijaz Anwar, Advocate. .. For appellant.

Mr. Muhammad Jan, Government Pleader .. For respondents

MR. PIR BAKHSH SHAH .. MEMBER (JUDICIAL)  
MR. ABDUL LATIF .. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAH, MEMBER: It was stated that the appellant was appointed as Office Assistant in the office of Commissioner, Mardan on 02.01.2009, he was involved in a criminal case vide FIR No. 62 dated 05.02.2012 which led to his suspension by the competent authority and a show cause notice dated 19.10.2014 under rule-9 of the E&D Rules, 2011 was issued to him. A reply dated 23.08.2014 to this show cause notice was received by the respondents through one Syed Rahim who was stated to be the uncle of the appellant. According to the respondents as the appellant remained willful absent from duty therefore, he was removed from service vide order dated 14.10.2014 against which order his departmental appeal was accepted on 22.02.2015 as a consequence whereof he was reinstated

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into service and the case was remitted back to the competent authority with the instructions to reconsider the matter and to ascertain whether the procedure set out in rule-7 of (E&D Rule-2011) had to be followed or not in the present case?. This time the competent authority vide his order dated 18.05.2015 rejected case of the appellant by holding that citation of show cause notice in the two dailies was not needed as required under rule-09 of E&D Rules. The higher authority also rejected his departmental appeal vide order dated 09.07.2015, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

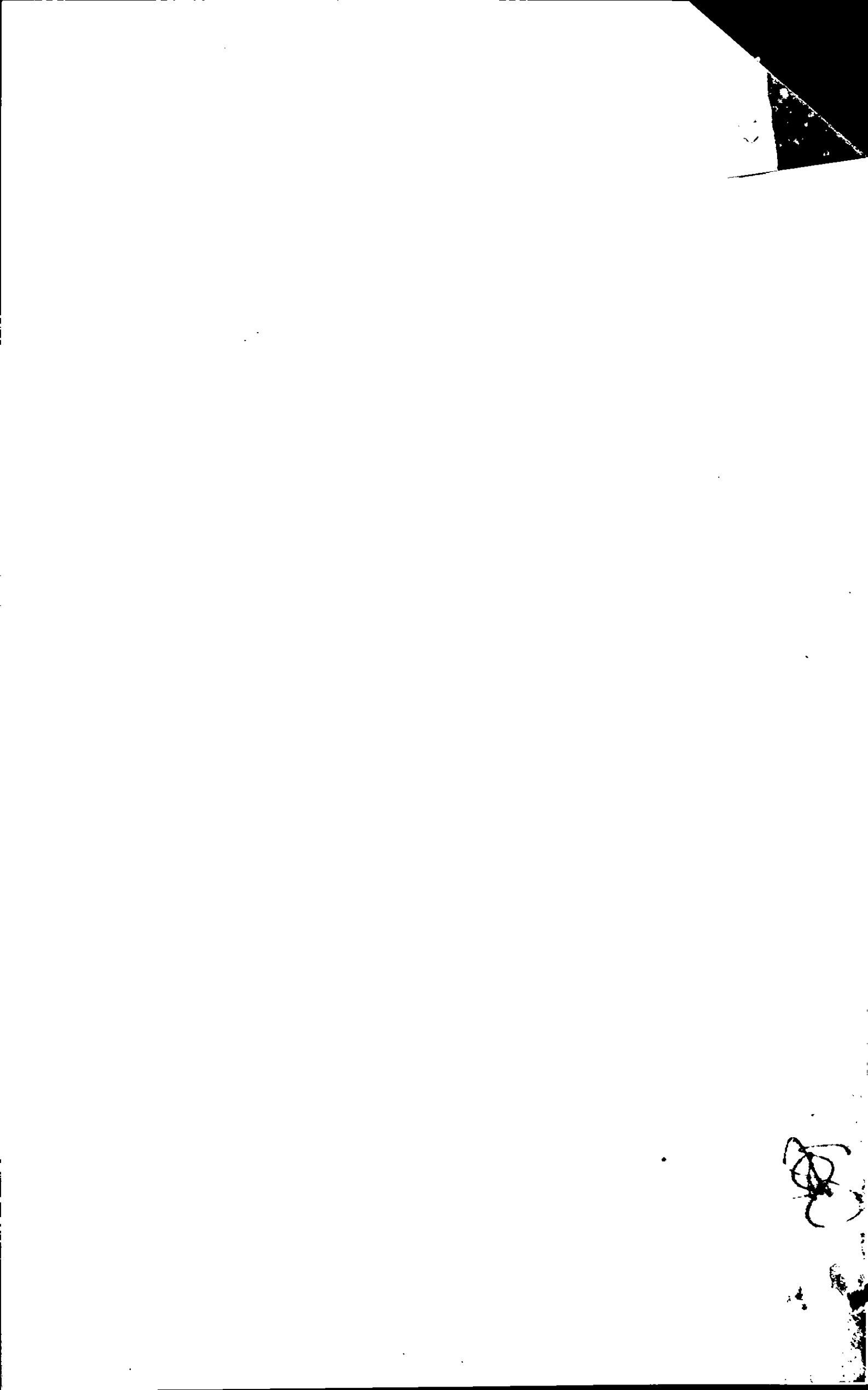
2. Arguments heard and record perused.

3. Learned counsel for the appellant submitted that when the appellant was once reinstated into service by the appellate authority, the competent authority could not again remove appellant from service. He next contended that the respondents have not fulfilled the requirements of rule-9 of E&D Rules 2011<sup>as</sup> when the appellant was not personally served on show cause notice it was mandatory that it should have been published in the news paper. On factual side it was stated that appellant submitted BBA application (on 17.09.2014) which was rejected on 13.10.2014. That the appellant was acquitted under section 265-k CRPC in the criminal case by the court of competent jurisdiction on 28.10.2014, therefore, the respondents was required to have given him full opportunity of defense and hearing when once he was acquitted of the charge. But it is evident that when the appellant was yet behind the Bar, the competent authority removed him from service. The learned counsel argued that the penalty is too harsh and opportunity of defense has not been provided to the appellant. He submitted that the order impugned against may be set aside and appellant reinstated in to service with all back benefits.

4. The appeal was resisted by learned Government Pleader who submitted that when the appellant replied to the show cause notice dated 19.08.2014 through his uncle Syed Rahim, the competent authority under rule-9 of the E&D Rules-2011 was not obliged to publish show cause notice to the appellant in the news paper. He next replied that the appellant

willfully remained absent and he was a fugitive from law and his absence amount to misconduct therefore, he was rightly removed from service. He defended the impugned orders and stated that disciplinary action against the appellant was taken in accordance with the rules and that all the codal formalities were fulfilled. He submitted that being devoid of merits, the appeal may be dismissed with cost.

6. We have carefully perused the record and have patiently considered pro & contra arguments for the parties. It is evident from perusal of orders of the competent authority dated 12.02.2015 as well as his order dated 18.05.2015 that the appellant has been proceeded against under rule-9 of the E&D Rules-2011 when once a show cause notice dated 19.08.2014 was issued to the appellant at his home address so the same, according to the respondents, was replied by the appellant on 25.08.2014 through his uncle Syed Rahim. Here it is worth mentioning that such reply was denied before us on behalf of the appellant. Admittedly the competent authority drew the inference that as the appellant has been duly served therefore, publication of show cause notice through citation in the two dailies news paper was no more required. This may be observed that proceedings under rule-9 were not entirely completed and rule-9 was not acted upon in its true spirit. It is the opinion of this Tribunal ~~is~~ that when once the competent authority concluded that show cause notice was duly served on the appellant then it should have resorted to proceedings under rule 5/7 of the E&D Rules-2011 as also pointed out by the appellate authority in its order dated 12.02.2015 but it is evident that neither any show cause notice was issued to the appellant nor that any reason was given as to why proceedings of enquiry are dispensed with. In the stated situation it is the considered view of the Tribunal that neither proceedings under rule-9 of the E&D Rules were taken to its logical and legal end nor proceedings under rule 5/7 were initiated and thus the matter became entangled. It is also on record that BBA order of the appellant was rejected on 13.10.2014 and on the next dated on 14.10.2014 he was removed from service when he was inside the jail. Fortunately he earned his acquittal on 28.10.2014. In the view of this situation, the Tribunal is constrained to observe that harsh penalty of removal from service has been awarded to the appellant without proper opportunity of defense. We

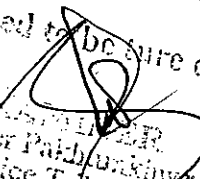


(2)

are therefore, constrained to set aside the orders impugned against. Consequently, the impugned orders are set aside and the appellant is reinstated into service. The intervening period shall be treated as his leave of the kind due. The department if so advised may initiate enquiry proceedings against the appellant in which he should be given full opportunity of defense and hearing and the same *de-novo* proceedings shall be concluded in the time stipulated under the rules. Appeal is accepted in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED  
03.08.2016

Sd/- Pir Bakht Shah,  
Member  
Sd/- Abdul Latif,  
Member

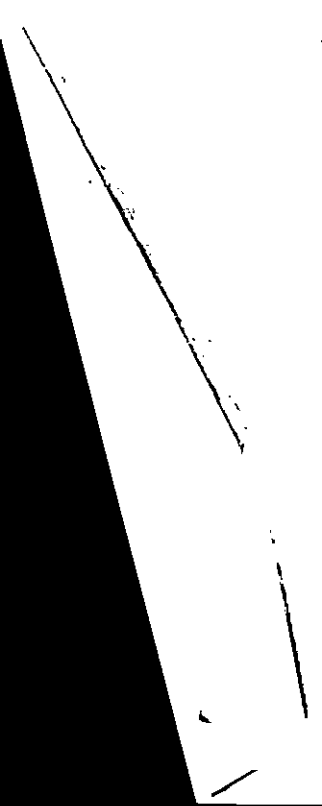
Certified to be true copy  
BY   
JALAL UDDIN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 08-08-2016  
Number of Words 2000  
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Urgent 2/-  
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بجداالت ضنا ۳ کروں (نمونه) ۹

Exeution..

ماہ ۲۰۱۱ء بمقام استخبر یا خان  
استخبر یا خان بنام الحدیث عمر

پا عیش تحریر آئیگی

مقدمہ مندرجہ ستوان بالا میں اپنی طرف سے واسطے بیرونی وجوہ دہی کو کھڑا کرنا کی متعلقہ

ان مقام **لشاور** کیلئے فضیلتہ عیند ایریل کی حکم لوسے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا ال اختیار ہوگا۔ نیز

کیل صاحب کو راضی نامہ کرنے و تقرر تالش و فیصلہ پر حلف دینے۔ جواب دہی اور اقبال و ڈوکی اور

بصورت ڈگری کرنے اجراء اور دستوری چیک و روپیہ عرضی و گواہ اور درخواست ہرم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری کی طرف یا بین کی برادگی

اور منسوخی نیز واکر کرنے اپیل گمانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بصورت ضرورت

مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور کیل یا مختار قانونی کو اپنے ہمراہ اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے

اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو ترچہ بجا نہ التوائے مقدمہ کے

سبب سے ہوگا کوئی تاریخ پیش مقام دورہ پر ہو یا عدتے باہر ہو تو کیل صاحب یا بند ہوں

گے کہ بیرونی مذکورہ کریں۔ لہذا واکالت نامہ لکھو یا کہ سند ہے۔

المزوم ۲۸ ماہ ۳۰۱۶ء

Attested - Accepted

الہ راہ الب

مقام لشاور کے لیے منظور ہے۔

اصحاب خان و صاحب

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 29/03/2017

NOTIFICATION

No. Estt:V/SA. No.830/\_\_\_\_\_ In Pursuance of Khyber Pakhtunkhwa Service Tribunal order dated: 27.01.2017 passed in service appeal No.830/2015 "Asfandyar Khan V SMBR etc;" Asfandyar Khan Assistant is hereby re-instated in Service w.e.f the date of his removal from service i.e 14.10.2014. The intervening period is treated as leave kind of due.

On his re-instatement in service, he is adjusted as Computer Operator BS-16 in Commissioner Office Mardan till availability of post of Assistant subject to decision of the Supreme Court of Pakistan.

By order of  
Senior Member

No. Estt:V/SA.No.830/ 6444-47

Copy forwarded to:-

1. Commissioner Mardan Division Mardan with reference to his letter No.393/ACR/EA/2 dated 08.03.2017. He is requested to take up the case for creation of post of Assistant BS-16 with Finance Department through Administrative Department.
2. Registrar Service Tribunal Khyber Pakhtunkhwa.
3. District Account officer Mardan.
4. Official concerned.

Assistant Secretary (Estt)