


14<sup>th</sup> June, 2023

01. Counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mohsin Sheraz, Superintendent for the respondents present. Reply/comments submitted which are placed on file and a copy whereof handed over to learned counsel for the appellant. Preliminary augments heard and record perused.

02. Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security within 10 days. To come up for rejoinder, if any, and arguments on 14.09.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KFST  
Peshawar

  
(Fareeha Paul)  
Member(E)

\*Fazle Subhan, P.S\*

2<sup>nd</sup> Mar, 2023

Learned counsel for the appellant present.

Let a pre-admission notice be issued to the respondents for written reply. To come up on 04.04.2023 before S.B.



(Kalim Arshad Khan)  
Chairman

04<sup>th</sup> April, 2023

Appellant present in person. Mr. Asad Ali Khan.

AAAG for the respondents present and requested for time to submit reply. Granted. To come up for reply/preliminary hearing on 23.05.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED  
KALIM ARSHAD KHAN  
PESHAWAR



(Fareeha Paul)  
Member(E)

23<sup>rd</sup> May, 2023

Junior of learned counsel for the appellant present.

Mr. Fazal Shah Mohmand, Addl. AG alongwith Syed Mohsin Sheraz, Superintendent for the respondents present.

02. Representative of the respondents requested for further time to submit reply. Last opportunity is granted. To come up for reply/comments as well as preliminary hearing on 16.06.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED  
KALIM ARSHAD KHAN  
PESHAWAR




(FAREEHA PAUL)  
Member (E)

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. \_\_\_\_\_ /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.02.2023	As per direction of the Worthy Chairman the present appeal is fixed before the Single Bench for decision on office objection on dated <u>1-03-23</u> counsel for the appellant be informed accordingly.
	1 <sup>st</sup> Mar, 2023	Appellant in person present. Counsel are on strike. To come up for arguments on office objection on <u>02.03.2023</u> before S.B.P.P given to the parties.
		 (Kalim Arshad Khan) Chairman (Kalim Arshad Khan) REGISTRAR

Respected Sir,

It is submitted that the present appeal was received on 13.02.2023, which was returned to the counsel for the appellant for removing objection 1 to 2 (Flag-A). Today i.e. 21.02.2023 he re-filed the same without removing the objection no. 1 with a note i.e. (Flag-B).

The appeal is now submitted to your honor under rules 7 (c) of the Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

Worthy Chairman

REGISTRAR

21/2/2023

070 be fixed  
before the court  
27/02/23


A

The amended appeal of Mr. Malang Jan S. Stenographer Anti Terrorism Court Peshawar received today i.e. on 10.02.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Copy of impugned order is not attached with the appeal which may be placed on it.
- ② Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.

No. 564 /S.T,

Dt. 13/2 /2023

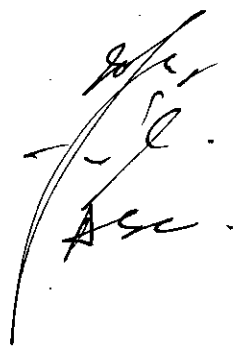
  
 REGISTRAR  
 SERVICE TRIBUNAL  
 KHYBER PAKHTUNKHWA  
 PESHAWAR.

M: Zaffar Tahirkheli Adv.  
High Court Peshawar.

21-02-2023

B

The appeal is regarding a missing increment, wherein no specific order exists. An appeal for grant of increment was filed which was not decided within time, hence the present appeal. Duly completed and re-submitted.

  
 Sec.

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

Service Appeal No. 746 /2023

Malang Jan,  
Senior Stenographer, Anti-Terrorism Court-II Peshawar.

.....Appellant

**VERSUS**

Hon'ble Administrative Judge, Anti-Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar.

.....Respondent

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**I N D E X**

\_\_\_\_\_

S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-3
2	Certificate		4
3	Departmental Appeal	dated 15-09-2022	"A" 5-6
4	Appointment Order	dated 20-03-2010	"B" 7
5	Judgement	dated 03-06-2016	"C" 8-11
6	Order	dated 29-10-2016	"D" 12
7	Relevant Rules		"E" 13
8	Vakalatnama		14

Peshawar, dated  
10-02-2023

  
(MUHAMMAD ZAFAR TAHIRKHELI)  
ASC

87, Alfalah Street, Cantt Colony,  
Peshawar.  
0300-9597670

①

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

Service Appeal No. 746 /2023

Malang Jan,  
Senior Stenographer, Anti-Terrorism Court-II Peshawar.

.....Appellant

**VERSUS**

Hon'ble Administrative Judge, Anti-Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar.

.....Respondent

=====

**SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974,  
FOR ALLOWING ANNUAL INCREMENT FALLING ON JANUARY,  
YEAR 2016 TO THE APPELLANT, WHEREIN HIS DEPARTMENTAL  
APPEAL DATED 15-09-2022 (Annex-A) WAS NOT DECIDED WITHIN  
THE STATUTORY PERIOD OF LIMITATION.**

=====

**PRAYER:**

Allowing the service appeal and granting the annual increment falling on January, year 2016 to the appellant for the purpose of appellant's pay and pension with all consequential benefits.

=====

**RESPECTFULLY SHEWETH,**

1. That the appellant being qualified and eligible was selected and appointed as Senior scale stenographer vide office order dated 20-03-2010.  

(copy annexed "B")
2. That the appellant was removed from service by the worthy authority on 20-05-2015. Being aggrieved the appellant submitted his departmental appeal followed by service appeal No. 1030/15 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal.
3. That the worthy service' tribunal accepted the appellant's service appeal vide judgment and order dated 03-06-2016 with the observation as under:

3. "in the circumstances, the Tribunal is of the considered view that removal of the applicant from service was not in accordance with law/rules and as a consequence the impugned order dated 20-05-2015 is set-aside, the applicant is reinstated in service and the intervening period he remained out of service since his removal is treated as leave of the kind due. The competent authority is however at liberty to refer the case of the applicant, if required, to standing medical Board for opinion on the health and physical fitness and take further decision under the rules in vogue."

(Copy annexed "C")

4. In compliance with the judgment of Khyber Pakhtunkhwa Service Tribunal the appellant was reinstated in service vide office order dated 29-10-2016. The intervening period, wherein the appellant remained out of service was treated as leave with full pay for 248 days and leave without pay as 131 days.

(Copy annexed "D")

5. That since the appellant was reinstated in his service and his period of absence for 379 days in the year 2015-2016 was treated as leave with pay and half pay for 248 days and 131 days respectively, therefore the absence period of his service was condoned as that of with no service break. Hence he was entitled to receive the annual increment falling on January, 2016.

6. That the appellant submitted his departmental appeal dated 15-09-2022 (annex "A") which was not decided till the lapse of statutory period of limitation.

Feeling aggrieved and finding no appropriate remedy, the appellant has been constrained to approach the worthy Tribunal inter-alia on the following;

**Grounds**

a. That the worthy authority has ignored the appellant's departmental appeal without any plausible explanation, which needs immediate attention of the Hon'ble Service Tribunal for the just conclusion of the matter in question.

b. That since, the appellant was reinstated in his service and his period of absence for 379 days in the year 2015-2016 was treated as leave with pay and without pay for 248 days and 131 days respectively, therefore the absence period of his service was condoned as that of with no service break.

c. That in this regard, FR. 26 prescribes the conditions on which service counts for increments in a time scale, which is reproduced below;

**(a) All duty in a post on a time-scale and period of leave other than extraordinary leave count for increments in that time scale;**

**Provided that the leave was taken on account of illness or for any other cause beyond the Government servant's control, to direct that extraordinary leave shall be counted for increments under this clause.**

(copy annexed "E")

d. That the period falling between his removal on 20-05-2015 and reinstatement 03-06-2016 was beyond the control of the appellant for which he is entitled to be allowed to count such part of his extra-ordinary leave towards increment. (1993 SCMR, 1014)

The appellant has been subjected to re-curing loss since 2016, which needs to be rectified by the worthy service Tribunal with all consequential benefits till date.

f. The impugned omission is thus arbitrary, discriminatory, against the principles of equity, law, justice and propriety, subject to correction by the worthy Service Tribunal.

g. Appellant seeks permission to take several other grounds at the time of arguments.



**Prayer:**

In view of the above it is prayed that by allowing this appeal, the appellant may be allowed the annual increment falling on January, 2016 for the purpose of appellant's pay and pension with all the consequential benefits.

*M. Daraz Khan*

Appellant

Through,

Peshawar, dated  
10-02-2023

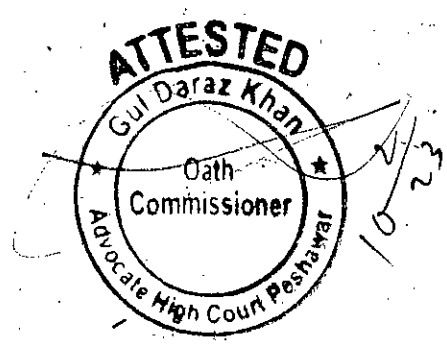
*Muhammad Zafar Tahir Kheli*  
**(MUHAMMAD ZAFAR TAHIRKHELI)**  
ASC

**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.

*M. Daraz Khan*

DEPONENT



4

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

Service Appeal No. \_\_\_\_\_/2020

Malang Jan,  
Senior Stenographer, Anti-Terrorism Court-II Peshawar.

.....Appellant

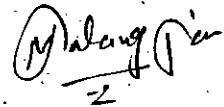
**VERSUS**

Hon'ble Administrative Judge, Anti-Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar.

.....Respondent

**Certificate;**

It is certified that no such like appeal on similar grounds was filed before  
the Khyber Pakhtunkhwa Service Tribunal before the instant service appeal.



Appellant.

**Before the Hon'ble Judge, Anti-Terrorism Court-II,**  
**Khyber Pakhtunkhwa, Peshawar.**

**DEPARTMENTAL APPEAL FOR THE GRANT OF ANNUAL INCREMENT  
FOR THE YEAR 2016.**

Prayer:-

**REQUEST FOR ALLOWING THE DEPARTMENTAL APPEAL  
AND GRANTING THE ANNUAL INCREMENT FOR THE  
YEAR 2016 FOR THE PURPOSE OF APPELLANT'S PAY AND  
PENSION WITH ALL CONSEQUENTIAL BENEFITS.**

Respectfully Sheweth,

Malang Jan, Senior Scale Stenographer, Anti-Terrorism Court-II,  
Peshawar, the appellant, submits most respectfully, the following for your kind  
consideration and favour of acceptance.

- 1) That appellant being qualified and eligible was selected and appointed as Senior Scale Stenographer vide office order dated 20.03.2010.
- 2) That the appellant was removed from service by the worthy authority on 20.05.2015. Being aggrieved the appellant submitted his departmental appeal followed by service appeal No. 1030/2015 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal.
- 3) That the worthy service Tribunal accepted the appellant's service appeal vide judgment and order dated 03.06.2016 with the observation as under:-

*"In the circumstances, the Tribunal is of the considered view that removal of the applicant from service was not in accordance with law/rules and as a consequence the impugned order dated 20.05.2015 is set-aside, the applicant is reinstated in service and the intervening period he remained out of service since his removal is treated as leave of the kind due. The competent authority is however at liberty to refer the case of the applicant, if required, to Standing Medical Board for opinion on the health and physical fitness and take further decision under the rules in vogue".*

- 4) In compliance with the judgment of Khyber Pakhtunkhwa Service Tribunal the appellant was reinstated in service vide office order dated 29.10.2016. The

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M. Jan  
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intervening period, wherein the appellant remained out of service was treated as leave with full pay for 248 days and leave without pay as 131 days.

- 5) That the necessary entries were made in appellant's service record/ service book. However, the increment falling on 1<sup>st</sup> December, 2016 was not allowed to the appellant. (Annexure-A)
- 6) That since, the appellant was reinstated in his service and his period of absence for 379 days in the year 2015-2016 was treated as leave with pay and without pay for 248 days and 131 days respectively, therefore the absence period of his service was condoned as that of with no service break. (Annexure-B)
- 7) That the appellant is entitled to receive the annual increment falling on 1<sup>st</sup> December, 2016 and its denial is arbitrary, subject to correction by the worthy authority.
- 8) That the appellant has been subjected to re-curing loss since 2016, which needs to be rectified by the worthy authority with all consequential benefits till date.
- 9) That in this regard, F.R. 26. prescribes the conditions on which service counts for increments in a time scale, which is reproduced below:

(a) All duty in a post on a time-scale and periods of leave other than extraordinary leave count for increments in that time scale:

Provided that the President shall have power, in any case in which he is satisfied that the leave was taken on account of illness or for any other cause beyond the Government servant's control, to direct that extraordinary leave shall be counted for increments under this clause.

(Annexure-C)

Prayer:

In view of the above, it is prayed that by allowing this appeal, the appellant may be allowed the annual increment for the year 2016 for the purpose of appellant's pay and pension with all the consequential benefits.

Dated:- 12-09-2022.

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Malang Jan  
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*(Malang Jan)*  
(MALANG JAN)  
Senior Scale Stenographer  
Anti-Terrorism Court-II,  
Peshawar.

Diary No. 07  
Date 15/09/2022

Received from Malang Jan Senior Scale Stenographer  
on 15.9.2022. Submitt, to concerned Judge ATC-II, Peshawar for  
further order.

ANNEXURE

B

IN THE COURT OF MR. ABDUR RAHMAN KHAN,  
ADMINISTRATIVE JUDGE, ANTI-TERRORISM COURT-II, PESHAWAR.

(7)

O R D E R

20<sup>th</sup> MARCH 2010.

Consequent upon the recommendations of the Departmental Selection Committee in its meeting held on 25<sup>th</sup> February 2010 Mr. Malang Jan s/o Dad Khan r/o village & P.O. Keshgi Payan, Mohalla Shams Abad, District & Tehsil Nowshera is hereby appointed as Senior Scale Stenographer in Basic Pay Scale No. 15 viz (5220-420-17820) in the Court of Administrative Judge, Anti-Terrorism II, Peshawar with immediate effect.

A

His appointment is purely on temporary basis and shall be liable for termination at any time without assigning any reason or giving prior notice.

TERMS AND CONDITIONS

1. His service shall be governed by the NWFP Civil Servants Act, 1973 as amended up to date.
2. The service shall be governed by the NWFP Govt: Servant (E&D) Rules, 1973
3. His service shall be subject to Medical Fitness Certificate from M.S. Service and Police Hospital Peshawar.
4. In case he desires to resign from service, either he will submit notice one month before leaving the office or will surrender one month pay.
5. His service shall be on probation for a period of one year extendable upto two years.
6. His appointment is also subject to verification of his Academic Certificates / Degrees from concerned Board or University.
7. His service shall be subject to eventual confirmation in case of availability of permanent post.
8. He shall be paid the minimum Basic Pay of Grade 14 and ordinary allowances admissible under the rules.

In case the above terms and conditions are accepted he should report to the undersigned for assuming his duty within seven days from today, failing which offer shall stand withdrawn.

*sd/*  
(ABDUR RAHMAN KHAN)

ADM: JUDGE

ANTI-TERRORISM COURT-II /  
CHAIRMAN SELECTION COMMITTEE

Dated Peshawar the 20<sup>th</sup> March 2010.

Endst. No. 297-301 ATC (P-II)

Copy forwarded for information and necessary action to :-

- 1) The Registrar, Peshawar High Court, Peshawar.
- 2) The Secretary to Government of NWFP, Home and Tribal Affairs Department, Peshawar.
- 3) The Accountant General, NWFP, Peshawar.
- 4) The Accountant of this Court.
- 5) Mr. Malang Jan S/O Dad Khan R/O Village and P.O. Keshgi Payan Mohallah Shams Abad, Tehsil and District Nowshera

*sd/*  
(ABDUR RAHMAN KHAN)

ADM: JUDGE

ANTI-TERRORISM COURT-II /

CHAIRMAN SELECTION COMMITTEE

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*Malang Jan*  
*2*

ANNEXURE C

BEFORE: KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

SERVICE APPEAL NO. 1030/2015

Date of institution ... 18.09.2015

Date of judgment ... 03.06.2016



8

MALANG JAN,  
Ex: Senior Scale Stenographer,  
Anti-Terrorism Court-II, Peshawar.  
R/o Village & P.O Khesghi Payan, Mohallahi Shamsabad,  
Tehsil & District, Nowshera.

(Appellant)

VERSUS

1. THE HONORABLE ADMINISTRATIVE JUDGE,  
Peshawar High Court, Peshawar (Appellate Authority),  
Through Registrar, Peshawar High Court, Peshawar.
2. THE ADMINISTRATIVE JUDGE,  
Anti-Terrorism Courts, Judicial Complex, Peshawar.
3. JUDGE/PRESIDING OFFICER,  
Anti-Terrorism Court-II, Judicial Complex, Peshawar.

(Respondents)

248  
151

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 2011 AGAINST OFFICE ORDER NO. 187-191/ATC (P) DATED 20.03.2015, ISSUED BY RESPONDENT NO. 3, WHEREBY APPELLANT HAS BEEN REMOVED FROM SERVICE WITH IMMEDIATE EFFECT & DEPARTMENTAL APPEAL/REPRESENTATION HAS NOT YET BEEN DECIDED DESPITE THE LAPSE OF MANDATORY PERIOD.

Mr. Bilal Ahmad Kakaizai, Advocate.  
Mr. Usman Ghani, Senior Government Pleader

For appellant:  
For respondents

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

MEMBER (EXECUTIVE)  
MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeals are that

the appellant was appointed by the competent authority as Senior Scale Stenographer vide

order dated 20.03.2010. That on 08.06.2013 an explanation was called from the appellant

ATTESTED

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*(Signature)*

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and appellant submitted his reply. That on 15.07.2013 & 16.07.2013 appellant was called for the competency & efficiency test by the committee headed by the Judge of ATC-II. That again on 18.07.2013, yet another explanation was called from the appellant in respect of inefficiency and incompetency charges and appellant again submitted his written reply of the said explanation. It is important to mention here that in response to both the explanations, the appellant submitted its reply wherein he mentioned his illness/ear disease but the committee did not give any importance to his reply or his ear disease neither referred the matter to Standing Medical Board. That, after lapse of about 22 months, on 04.05.2015 appellant served with a final show-cause notice. That, since the final show-cause notice was neither in accordance with law nor the same was according to the actual and factual position of the case, hence the appellant submitted his detailed reply, wherein he clarified his position. That, without considering the reply of the appellant, vide order dated 20.05.2015, the appellant was removed from service. That against the impugned order dated 20.05.2015 appellant submitted departmental appeal/representation to the competent authority on 01.06.2015 which was not responded within the statutory period and hence the instant service appeal with a prayer that on acceptance of this service appeal the impugned order of removal from service be set-aside being against the law and rules and appellant be reinstated in service with full back benefits and wage, with such other relief as may be deem fit in the circumstances of the case may also be granted.

2. The learned counsel for the appellant argued that allegations of inefficiency and incompetency were illegal, unlawful, void and ineffective. He further argued that proper procedure as provided in the Efficiency and Discipline Rules was not adopted, full-fledged inquiry was not conducted to prove the allegations of inefficiency against the appellant, the impugned order was therefore liable to be set-aside. He further argued that fact regarding the illness of the appellant on account of ear infection was never considered or discussed by the competent authority in his finding/removal order in spite of the fact that documentary evidence in support of illness of the appellant was submitted in reply to the explanation and show-cause notices, the order of removal of the appellant was therefore not a speaking order in terms of Section-24-A of General Clauses Act and was against the principles of natural justice. He further argued that as per Constitution of Islamic Republic of Pakistan

ATTESTED

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*M. Alay*  
21/07/15

(10)

1973 State was bound to provide facility for work, medical relief etc to the citizens who were temporarily unable to earn their livelihood on account of sickness or infirmity but in the instant case the competent authority instead of seeking opinion of Standing Medical Board subjected the appellant to unfair and unjust proceeding and deprived him of the only source of livelihood. He prayed that the appeal may be accepted and the appellant may be reinstated in service with all back benefits.

3. The learned Senior Government Pleader resisted the appeal and argued that the appellant was proceeded against for the charges of inefficiency and was removed after fulfillment of all codal formalities. He further argued that opportunity was given to the appellant to improve his performance but he failed to make any improvement in his performance/output and on holding the competency test he failed to show his competency and the committee constituted for the purpose recommended that he was not suitable for retention for any government service. He further argued that proper show-cause notice was served on the appellant and he was also provided opportunity of personal hearing before the competent authority imposed on him major penalty of removal from service. He prayed that the appeal being devoid of any merits may be dismissed.

4. Arguments of learned counsels for the parties heard and record per used.

5. From perusal of the record it transpired that the appellant was proceeded against for the charges of inefficiency and poor performance as a stenographer. He was put to a competency test through a two Members Committee who did not find his performance in the Type/Shorthand test and as such recommended that the stenographer was not suitable for retention any more in government service and recommended his removal from service to the competent authority. Based on the recommendation of the said committee the appellant was removed from service vide impugned order dated 20.05.2015. From perusal of the record it transpired that in response to explanation letters of the competent authority, the appellant defended himself on the basis of various medical prescription wherein he was reported ill on account of infection in his right ear. A perusal of the proceedings reveal that the competent authority did not bother to investigate thoroughly into ailment of the appellant through relevant Standing Medical Board nor was he provided full opportunity to prove his innocence on account of being physically impaired. It is also worth mention that

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APPEALED

(Signature)



(11)

proper mechanism is provided in the Civil Servant Act 1973 wherein retention or otherwise in service on account of inefficiency/redundancy is clearly spelt out. The second option was however also not exercised wherein a civil servant can be prematurely retired from service on account of inefficiency. In the circumstances, the Tribunal is of the considered view that removal of the appellant from service was not in accordance with law/rules and as a consequence the impugned order dated 20.05.2015 is set-aside. The appellant is reinstated in service and the intervening period he remained out of service since his removal is treated as leave of the kind due. The competent authority is however at liberty to refer the case of the appellant, if required, to Standing Medical Board for opinion on his health and physical fitness and take further decision under the rules in vogue. Parties are however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
03.06.2016

*sd/-*  
(PIR BAKHSH SHAH)  
Member

*sd/-*  
(ABDUL LATIF)  
Member

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

Date of Presentation of 16.06.16  
Number of Words 1600  
Copying Fee 10/-  
Urgent       
Total 10/-  
Name of Copyist [Signature]  
Date of Completion of 22.06.16  
Date of Delivery of 22.06.16

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*M. Ali Qureshi*  
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*vsk*

ANNEXURE 1

12

OFFICE OF THE  
JUDGE ANTI-TERRORISM COURT-II,  
PESHAWAR

Old Judicial Complex, Khyber Road, Peshawar. Phone No. 091-9214259

ORDER

In compliance with the Judgment of the Hon'ble Khyber  
Pahtunkhwa Service Tribunal passed in Service appeal No. 1030/2015  
dated 03-06-2016, the Competent Authority has been Pleased to  
*Reinstate* Mr. Malang Jan (appellant) Senior Scale Stenographer  
(BPS-15) in service from 03-06-2016, further the intervening period he  
remained out of service since his removal (20-05-2015) is treated as  
leave for 248 days on full pay while the rest of his period (131 days) as  
leave without pay.

Judge  
Anti-Terrorism Court-II,  
Peshawar.

No. 287-92 /ATC (P) Dated: Peshawar the 29<sup>th</sup> October 2016.

Copy forwarded to;

- The Registrar, Peshawar High Court Peshawar.
- The Administrative Judge Anti Terrorism Court Peshawar  
Division Peshawar.
- The Accountant General K.P.K, Peshawar.
- The Sectary to Government of KPK, Home and Tribal Affairs  
Department, Peshawar.
- The Superintendent ATC, Peshawar
- ✓ Malang Jan s/o Dad Khan r/o Shams abad, Khesgi Payan  
District Nowshera.

THE COI  
Malang Jan  
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Judge  
Anti-Terrorism Court-II,  
Peshawar.

ANNEXURE E

Legal Point:

Period of unemployment between employee's removal from service and his reinstatement should be treated as one spent on duty and counted for computation of leave due and award of increments etc.

13

RELEVANT STATUTORY PROVISIONS

THE FUNDAMENTAL RULES. & SUPPLEMENTARY RULES

F.R. 26. The following provisions prescribed the conditions on which service counts for increments in a time scale:

(a) All duty in a post on a time-scale and periods of leave other than extraordinary leave count for increments in that time scale:

Provided that the President shall have power, in any case in which he is satisfied that the leave was taken on account of illness or for any other cause beyond the Government servant's control, to direct that extraordinary leave shall be counted for increments under this clause.

F.R. 54. Where a Government Servant has been dismissed or reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—

(a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.

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M. Singh  
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(14)

# VAKALATNAMA

In the Court of

KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. / 2023

B.C No.	10-7764
Advocate	M. Zafar
Cell No.	0300-9597670
CNIC,	17301-1639615-3

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

Malang Jan

Decree-Holder

**V**ERSUS

Respondent  
Defendant  
Opponent  
Accused

Hon'ble Judge ATC-II, Peshawar.

Judgment-Debtor

I / We Malang Jan the above noted Petitioner / Appellant do hereby appoint and constitute, Muhammad Zafar Khan Tahirkheli, ASC, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Malang Jan

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Client

M. Zafar Khan Tahirkheli

Attested & Accepted (Advocates)

Dated: 10-02-2023

Office **ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-3059910  
E-mail: [zafark.advocate@gmail.com](mailto:zafark.advocate@gmail.com)

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

Appeal No. 746 /2023

Malang Jan

Senior Scale Stenographer, Anti Terrorism Court-II, Peshawar..... Appellant

Versus

Administrative Judge Anti Terrorism Court-II, Khyber Pakhtunkhwa Judicial Complex, Peshawar..... Respondent

**Subject:-** *Written Reply on behalf of Respondent.*

**Respectfully sheweth:-**

**Factual Objections:-**

1. Para-1 is correct to the extent of appointment of appellant however his services delivery is average and average below.
2. Para-2 is correct as it pertains to record.
3. That the Competent Authority complied the judgment of worthy Tribunal in letter and spirit.
4. Para-4 is correct as it pertains to record.
5. Para-5 is correct to the extent that during the pay calculation the annual increment falling on 01 December 2016 was not entitled to the official because the official was reinstated 03-06-2016 and the official did not complete pay period of 06 months which is essential for entitlement of Annual Increment, so for the reason stated the Competent Authority did not allowed annual increment of 2016.
6. Para -6 is correct as it pertains to record.

**Grounds:-**

- a. No Comment.
- b. The appellant is not entitled for annual increment for the year 2016 as the paragraph of the judgment dated 03-06-2016 by Hon'ble Khyber Pakhtunkhwa Service Tribunal is reproduce as under:

*“The Appellant is reinstated in service and the intervening period he remained out of service since is removal is treated as leave of due kind”.*

In compliance of leave of due kind the Competent Authority bisect the

intervening period of 379 days in which the appellant remained out of service into two kinds; first, 248 days (21-05-2015 to 23-01-2016) leave on full pay and second 131 days (24-01-2016 to 02-06-2016) leave with out pay. Since during pay calculation the annual increment falling on 01 December 2016 was not entitled to the official because the official was reinstated 03-06-2016 and the official did not complete pay period of 06 months which is essential for entitlement of Annual Increment, hence for the reason stated above, the Competent Authority did not allowed annual increment for the year of 2016.

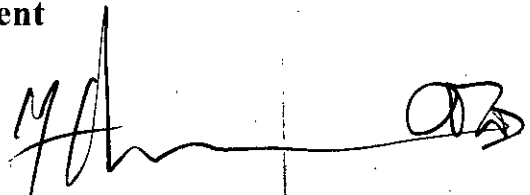
- c. That no fundamental right of appellant is violated in this case.
- d. That there is no case of extraordinary leave, the competent authority only invoke the relief granted to Appellant i.e *leave of due kind*.
- e. Para-f is not correct in view of explanation given in Para-b above.
- f. Needs no comments, appellant is dealt in accordance with law.

**Prayers:-**

In light of aforesaid, appeal of the appellant is without legal justification and not warranted in law and may please be dismissed at the earliest.

Dated:- 06-05-2023

**Respondent**



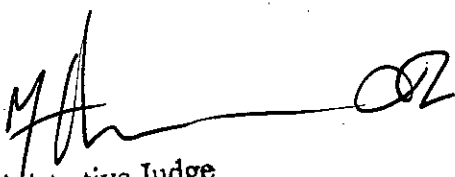
**Administrative Judge ATCs, Peshawar/  
Presiding Officer Judge, ATC-II, Peshawar.**

Administrative Judge  
Anti Terrorism Courts  
Peshawar Division Peshawar

## Affidavit

I, Dr. Muhammad Aamir Nazir, Judge Anti Terrorism Court-II, Peshawar do hereby confirm on oath that contents of written reply is correct to the best of my knowledge and belief. It is further stated on oath that in this appeal the answering respondent has neither been placed ex parte nor defense has been struck off.

Respondent.

  
Administrative Judge  
Anti Terrorism Courts  
Peshawar Division Peshawar

