

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD.**

Service Appeal No. 7271/2021

Date of Institution ... 13.08.2021

Date of Decision... 26.09.2023

Saeed Akhtar S/O Yousaf Saeed, R/O Village Banda Dilazak, Tehsil &  
District Abbottabad.

... (Appellant)

**VERSUS**

Peshawar High Court through its Registrar, Peshawar High Court, Peshawar  
and 02 others.

... (Respondents)

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MR. MUHAMMAD ARSHAD KHAN TANOLI,  
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For official respondents.

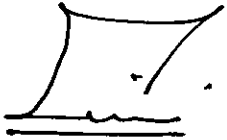
MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts forming the  
background of the instant appeal are that the appellant was serving as  
Sweeper in District Judiciary Khyber Pakhtunkhwa and was posted  
in Tehsail Havelian District Abbottabad. Departmental action was  
taken against him on the allegations that he was reported as often  
remaining absent from duty and explanations were called from him  
by Additional District Judge Havelian as well as Civil Judge  
Havelian time and again but he failed to justify his absence. On  
06.03.2021, the appellant had remained present on duty for only 10  
minutes and during his visit, the Senior Civil Judge (Admn)  
Abbottabad found the appellant proceeding to District


Abbottabad, driving carry van No. LOZ-897 in which passengers were also boarding; that on reaching Abbottabad *Adda*, the appellant was stopped and after alighting the passengers from van, he alongwith carry van was brought to the District Courts premises. The appellant was issued show-cause notice by learned District & Sessions Judge Abbottabad under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, whereby inquiry was dispensed with. The appellant submitted reply to the show-cause notice, where-after he was afforded opportunity of personal hearing by the District & Sessions Judge Abbottabad and vide the impugned order dated 07.04.2021, the appellant was awarded major penalty of removal from service. The penalty so awarded to the appellant, was challenged by him through filing of departmental appeal, however the same was not responded within the statutory period, hence the instant appeal.



2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that no regular inquiry was conducted in the matter and the appellant was awarded major penalty of removal from service without providing him an opportunity of cross-examination of the Senior Civil Judge (Admn) Abbottabad, on whose report the appellant was awarded major

penalty. He next argued that there are numerous verdicts of Supreme Court of Pakistan, wherein it has been held that conducting of regular inquiry is must for awarding of major penalty to a civil servant. He further contended that the appellant was having 17 years of service at his credit and his rights guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan were violated. He next argued that no particular period of absence from duty was mentioned in the show-cause notice issued to the appellant and it was only on 06.03.2021 that the appellant had to left for his home early due to illness of his son. He also argued that there was no evidence that the appellant was plying carry van as taxi on regular basis but even then he was awarded major penalty of removal from service. In the last he contended that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.



4. On the other hand, learned Deputy District Attorney, while controverting the arguments advanced by learned counsel for the appellant, argued that on 06.03.2021, the appellant performed his duty at Tehsil Court Havelian for only 10 minutes, where-after he left the court premises, who was found plying his carry van as Taxi. He next argued that in his reply to the show-cause notice, the appellant had admitted the allegation of plying his carry vain as Taxi and boarding of passengers in the same on his way from Havelian to Abbottabad. He next argued that the appellant was provided opportunity of personal hearing but he could not put forward any plausible justification and the allegations of misconduct against him stood proved. He also contended that previously too, disciplinary

actions were taken against the appellant and he was awarded punishments but he did not mend his ways. In the last he requested that the impugned order may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record with their valuable assistance.

6. A perusal of the record would show that it was on 06.03.2021, that the then Senior Civil Judge (Admn) Abbottabad submitted written report to the then District & Sessions Judge Abbottabad, wherein it was mentioned that on 06.03.2021, the appellant performed his duty in Tehsil Court Havelian only for 10 minutes and that on the same date he was found driving carry van No. LOZ-897 from Tehsil Havelian to Abbottabad, which was full of passengers; that the vehicle driven by the appellant was chased and on reaching the *Adda* at Abbottabad, passengers were alighted from the vehicle and the appellant alongwith vehicle was brought to premises of District Courts Abbottabad. It was on the basis of report so submitted by Senior Civil Judge Abbottabad that a show-cause notice was issued to the appellant under Rule-7 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The inquiry in the matter was though dispensed with by the learned District & Session Judge, however while going through the reply submitted by the appellant in response to the show-cause notice issued to the appellant, it has been admitted by the appellant that he was carrying passengers in his vehicle. In such view of the



matter, the arguments of learned counsel for the appellant that regular inquiry was dispensed with, is having no force. In view of the material available on the record that allegations to the extent of the episode of 06.03.2021 stood proved, however the quantum of penalty so awarded to the appellant does not commensurate with the gravity of misconduct committed by the appellant. We are of the view that awarding of penalty of stoppage of 03 increments of the appellant would meet the ends of justice.

7. Consequent upon the above discussion, the appeal in hand is partially allowed and the impugned penalty of removal from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant stands reinstated into service from the date of his removal from service, however the intervening period shall be treated as extra-ordinary leave without pay for bridging up service gap of the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.09.2023



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT ABBOTTABAD



(KALIM ARSHAD KHAN)  
CHAIRMAN  
CAMP COURT ABBOTTABAD

ORDER  
26.09.2023


Appellant alongwith his counsel present. Mr. Attas Amin, Computer Operator alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the impugned penalty of removal from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant stands reinstated into service from the date of his removal from service, however the intervening period shall be treated as extra-ordinary leave without pay for bridging up service gap of the appellant. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.09.2023



(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad



(Salah-Ud-Din)  
Member (Judicial)  
Camp Court Abbottabad