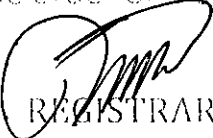


Form- A

FORM OF ORDER SHEET

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

Implementation Petition No. 631/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2023	<p>The implementation petition of Mr. Tariq Mehmood resubmitted today by Mr. Hamayun Khan Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____.</p> <p>Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The Execution Petition of Mr. Tariq Mehmood son of Mian Muhammad Assistant Treasury Office received today i.e. on 12.09.2023 is incomplete on the following scores which is returned to the counsel for the petitioner for completion and resubmission within 15 days.

- 1- Address of respondent no. 3 is incomplete.
- 2- Three more copies/sets of the memo of petition along with annexures i.e complete in all respect may also be submitted with the petition.

No. 101417 /S.T,

Dt. 13/9 /2023.



REGISTRAR  
KHYBER PAKHTUNKWA  
SERVICE TRIBUNAL  
PESHAWAR

Mr. Hamayun Khan Adv.  
Hogh Court A. Abad

*All objection removed  
and be submitted for hearing  
Resubmission of date.*

*H. Hamayun  
13-9-2023.*

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

E.P No. 631 /2023

Tariq Mehmood son of Mian Muhammad, resident of CB-29/33, Kakul Road Behind F.G Girls College, Abbottabad, presently serving as Assistant Treasury Officer District Accounts Office Swabi.

...PETITIONER

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others.

...RESPONDENTS

**APPLICATION FOR IMPLEMENTATION**

**INDEX**

<b>S. #</b>	<b>Description</b>	<b>Page #</b>	<b>Annexures</b>
1.	Application alongwith affidavit	1 to 5	
2.	Copy of appeal	6-19	"A"
3.	Copy of judgment	20-28	"B"
4.	Copy of judgment dated 23/05/2023	29-31	"C"
5.	Wakalatnama	32	

...PETITIONER

Dated: 11/9 /2023

Through

  
(HAMAYUN KHAN)  
Advocate High Court, Abbottabad

↓

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

E.P No. 631 /2023

Tariq Mehmood son of Mian Muhammad, resident of CB-29/33, Kakul Road Behind F.G Girls College, Abbottabad, presently serving as Assistant Treasury Officer. District Accounts Office Swabi.

...PETITIONER

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 7432

Dated 12/09/23

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Finance Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
3. ~~A~~Content General Khyber Pakhtunkhwa, Peshawar.

...RESPONDENTS

**APPLICATION** FOR IMPLEMENTATION OF  
JUDGMENT DATED 23/05/2023 PASSED BY  
AUGUST SUPREME COURT OF PAKISTAN IN CP  
NO. 165-P OF 2021 TITLED AS "GOVT. OF KHYBER  
PAKHTUNKHWA V/S TARIQ MEHMOOD.

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Respectfully Sheweth:-

1. That petitioner filed service appeal against impugned order dated 18/01/2017 passed by

respondent No. 2 in main service appeal. Copy of appeal is attached as Annexure "A".

2. That on 13/01/2021 after hearing of arguments this Honourable tribunal accepted appeal of the petitioner and set aside impugned dismissal order 18/01/2017. Copy of judgment is attached as Annexure "B".
3. That thereafter, the respondents filed CP No. 165-P of 2021 before the August Supreme Court of Pakistan against the judgment dated 13/01/2021 passed by this Honourable Tribunal.
4. That the Honourable Supreme Court of Pakistan on 23/05/2023 after hearing the arguments allowed the CP No. 165-P of 2021 alongwith other connected CPs in the following term; -

*"5. In the circumstances, we set aside the impugned judgment and direct the department to hold a **denovo** inquiry against the three officers before us, as well as, the concerned officers of District Education Office, Battagram, which should be concluded within three months. In this*

*background, the departmental order of dismissal passed against the officer dated 18.01.2017 is also set aside and all the three officers are reinstated in service. Further, the arrears of pay of the said officers shall be withheld till the conclusion of denovo inquiry proceedings and they shall also furnish the surety bond for the alleged amount of misappropriation to the satisfaction of the department within a fortnight from the dates of their reinstatement before the start of the denovo inquiry”.*

Copy of judgment dated 23/05/2023 is annexed as Annexure “C”.

5. That thereafter the petitioner was reinstated into service in the light of the judgment dated 13/01/2021 after laps of more than 01 year.
6. That the petitioner since January 2021 till date is in service and not has posted in District Accounts Office Swabi as Assistant Treasury Officer.
7. That arrears of pay and allowances since 18/01/2017 till date not released by the respondents –department and similarly time given

by the Honourable Supreme Court of Pakistan has also been lapsed for completion of denovo inquiry.

8. That after judgment dated 23/05/2023 passed by August Supreme Court of Pakistan the petitioner in all respect entitled for all kind of benefits including seniority and promotion because initial dismissal order dated 18/01/2017 had already been set-aside by this Honourable Tribunal as well as August Supreme Court of Pakistan.
9. That other point would be raised at the time of arguments kind permission of this Honourable Tribunal.

It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed to release the back benefits including salary, arrears, allowances, seniority and promotion etc in the light of judgment dated 23/05/2023 passed by August Supreme Court of Pakistan.

...PETITIONER

Through

Dated: 11/9/2023



(HAMAYUN KHAN)  
Advocate High Court, Abbottabad

5

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

E.P No. \_\_\_\_\_/2023

Tariq Mehmood son of Mian Muhammad, resident of CB-29/33, Kakul Road Behind F.G Girls College, Abbottabad, presently serving as Assistant Treasury Officer District Accounts Office Swabi.

**...PETITIONER**

**VERSUS**

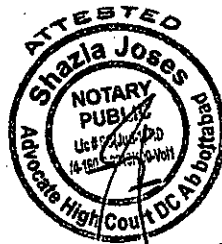
Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others.

**...RESPONDENTS**

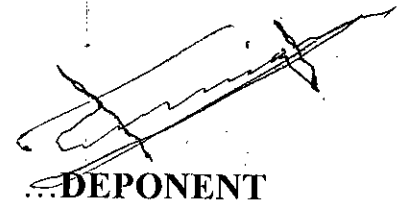
**APPLICATION FOR IMPLEMENTATION**

**AFFIDAVIT**

*I, Tariq Mehmood son of Mian Muhammad, resident of CB-29/33, Kakul Road Behind F.G Girls College, Abbottabad, presently serving as Assistant Treasury Officer District Accounts Office Swabi, do hereby solemnly affirm and declare that the contents of foregoing petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.*



8/9/2023

  
**...DEPONENT**



ANNEXURE 'A' 5 6



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

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 505

Dated 16-5-2017

Service Appeal No. 474 /2017

Tariq Mehmood son of Mian Muhammad, resident of CB-29/33, Kakul Road, Behind F.G Girls College, Abbottabad.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. Finance Secretary to the Govt., Khyber Pakhtunkhwa, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.

...RESPONDENTS

Filed to-day

Registrar

16/5/17

SERVICE APPEAL UNDER ARTICLE 212 OF  
THE CONSTITUTION OF ISLAMIC REPUBLIC  
OF PAKISTAN 1973, READ WITH SECTION 4  
OF KPK SERVICE TRIBUNAL ACT, 1974,  
AGAINST THE IMPUGNED ORDER  
NO.SO(ESTT)/FD/5-14/B.GRAM DATED

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

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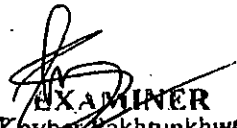
18/01/2017, PASSED BY RESPONDENT NO.2  
THROUGH SECTION OFFICER  
ESTABLISHMENT TREASURIES, WHEREBY,  
IMPOSING MAJOR PENALTY OF DISMISSAL  
FROM SERVICE AND RECOVERY OF  
RS.2,67,68,871/- IS IMPOSED, WHICH IS  
ILLEGAL, UNLAWFUL, WITHOUT LAWFUL  
AUTHORITY, PERVERSE, ARBITRARY AND  
MISUSE OF POWERS, HENCE OF NO LEGAL  
EFFECTS UPON THE RIGHTS OF THE  
APPELLANT.

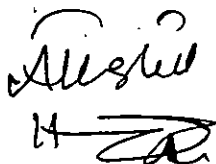
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**PRAYER:** ON ACCEPTANCE OF THE  
INSTANT APPEAL, THE IMPUGNED ORDER  
DATED 18/01/2017 PASSED BY RESPONDENT  
NO.2 MAY GRACIOUSLY BE SET ASIDE AS  
BEING ILLEGAL, UNLAWFUL, AB-INITIO  
VOID AND THE APPELLANT MAY KINDLY  
BE REINSTATED IN THE SERVICE WITH  
ALL BACK BENEFITS. ANY OTHER RELIEF  
WHICH THIS HONOURABLE TRIBUNAL  
DEEMS FIT AND PROPER IN THE  
CIRCUMSTANCES OF THE CASE.

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**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



Respectfully Sheweth:-

Brief facts of the instant appeal are arrayed as under:-

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1. That, appellant was appointed as Sub-Accountant (BPS-11) in the year 1990 in Finance Department, KPK.
2. That on the basis of good performance and length of service, appellant was promoted as Assistant Treasury Officer (ATO) BPS-17.
3. That on anonymous application, respondent No.4 initiated one sided inquiry besides other who were directly named in the so-called application also against the present appellant who was not even named in the so-called application. Copy of application is attached as Annexure "A".

*Witnessed*  
*[Signature]*

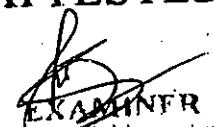
**ATTESTED**

*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

4. That thereafter respondent No.4 conducted inquiry besides other also against appellant from 18/04/2016 to 20/04/2016 and after conclusion could not prove any kind of allegation against the present appellant in respect of corruption and embezzlement. Copy of inquiry attached as Annexure "B".

5. That thereafter within a span of two days on the same application in which present appellant was not even named another inquiry was conducted by respondent No.3 on the same allegations and charges mentioned in so-called complaint and after inquire into the matter by the respondent No.3, the inquiry officer appointed by respondent No.3 gave his findings to the said effect and at the same time failed miserably to prove any charges of corruption or otherwise against the present appellant. Copy of inquiry report is attached as Annexure "C".

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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6. That as behind the complaint there were some elements within the office as well as outside who aggrieved of the upright and honest approach and behaviour of the present appellant after coming of the knowledge of the exoneration of the present appellant from charges leveled against him. thereafter malafidely again approached respondent No.2 and pressurized him into re-inquiry against present appellant on which respondent No.1 took the cognizance of the allegations level against the appellant and issued directions to the respondent No.4 for conducting another inquiry into the matter and on the direction of respondent No.1 Additional Secretary Finance KPK again conducted inquiry against the appellant and on 16/06/2016 served charge sheet to the appellant and after receiving charge sheet appellant submitted reply to the same. Copies of charge sheet and reply are attached as Annexure "D" & "E".

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

That thereafter on 06/10/2016, Inquiry Officer (Additional Secretary Finance)

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issued show cause notice alongwith questionnaire to the appellant. Copies of show cause and questionnaire are attached as Annexure "F" & "G".

8. That on 17/10/2016, appellant submitted detailed reply to the show cause notice and described all actual facts and at the same time denied all the allegations leveled against him. Copy of reply is attached as Annexure "H".

9. That in the meanwhile, on the same application filed by person unknown, the National Accountability Bureau without going into deeper appreciation of evidence and without following the rules regulation and without proper investigation and reference straight away arrested the appellant vide warrant of arrest dated 11/01/2017. Copy of warrant of arrest dated 11/01/2017 is attached herewith as Annexure "I".

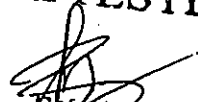
Attested  
11/01/2017  
Dr



ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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10. That after the arrest of the appellant, the appellant thereafter filed constitution petition before the Honourable Peshawar High Court Peshawar for release on bail.
11. That after hearing the arguments and going through the record, the Honourable High Court seeing that there was no direct evidence against the appellant, released the appellant on bail vide order dated 08/03/2017.
12. That, during the period when the present appellant was in custody of NAB, the respondents malafidely and in order to humiliate the present appellant, vide order dated 18/01/2017 dismissed the appellant from service alongwith imposing of recovery of Rs. 2.6 million. Copy of impugned order is attached as Annexure "J".
13. That, on 06/02/2017 appellant filed departmental appeal before respondent No. 2

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal

  
14 

through Superintendent Central Jail Peshawar. Copy of departmental appeal is annexed as Annexure "K".


14. That on the departmental appeal of the present appellant, respondents department did not pass any order till date and similarly have not given any response to the appellant. Therefore, feeling aggrieved of the same, the present appellant files this appeal, inter-alia, on the following amongst many others grounds:-

GROUNDS:-

- a. That the impugned order/ act of respondents is illegal, unlawful, without lawful authority, arbitrary, perverse, against the principle of natural justice, hence, ineffective upon the rights of the petitioner and thus liable to be set-aside.

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



b. That, the so-called inquiry proceedings are illegal, arbitrary and grossly offensive against the rules governing the subject matter, hence not tenable.

c. That during the course of self styled inquiry, no evidence was recorded in the presence of appellant and no opportunity of cross examination through counsel or otherwise was allowed to the appellant nor any copy of the same were provided to the appellant therefore, the said inquiry was one sided, haphazard and cosmetic styled inquiry which if allowed will be a mockery to the justice system of the country and therefore, should be set aside and appellant reinstated into service with all back benefits.

**ATTESTED** that there is no evidence whatsoever against the appellant of his any

*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

*[Signature]*  
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24-15

involvement within the so-called embezzlement regarding the ghost teacher salaries.

- e. That even otherwise according to the job description of the appellant, his job description is regards issuance of stamp papers and supervision of treasury establishment, as regards release of salary etc the same does not fall within the ambit of the appellant. Therefore, on this score also the said inquiry is based on malafide and has been made in order to please the local political figure and in order to settle scores with the appellant, therefore, as the whole inquiry is based on wrong facts, malafide, therefore, the impugned order is liable to be set aside on this score also.

- f. That the appellant has nothing to do with the federal or provincial establishment employees salaries nor

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*[Signature]*  
 J. A. DINER  
 Member, Peshawar  
 Service Tribunal,  
 Peshawar

*[Signature]*  
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he is involved in any way in release of their pays nor it was his job description therefore the appellant has wrongly been dismissed from service on account of a one sided, malafide inquiry, whereas, no involvement of the present appellant has been proved by the first two inquiries and as far as the third inquiry is concerned the same was one sided, without affording the appellant the right to cross examination or to bring evidence in his favour, therefore, on account of natural justice and on account of audi-altrum-paltrum the same is liable to be set aside.

g. That all proceedings were conducted against a well known principle of natural justice and guaranteed fundamental rights of appellant and therefore as the appellant has been condemned unheard, therefore, the impugned inquiry is liable to be set

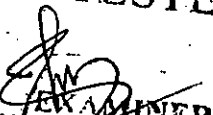
**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar


*Attested*  


aside and appellant be reinstated into service with all-back benefits.

- h. That respondents issued impugned order against the appellant during period when appellant was in judicial lockup and impugned order has not provided within time.
- i. That the impugned act of respondents is a sheer example of highhandedness and political motivation. Hence, liable to be set-aside.
- j. That the impugned act of respondents is a worst example of discrimination and misuse of powers/ authority.
- k. That inside the Account Office there are so many sections for so many different activities and responsibility making under different incharges. Amongst them, District Account

ATTESTED

  
J. W. M. N. R.  
Khayber Pakhtunkhwa  
Service Tribunal,  
Peshawar

  
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Officer, Office Superintendent and Audit Officer play the key roll and appellant is none of them.

l. That even otherwise the distribution of salaries and other financial benefits falls within the ambit of Senior Auditor, Assistant Account Officer and District Account Officer and whereas the present appellant was working as Assistant Treasury Officer within the hierarchy of the department and had no direct role to play regarding the same.

m. That twice, the NAB authorities have made a thorough probe in the matter, but without any success.

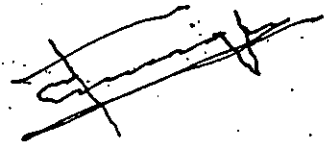
n. That other points shall be urged at the time of arguments.

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*[Signature]*  
 MEMBER  
 Cyber Pakhankhwa  
 Service Tribunal,  
 Pesawar

*[Signature]*  
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It is, therefore, humbly prayed that on acceptance of the instant appeal, the impugned order dated 18/01/2017 passed by respondent No.2 may graciously be set aside as being illegal, unlawful, ab-initio void and the appellant may kindly be reinstated in the service with all back benefits. Any other relief which this Honourable tribunal deems fit and proper in the circumstances of the case.



...APPELLANT

Dated: 10-5 /2017

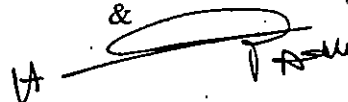
Through



(FAWAD SALEH)

Senior Advocate Supreme Court of Pakistan,  
Abbottabad

&

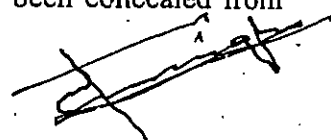


(HAMAYUN KHAN)

Advocate High Court, Abbottabad

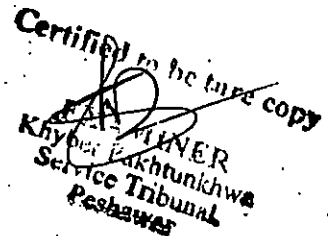
**VERIFICATION:-**

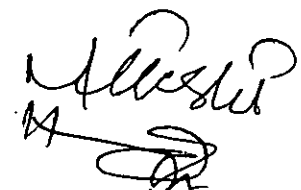
Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal



...APPELLANT

Date of Presentation of Application 09/02/21  
 Number of Words 5600  
 Copying Fee 58/-  
 Urgent \_\_\_\_\_  
 Total 58/-  
 Name of Copyist \_\_\_\_\_  
 Date of Completion of Copy 28/2/21  
 Date of Receipt of Copy 28/2/21

Certified to be true copy  
  
 J.A. KHATTAR  
 Khayal Pakhtunخوا  
 Service Tribunal  
 Peshawar



ANNEXURE "B" 20  
1 (6)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.474/2017

Date of Institution: 16.05.2017

Date of Decision: 13.01.2021



Tariq Mehmood son of Mian Muhammad, R/o CB-29/33, Kakul Road, behind FG Girls College, Abbotabad

(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa, through Chief Secretary and three others

(Respondents)

Mr. Hamayun Khan,  
Advocate

Mr. Abdul Hameed,  
Advocate

Mr. Masood Khan,  
Advocate

For Appellants

Mr. Riaz Ahmed Paindakhel,  
Assistant Advocate General

For Respondents

Mr. MUHAMMAD JAMAL  
Mr. ATIQ UR REHMAN WAZIR  
Mr. MIAN MUHAMMAD

MEMBER (J)  
MEMBER (E)  
MEMBER (E)

ATTESTED

ENAWAZER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**JUDGEMENT: -**

**Mr. ATIQ UR REHMAN WAZIR:** - This judgement shall dispose of the instant service appeal as well as connected Service Appeal No. 673/2017 titled Hamid Younas and Service Appeal No 473/2017 titled Muhammad Ayaz, as similar question of law and facts are involved therein.

2. The instant service appeal was heard by a Division Bench of this Tribunal on 21-02-2019 and judgment was pronounced. The two learned Members, however, differed in their respective opinions essentially, on the point as to whether the appellants were

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[Signature]

treated as per law or not. A larger Bench was, therefore, constituted which heard the matter on 09.12.2020.

3. The facts as laid in the memorandum of appeal in hand, suggest that appellants Muhammad Ayaz, Tariq Mehmood and Hamid Younas were posted as District Accounts Officer, Assistant Treasury Officer and Sub Accountant respectively in District Accounts Office Batagram. During the tenure, they were proceeded against on the charges of fraudulent drawl of money from government exchequer. To this effect, Finance Department as well as Accountant General Office conducted two separate preliminary inquiries each, based on which a formal inquiry was conducted and as per recommendations of the inquiry officer, all the three accused were proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Separate charge sheets and statement of allegations were served upon the appellants to the effect that they were involved in drawl of Rs. 80,30,314/ on account of pay and allowances to the ghost employees/fake appointees in District Education Office Batagram w.e.f. May 2013 to February 2015 and also transfer of pay of ghost employees to District Accounts Office Mansehra. The appellants responded to the charge sheet/statement of allegations, but the inquiry officer recommended that the amount of Rs. 80,30,614/ fraudulently drawn by the appellants may be recovered from them equally as well as recommended major penalty as defined in Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 and as a consequence, appellants were dismissed from service and recovery of Rs. 26,76,871/ was also ordered to be made from each appellant vide impugned order dated 18-01-2017. The appellants filed departmental appeals but of no avail, hence the instant service appeal with prayers that impugned orders dated 18-01-2017 may be set aside and the appellants may be re-instated into service with all back benefits.

ATTESTED

4. We have heard learned counsel for the appellant as well as learned Deputy District Attorney on behalf of respondents and have thoroughly gone through the available record with their assistance.

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Attested  
[Signature]



5. Learned counsel for the appellant (Mr. Muhammad Ayaz) contended that the charges leveled against the appellant were vague, evasive and in general terms without indicating details of the cases, breakup and apportionment of responsibilities, which clearly violates Rule 10(1)(b) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further added that during the course of inquiry proceedings, neither any departmental representative was appointed as required under Rule 10 (1) (c) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 nor the departmental representative performed his duties as such, as envisaged in Rule 13 of the rules ibid. Similarly, no copy of inquiry report along with enclosures was provided with show cause notice as was required under 14(4) of the rule ibid. Similarly, no departmental representative appeared along with relevant record on the date of hearing as was required under Rule 14 (4) (d) of the rule ibid to substantiate allegations, without which all the proceedings is nullity in the eyes of law.

Reliance was placed on 2018 PLC (CS) 997 and 2019 SCMR 640. The learned counsel further argued that the inquiry conducted by Finance Department was a fact finding inquiry, which speaks only of ten ghost employees with no mention of amount and the penalties were imposed on the basis of the stated fact finding inquiry, which is unlawful and the honorable court in case 2012 CLR 464 has turned down such practice. The learned counsel further added that there were no evidences, examination of prosecution witnesses or opportunity of cross-examination, which was illegal and unlawful and such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS)997 and 2019 SCMR 640. That both the competent and appellate authorities have awarded the penalty on the recommendations of inquiry officer, which practice is quite incorrect and turned down by the apex court in a latest judgment contained in 2020 PLC (CS) 1291. The learned counsel contended that the impugned order is not a speaking order, lacking necessary ingredients and issued in violation of Section 24-A of the General Clauses Act.

Reliance was placed on 2015 PLC (CS) 1125-D and 2015 KLR. He further added that the respondents violated Article 10-A and 4 of the constitution due to non-provision of

**ATTESTED**

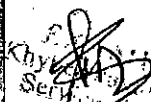
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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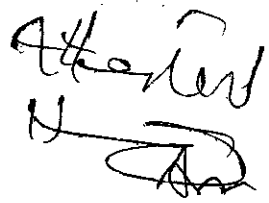
opportunity of free and fair trial and adherence to due process of law, rather it was restricted to selected questions of his choice through questionnaire. Such process of questionnaire has been deprecated by the apex court in its judgment 1993 SCMR 1440. He further added that preliminary inquiries conducted by Finance Department (FD) and Accountant General (AG) Office are contradictory to the effect that Finance Department suggested 10 cases of alleged ghost employees, while Accountant General Office listed it as 18. Besides employee Rahim Dad is shown as appointed on March 2011 by Finance Department, whereas in Accountant General list, the same is shown as appointed on August 2014. Similarly, another employee namely Fazal Wahab in the Finance Department list is shown as appointed on July 2008, while in Accountant General list on May 2013. It was added that both Finance Department and Accountant General lists contained eight appointments prior to the date of posting of appellant i.e. 31-12-2011. Such contradictions in the inquiry reports negate its credibility. He added that neither statement of prosecution witnesses nor other officials, including the alleged ghost employees have been recorded in support of allegations/charges nor was the opportunity of cross-examination afforded to the appellants. The charges against the appellant were firmed up on the basis of suspicion and surmises, therefore not sustainable in the eyes of law. The learned counsel further added that an alleged ghost employee at Sr. No 16 namely Khais Gul has been allowed pension from 2016. Another alleged ghost employee namely Fazal Wahab has already been re-instated in service by this Tribunal vide judgement dated 30-03-2018 in Service Appeal No. 1070/2017. Still another alleged ghost employee namely Mr. Malik Hayat stands re-instated in service by this Tribunal vide judgement dated 12-04-2018 in service appeal No 572/2017, who actually was recruited back in 1996. The stance of appellant to this effect is further substantiated with issuance of a certificate by District Accounts Officer Batagram that eight alleged ghost employees were appointed prior to posting period of the appellant.

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The learned counsel further added that the appellants have been discriminated to the effect that recovery is to be made from only three accused officials without taking into account the other co-accused of Accountant General Office and Education department,

  
 Appellant

who were also held responsible by the inquiry officer in the same case, but no action whatsoever was taken against them inspite of clear recommendations of the inquiry officer to this effect. That responsibility of the appellant is restricted to 2% random checking of bills, as is evident from findings of the inquiry report, but the penalty so imposed does not commensurate with the offence.

6. Counsel for appellant (Mr. Tariq Mehmood) mainly relied on the arguments put forth by his fellow counsel for the appellant, Mr. Muhammad Ayaz with an addition that job description of the appellant was issuance of stamp paper from treasury and to maintain its record having no connections with fake appointments and drawl of illegal money from government exchequer. That there is no mention of the appellant in the preliminary inquiries conducted by Finance Department and Accountant General Office, but still the appellant was held responsible for an act not committed by him.

7. Learned counsel for the appellant (Hamid Younas) also relied on the arguments of his fellow counsels with an addition that Rule 10(3) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. have been violated by not affording opportunity of personal hearing to the appellant. He further argued that no opportunity of cross-examination was afforded to the appellant, which is unlawful and not sustainable in the eyes of law. Reliance was placed on 1998 PLC (CS) 1338-E, 2008 SCMR 1406, 2016 SCMR 108, 1997 SCMR 1073 and Service Appeal No. 613/2017.

8. Learned Assistant Advocate General on behalf of respondents opposed the contention of the appellants and stated that the appellants were properly proceeded against as per rule and law. Proper charge sheet/statement of allegations were served upon them, to which they responded accordingly. He further contended that proper opportunity of defense was afforded to the appellants. He further added that on the basis of fact finding inquiry, it was established that the appellants were involved in fraudulent drawl of Rs. 80,30,614/ and the charges leveled against them proved during the course of inquiry, hence after fulfilling the required formalities major penalty was awarded to the appellants.

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572/2017. Though appeal was decided on technical grounds but gave credence to the fact that action against the appellants was against the norms of justice/fair play.

10. The formal inquiry conducted is replete with discrepancies, shortcomings, lacunae and illegaiities. The inquiry officer was required to sift chaff from the grain, which could be done by following Rule 12 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, he however showed complacency and presented a cut and paste report by mostly relying on earlier fact finding inquiries. The inquiry officer failed to establish as to how in the absence of any incriminating evidence charges can be established against the accused. His findings were based on assumption/suppositions. We could not find basis of apportionment of embezzled amount to be recovered from the appellants, as no criteria, rationale and yardstick was applied by the inquiry officer in reaching the figure of Rs. 2.6 million to be recovered from each accused. The inquiry was also deficient to the effect that it was only conducted against employees of Finance Department. Had it been conducted jointly against staff of Education Department, Accountant General Office staff as well as against the ghost employees, it would have definitely helped in reaching the bottom of the fraud, but the inquiry officer, while ignoring the other co-accused, confined the inquiry only to its own staff and by doing so, apportioned the whole responsibilities pertaining to Education and Accountant General Office employees upon the appellants.

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Service Tribunal,  
Peshawar

We are conscious of the fact that main beneficiary in the fraud were employees of Education department, whether fake or genuine and action against them would have definitely helped in reaching to the bottom of the fraud committed by the concerned. Fraudulent drawl of such a huge amount is not possible without connivance of the District Education Office Batagram, but record reveals that no action whatsoever was taken against either Employees of Accountant General Office or Office of Education in District Batagram inspite of the fact that inquiry officer recommended that Education Department and Accountant General Office may initiate action against their employees involved in the scam. It was noted that most of the activities regarding appointment of

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staff and other allied issues with regard to drawl of their pay and allowances have been initiated by education department and expenditure incurred was also reconciled and accepted by the department without any complaint. All this was done by the education department in connivance with staff of Accounts Office.

12. The penalties imposed upon appellants does not commensurate with the offense committed, as the District Accounts Officer, Mr. Muhammad Ayaz was charged for 18 ghost employees, who however was not responsible for all of them as record reveals that eight of the employees entered the system before his posting period as DAO Batagram, which shows that wrong doer was already present before his arrival to this post. Furthermore, yardstick for due vigilance is that the auditor concerned would check 100% calculations as a test check whereas the Assistant Accounts would check about 10% calculation as a test check and similarly the Account Officer is to check about 2% calculation as a test check and his responsibility to this effect was negligible. Similarly, Mr. Muhammad Tariq Assistant Treasury Officer was also responsible for 10% check, which also is negligible. Moreover, as his designation indicates that he was basically a treasury officer having no apparent role in activation of salaries and allowances. Moreover, name of Mr. Muhammad Tariq was not mentioned in the preliminary inquiries, but his name appeared in the formal inquiry on the basis of doubt. They however, cannot totally be absolved of their responsibilities as they failed to properly supervise the activities as were required. The role of Mr. Hamid Younas Sub Accountant is of prime importance to the effect that he was 100% responsible for checking as well as he was dealing hand responsible for activation of pay and allowances. He was categorically held responsible by all the three inquires conducted to this effect. Record also shows that all such fraudulent activities were initiated from his user account including activation of pay and its transfer to other cost centers.

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13. In view of the situation, the impugned order is set aside to the effect that the appellant Mr. Muhammad Ayaz and appellant Mr. Tariq Mehmood are re-instated into service by converting major penalty of dismissal and recovery into minor penalty of

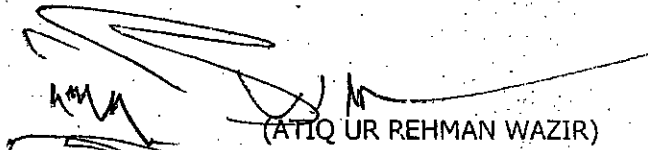
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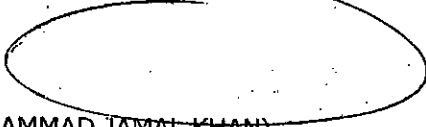
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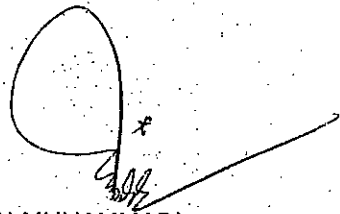
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stoppage of two increments for two years each. Major penalty imposed upon the appellant Mr. Hamid Younas is maintained to the extent of dismissal. Respondents however are directed to conduct inquiry against District Education Office Batagram as well as the ghost employees within three months for recovery of the embezzled amount. No order as to costs. File be consigned to the record room.

ANNOUNCED  
13.01.2020

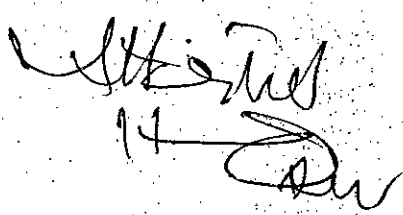
  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (J)

  
(MIAN MUHAMMAD)  
MEMBER (E)

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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

**PRESENT:**

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petitions No.470 and 165-166-P of 2021**

[Against the judgment dated 13.01.2021, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeals No.474, 473 and 673/2017]

**Hamid Younas.** (in CP No.470)  
**Government of Khyber Pakhtunkhwa** (in CPs No.165-166-P)  
**through Chief Secretary, Peshawar and**  
**others.**

...Petitioner (s)

**Versus**

**Government of Khyber Pakhtunkhwa** (in CP No.470)  
**through Chief Secretary, Peshawar and**  
**others.**

**Tariq Mehmood.** (in CP No.165-P)  
**Muhammad Ayaz.** (in CP No.166-P)

...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Shoaib  
(in CP No.470) Shaheen, ASC

For the Petitioner(s) : Mr. Zahid Yousaf Qureshi, AOR  
(in CPs No.165-166-P) and Sardar Bahadur, Deputy  
For Respondent(s) Secretary (Finance)  
(in CP No.470) Farhad Durrani, Accounts  
Officer, A.G. Office (KP)

For the Respondent(s) : Mr. Zulfiqar Ahmed Bhutta,  
(in CPs No.165-166-P) ASC  
Mr. Tariq Mehmood, ASC

Date of Hearing : 23.05.2023

**ORDER**

**Syed Mansoor Ali Shah, J:-** Brief facts of these cases are that M/s Muhammad Ayaz (Respondent in C.P.166-P/2021), Tariq Mehmood (Respondent in C.P.165-P/2021) and Hamid Younas (Petitioner in C.P.470/2021) were holding the posts of District Accounts Officer, Assistant Treasury Officer and Sub Accountant, respectively, at the District Accounts Office,

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Supreme Court of Pakistan  
Islamabad



Battagram. They were proceeded departmentally on the charge of fraudulent withdrawal of money from the government exchequer. After formal inquiry, the said officers were proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and were dismissed from service and recovery of Rs.26,76,871/- was also ordered to made from each of them vide order dated 18.1.2017. The said officers preferred departmental appeals but to no avail and thereafter they filed service appeals before the Khyber Pakhtunkhwa Service Tribunal, Peshawar ("Tribunal"), which granted relief to Muhammad Ayaz and Muhammad Tariq by setting aside their dismissal order and reinstating them in service by converting the major penalty of dismissal from service into minor penalty of stoppage of two increments for two years. In the case of Hamid Younas, the Tribunal maintained the major penalty of dismissal from service to his extent.

2. We have heard the learned counsel for the parties and have perused the impugned judgment. We have noticed that the Tribunal held that "the formal inquiry was replete with discrepancies, shortcomings, lacunae and illegalities". The Tribunal also held that the inquiry failed to establish as to how in the absence of any-incriminating evidence charges can be proved against the accused. The Tribunal further held that the inquiry officer did not follow any criteria or yardstick for imposing the recovery on the said officers. The Tribunal also held that the inquiry was defective as it was held only against the staff of Finance Department, whereas the staff of Education Department was totally ignored without taking into effect that the matter relating to ghost employees and fake appointments involved the District Education Office, Battagram.

3. The Tribunal after holding that the inquiry was defective, reinstated Tariq Mehmood and Muhammad Ayaz by converting their major penalty of dismissal from service to that of minor penalty of stoppage of two annual increments for two years,

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Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

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whereas major penalty of dismissal from service was maintained in the case of Hamid Younas.

4. We have heard the learned counsel for the parties and have gone through the record. We are of the view that once the major penalty of dismissal was set aside by the Tribunal due to defective inquiry proceedings, a *denovo* inquiry should have been ordered, that too by including the concerned staff of District Education Office, Battagram. Therefore, conversion of penalty from major to minor in case of Muhammad Ayaz and Tariq Mehmood and maintaining the major penalty in case of Hamid Younas is not sustainable in law.

5. In the circumstances, we set aside the impugned judgment and direct the department to hold a *denovo* inquiry against the three officers before us, as well as, the concerned officers of District Education Office, Battagram, which should be concluded within three months. In this background, the departmental order of dismissal passed against the officer dated 18.1.2017 is also set aside and all the three officers are reinstated in service. Further, the arrears of pay of the said officers shall be withheld till the conclusion of *denovo* inquiry proceedings and they shall also furnish the surety bond for the alleged amount of misappropriation to the satisfaction of the department within a fortnight from the date of their reinstatement before the start of the *denovo* inquiry.

6. All these petitions are converted into appeals and allowed in the above terms.

sd/ J Certified to be True Copy

sd/ J

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



Bench-IV  
Islamabad  
23.05.2023  
NOT APPROVED FOR REPORTING  
Rabbani & Sadaqat

GR No: 10945/2023 Civil/Criminal

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# وکالت نامہ

کورٹ فیس

BEFORE THE K.P.K. Service Tribunal بعد ازاں

PARID Mehmood نام Court عنوان:

Pakistan منجانب:

Execution نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کارروائی متعلقہ آن مقام

Hamayun Khan, Fazilullah Khan

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقررات و فیصلہ بر طرف دہینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء

وصولی چیک روپیہ و مرضی دعویٰ کی تصدیق اور اس پر دخل کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کارروائی کے لئے کسی اور وکیل یا مفکر صاحب کالونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی دعویٰ اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختمہ مجھ کو منظور قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔

نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا احد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مفکر مقرر کردہ میں کوئی جزو جھٹایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بر ادا استجارت نالہ بیسٹہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

الرقوم: 11/9/23

بمقام:

Accepted by

ال

Parid Mehmood — Pakistan