

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 9B /2022

Diary No. 264

Dated 14-6-2022

Mujahid Ali (Ex Senior Clerk/Reader CJ XVII Peshawar)
S/O Muhammad Yousaf R/O Mohallah Mama Khel, Kalu
Khan Tehsil Razzar District Swabi

.....Appellant

Versus

1. District and Session Judge Peshawar at Judicial Complex Peshawar
2. Registrar Peshawar High Court Peshawar at Peshawar High Court Peshawar
3. Appellate authority (Senior Pusine Judge Peshawar High Court Peshawar) through Registrar Peshawar High Court Peshawar at Peshawar High Court Peshawar
4. Peshawar High Court Peshawar through Registrar at Peshawar High Court Peshawar

.....Respondents

Subject: Service Appeal under section 4 of the KP Service Tribunal Act 1974 against the order dated 17/02/2022 passed by Learned District and Session Judge Peshawar wherein appellant has been compulsorily retired from service which is illegal against law and facts.

PRAYER: On acceptance of this service appeal, impugned order dated 17/02/2022 passed by District and Session Judge Peshawar wherein appellant has been compulsorily retired from service may please be set aside and appellant may please be reinstated in service with all back benefits.

Respected Sir,

Appellant humbly submits as under:

1. That appellant was appointed as Chowkidar (BPS-1) vide appointment order dated 13/05/1999 (Copy of the appointment order dated 13/05/1999 is attached as Annexure A)

Filed to-day
Registrar
14/6/2022

2. That appellant was promoted to the post of Naib Qasid vide order dated 27/09/2001 (**Copy of the promotion order dated 27/09/2001 is attached as Annexure B**)
3. That appellant was promoted to the post of Junior Clerk (BPS-5) vide promotion order dated 09/09/2002 (**Copy of the promotion order dated 09/09/2002 is attached as Annexure C**)
4. That appellant was promoted to the post of Senior Clerk (BPS-9) vide order dated 09/07/2010 (**Copy of the promotion order dated 09/07/2010 is attached as Annexure D**)
5. That the post of Senior Clerk was upgraded from BPS-9 to BPS-14 in the year 2012-13 and was performing duty as reader to Civil Judge XVII Peshawar.
6. That appellant is B.A (Bachelor of Arts) qualified from Abdul Wali Khan University Mardan (**Copy of the B.A degree is attached as Annexure E**)
7. That the findings of the Learned Additional District Judge namely Sajid Khan as a probe-finding inquiry with respect to appellant is limited to negligence which too is illegal against law and facts as at the back of the appellant (**Copy of the probe finding inquiry report is attached as Annexure F**)
8. That appellant was charge sheeted along with statement of allegation on 01/10/2021 for inefficiency/misconduct (**Copy of the charge sheet**

along with statement of allegation is attached as **Annexure G)**

9. That appellant properly replied the same on 06/10/2021 **(Copy of the reply dated 06/10/2021 is attached as Annexure H)**
10. That the allegation against the appellant is entry in the Faisala Bahi register of the fake decree titled as Mst Sabiha and other versus Assistant Director Land, DHA and others.
11. That appellant denied the same and asserted that the register is not in the exclusive custody of the appellant but remains in the Court room in open cupboard without lock and key and accessible to every official of the Court.
12. That the entry at the bottom on 02/02/2020 regarding the fake decree has been made by someone wherein the last column has been further divided into two and thus the squares of this row are smaller than the preceding one **(Copy of the relevant page dated 02/02/2020 of the Faisala Bahi register is attached as Annexure I)**
13. That the handwriting of entry of the fake decree is different than that of the handwriting of the appellant with respect to the remaining entries in the register.
14. That the fake entry may have been made by the scrupulous hands much later than the date of decree most probably held guilty and dismissed from service

by the Senior Civil Judge (Admin) i.e Muharrir/Naib Nazir of the Court.

15. That as the entry has been made clandestinely and it never came into my notice as the guilty hands had effected the entry whenever they got the opportunity.
16. That as a matter of fact, the working relationship of the Court is based on confidence in between the Court staff and the register cannot be kept in the exclusive custody of the reader.
17. That it is human for the reader to leave his seat for attending bathroom, tea-break, lunch break and prayer break.
18. That the opening and locking of the door of the Court is the responsibility of the Naib Qasid concerned.
19. That inquiry has been conducted at the back of the appellant.
20. That similarly appellant has not been confronted with any of the document and the appellant has not been given any opportunity to cross examine any witness.
21. That a show cause notice was issued to the appellant which was properly replied by the appellant **(Copy of the show cause notice and reply to show cause are attached as Annexure J)**
22. That neither appellant has been charged for making entry of bogus decree with deliberate evil/malafide intention nor the same has been proved.

- 23. That appellant has been charged only for inefficiency and misconduct.

- 24. That neither appellant has been associated with the inquiry nor any witness has been examined in front of the appellant. **(Copy of the inquiry report of Senior Civil Judge is attached as Annexure K)**

- 25. That the finding of inquiry by the Learned Senior Civil Judge Peshawar wherein he has concurred with the finding of the fact-finding inquiry officer mentioned above is also limited to negligence which too is illegal against law and facts.

- 26. That appellant has rendered 22 years satisfactory service wherein neither any show cause notice nor any warning has been issued to the appellant and has earned good ACRs throughout.

- 27. That the entire record shows that the decree is fake and bogus and with malafide designs, the execution has been filed much later after 10 months i.e on 11/12/2020 so that no one should notice the same. **(Copy of fake and bogus decree and order sheets and case file along with execution file is attached as Annexure L)**

- 28. That appellant reiterated and affirmed on oath before the appellate authority that appellant has never noticed the entry of the bogus decree and the moment, it came into the notice of the appellant, appellant immediately orally informed the Presiding Officer namely Mr Rafaqat Zahoor (Civil Judge XVII Peshawar) as well as

Mr Justice Younas Khan (the then District and Session Judge Peshawar) and appellant submitted an affidavit to this effect with the Departmental appeal (**Copy of affidavit is attached as Annexure M**)

29. That appellant has been compulsorily retired vide order dated 17/02/2022 passed by the Learned District and Session Judge Peshawar which is illegal against law and facts and liable to be set aside.
30. That appellant filed a departmental appeal dated 02/03/2022 before the Honorable Senior Puisne Judge Peshawar High Court Peshawar which is received vide diary no 299 dated 03/03/2022 and forwarded by the respondent no 1 to respondent no 2 vide letter dated 04/03/2022 which remained un-responded (**Copy of the departmental appeal dated 02/03/2022 which is received vide diary no 299 dated 03/03/2022 is attached as Annexure N & Copy of forwarding letter dated 04/03/2022 is attached as Annexure O**)
31. That appellant along with the departmental appeal filed a separate application dated 02/03/2022 to conduct forensic examination through handwriting expert of alleged entry in Faisala Bahi register which also remained un-responded (**Copy of the application dated 02/03/2022 to appellate authority conduct forensic examination of handwriting is attached as Annexure P**)
32. That the impugned order dated 17/02/2022 passed by the Learned District and Session Judge Peshawar is illegal against law and facts on the following grounds:

GROUND:

(7)

- A. Because appellant is innocent and falsely charged.
- B. Because as per inquiry report, appellant has not been held guilty for misconduct and inefficiency.
- C. Because the inquiry officer has held that appellant is guilty of negligence and the impugned penalty of compulsory retirement does not commensurate with the charge as consistently held by the Honorable Supreme Court of Pakistan reported in 2006 SCMR 60. **(Copy of the judgment reported in 2006 SCMR 60 is attached as Annexure Q)**
- D. Because the Honorable Supreme Court of Pakistan has held that major penalty cannot be imposed for the charge of negligence.
- E. Because the handwriting of Moharrir/Naib Nazir in Ex CW-8/2 resembles with that of entry in Faisala Bahi register and therefore the alleged entry has been made by the Moharrir/Naib Nazir and to this effect, the present appellant is filing separate application with this Departmental appeal for forensic examination of the handwriting in Ex CW-8/2 as well as Faisala Bahi register.
- F. Because even the charge of negligence is not proved as the Learned Senior Civil Judge has recorded his finding as inquiry officer that the register Faisala Bahi doesn't remain in the exclusive custody of the reader but it goes into different hands of different Court officials.
- G. Because the appellant has specifically asserted in Para No


2 of the reply to charge sheet that the entries made in the register be sent to handwriting expert/Forensic Science Laboratory but the Learned inquiry officer failed to send the alleged entry made in the register to expert.

- H. Because the Learned inquiry officer has failed to arrive at the conclusion as to who has committed the act of entry of fake decree in the Faisala Bahi register.
- I. Because the appellant even along with the departmental appeal requested for forensic examination of the handwriting of the alleged entries which is not decided which is illegal against law and facts.
- J. Because as per statement recorded by Inquiry officer, Qaiser (Reader to Senior Civil Judge Peshawar) has endorsed the fact that there is no entry made in the marking register of the Senior Civil Judge (Judicial) Peshawar.
- K. Because the mode and manner under which the entry has been effected in the Faisala Bahi register while squeezing the last row by dividing into two halves by itself speaks of the fact that it can't be entered by the appellant but the evil doers have effected the entry in a hurried manner by creating an extra row. Moreover, no **serial number** has been given to the said entry and the date of judgment is wrongly written as **2002 instead of 2020** which fortifies the fact that the entry has been made in a hurried manner by the evil doer.
- L. Because the cause lists and Peshi register is maintained by the reader (appellant) and there is no entry in the cause list as well as Peshi register. Moreover, the appellant has completed computer training of the software developed

by District Judiciary. There is no entry in the computer software maintained by the appellant. (9)

- M. Because it was the boundened duty of the inquiry officer to give finding beyond any shadow of doubt as to who has entered the fake/bogus entry.
- N. Because appellant has been made a scapegoat.
- O. Because there is neither any allegation upon the appellant nor its proof that appellant is in connivance with the beneficiary or has any relationship with the beneficiary fake decree holder.
- P. Because in such type of cases, the charge must be specific like criminal cases and must be strictly proved.
- Q. Because the connected inquiry against the Moharrir/Naib Nazir wherein ultimately they have been inflicted with a more severe penalty of dismissal from service speaks of the fact that they were involved in making the entry. **(Copy of the inquiry proceedings in the case of Moharrir is attached as Annexure R)**
- R. Because neither the Presiding Officer of the Court nor the KPO nor the stenotypist nor the Naib Qasid has been penalized.
- S. Because as per rules, all the accuseds should have been jointly tried but separate inquiries in the cases is illegal against law and facts.
- T. Because appellant is jobless and entitled for back benefits.

It is therefore humbly prayed that on acceptance of this service appeal, impugned order dated 17/02/2022 passed by Learned District and Session Judge Peshawar wherein appellant has been compulsorily retired from service may please be set aside and appellant may please be reinstated in service with all back benefits.



Appellant

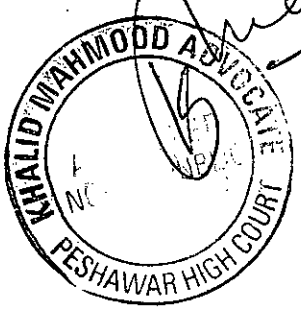
Through


Amjad Ali (Mardan)
Advocate
Supreme Court

Dated: 13/06/2022

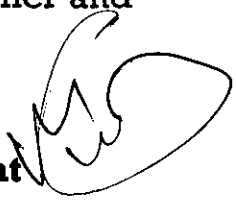
AFFIDAVIT

I, **Mujahid Ali (Ex- Senior Clerk/Reader CJ XVII Peshawar) S/O Muhammad Yousaf R/O Mohallah Mama Khel, Kalu Khan Tehsil Razzar District Swabi (appellant)**, do hereby solemnly affirm and verify on oath that the contents of the **service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



13-6-22

Deponent



(11)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

CM No _____/2022
IN
Service Appeal No. _____/2022

**Mujahid Ali (Ex Senior Clerk/Reader CJ XVII Peshawar)
S/O Muhammad Yousaf R/O Mohallah Mama Khel, Kalu
Khan Tehsil Razzar District Swabi**

.....Appellant/Applicant
Versus

**District and Session Judge Peshawar at Judicial Complex
Peshawar and other**

.....Respondents

***Subject: Application for forensic examination through
handwriting expert of alleged entry made in
Faisala Bahi register***

Respected Sir,

Applicant humbly submits as under:

1. That the aforementioned service appeal is filed today.
2. That despite request of the appellant, the Learned Inquiry Officer failed to conduct forensic examination of the entry made in the Faisala Bahi register and also restrained himself from giving findings as to in whose handwriting, the entry has been made.
3. That even despite written application to the appellate authority to conduct forensic examination of the handwriting, the appellate authority didn't pass any order on the application of the present appellant.
4. That the appellant/applicant has not made the entry in the Faisala Bahi register and therefore it is essential to conduct forensic examination through handwriting expert.
5. That applicant requests that handwriting samples be taken from all persons made part of inquiry and sent to the handwriting expert.

(12)

It is therefore humbly requested that handwriting samples be taken from all persons made part of the inquiry and sent to the handwriting expert for forensic examination of handwriting of the alleged entry made in the Faisala Bahi register.

Appellant/Applicant

Through

**Amjad Ali (Mardan)
Advocate
Supreme Court**

Dated: 13/06/2022

AFFIDAVIT

I, **Mujahid Ali (Ex- Senior Clerk/Reader CJ XVII Peshawar) S/O Muhammad Yousaf R/O Mohallah Mama Khel, Kalu Khan Tehsil Razzar District Swabi (appellant)**, do hereby solemnly affirm and verify on oath that the contents of the **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



13-6-22

Deponent