

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 2514/2021 (amended Oct,2023)

Mr. Pervez Khan
Ex-Project Director /EDO/DPWO,
Population Welfare Department,
Khyber Pakhtunkhwa.
R/o Village Palosi Tlarzai,
District Peshawar. Appellant

Khyber Pakhtunkhwa
Service Tribunal
Case No. 8384
Dated 18-10-23

VERSUS

The Govt. of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat, Peshawar.

The Secretary,
Govt. of Khyber Pakhtunkhwa
Population Welfare Department,
Civil Secretariat, Peshawar. Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 READ WITH 12-2/151 C.P.C. AGAINST THE IMPUGNED REGRET ORDER/LETTER OF 14TH JANUARY, 2021 & 01ST FEBRUARY, 2021 WHEREBY THE REPRESENTATION OF THE APPELLANT FOR HIS REINSTATEMENT INTO SERVICE WAS REGRETTED.

PRAYER:

On acceptance of the instant service appeal cum application u/s 12-2/151 C.P.C the impugned Regret orders/letters NO.SOE(PWD)1-61/2019 of 14th

January,2021, No.SOE(PWD)1-61/2019/3429-32 of 01st Feb,2021 received on 19.01.2021 and 5.2.2021 respectively and Compulsory Retirement Notification dated **16.01.2013** of the respondents may kindly be set aside and previous judgment dated 19.11.2015 in Service Appeal No.838/2012 of the Hon'ble tribunal obtained by respondents party through fraud & misrepresentation of 06 charges now repudiated, appellant exonerated & acquitted by Senior Special Judge Anti-Corruption Establishment (provincial) Peshawar and Peshawar High Court Peshawar concurrently, may kindly be reviewed/vacated/recalled while exercising powers u/s 12-2/151 C.P.C, *inter alia*. Appellant graciously be reinstated into service w.e.f. 16.01.2013 without any service break with all consequential back benefits solicited herein appeal including seniority& promotion to next higher scales w.e.f October 2005 and appellant allowed to serve for a period equivalent to the interrupted period of his service from 16.01.2013 to 31.12.2023 viz 10 years 11 months & 15 days as per dictum set by Supreme Court of Pakistan in **2010 P L C (C.S.) 820 [Supreme Court of Pakistan]** please.

Respectfully Sheweth,

Facts giving rise to the present Appeal cum 12-2/151 Civil Procedure Code petition are as under:-

1. That the appellant, admittedly, entered into the Government regular service on 16.04.1980 (*Notification of respondent-2 at page 175 of appeal*). Later, as in-service candidate appellant was appointed as EDO/DPWO (B.P.S-18) in Population Welfare Department, Khyber Pakhtunkhwa, respondent-2, w.e.f 29.09.2004 while topping the final merit list of the Khyber Pakhtunkhwa Public Commission. On one occasion one of the competing candidate impugned provisional selection of the appellant with respondent-2 department. Since the complaint was related to recruitment & selection matter, therefore, respondent-2 forwarded the complaint to KPK Public Service Commission for n/action having exclusive jurisdiction in the matter. The PSC dismissed the charges, finalized selection of the appellant and sent recommendation to respondent-2 for appointment. Respondant-2 department without any reservation issued appointment notification of the appellant. Complaint, Final selection/recommendation & Appointment notification at pages 39,40 &41 respectively.

2. While serving as EDO/ DPWO/Project Director FATA in respondent-2 department, a section of the federal-origin officers led by Acting D.G, who were illegally absorbed in the department and included in appellant's seniority list, landed in litigation with the appellant on the issue of seniority & promotion. The litigation stretched over years in this tribunal and Supreme Court of Pakistan ending in favour of the appellant that paved way for appellant's promotion to the D.G post being he now the senior most person in the respondent-2 department on provincial side vis-s-vis his federal-origin adversaries. Feeling them on the loose-end, federal-origin officers led by the then Acting D.G who were on helm of the affairs in respondent-2 department, hatched a well-planned conspiracy against the appellant which commenced with theft of appellant's three personnel files from Establishment section of the department. Theft/loss report at p-22. Thereafter they planted a baseless disciplinary case on the basis of a pseudonymous complaint scribed by the same federal-origin lot (*copy in add document*) and sent to respondent-2 department & other fora with mutilated photocopies unmatched to the true record of the appellant stolen as established in the two members enquiry committee report (p-29). The complaint was 1st pressed into service at the level of Director Anti-Corruption Establishment police Hayatabad twice. ACE police conducted two open enquiries on the charges later forming part of the official Charge sheet for civil misconduct, exonerated appellant and complaint was filed by Director ACE, Peshawar vide his orders dated 25.3.06 and dated 24.05.2011 (*copies at pages- 51 to53*). The vilification campaign did not stop here and next emerged into a planted disciplinary proceeding with Charge Sheet and Statement of Allegations dated 29.08.2011 (**pages 20-24**) issued to the appellant, containing the same fabricated and ill-founded 06 charges previously flatten in the two enquiries before Anti-Corruption Establishment Peshawar. The charges had neither public record in their support nor the department had *locus standi* to press them into service being the charges related to non-public life and pre-service period of the appellant. Interestingly, the departmental probe was conducted by those who were in active litigation with the appellant at the relevant time who recommended for a regular enquiry.
3. That, the 1st Inquiry Officer started conducting regular inquiry into the charges contained in Charge Sheet and Statement of Allegations and asked the Acting D.G of respondent-2 to provide original public record in support of the charges and also appear for recording statement & cross-examination

of the appellant accused in person. The Acting DG who himself was affectee of the litigation moved the then Secretary of the Department to substitute the Enquiry officer with a new one. Interim report of the 1st enquiry officer at **page-58** which is eye-opener to establish malafide behind the impugned disciplinary proceedings. Thus, a new enquiry officer was picked up by name who conducted enquiry under the influence of the then D.G & Administrative Secretary facing Damages suit of Rs 80 million along with the Minister of respondent-2 department from the appellant. The Enquiry officer completed enquiry in utter violation of provisions of RSO 2000, the fact he latest admitted before the Anti-Corruption Court, Peshawar during his cross-examination statement (page-77-84). Vide his letter dated 20.10.2021 he wrongly submitted his Enquiry report with his recommendations to the respondent-2 while mistaking him as authorized officer instead directly to the competent authority (Chief Minister) as provided in RSO 2000. Point to be noted that unlike NWFP E&D Rule, 1973 there was no concept of authorized officer in RSO 2000 and enquiry report with recommendations was supposed to be submitted directly to the competent authority within 25 days (Sec-5 (3) and sec-8) of RSO). Thus the then Secretary of respondent-2 department who was already facing of Rs. 80 million damages suit from the appellant and was negotiating outcome of the enquiry with appellant as set off to abate the damages suit, unlawfully altered recommendation of the enquiry officer for retirement of the appellant in light of section 13 (1) of KPK Civil Servant Act,193 to dismissal/removal from service in vengeance and submitted enquiry report after 06 months & 11 day instead within 25 days to the competent authority. See specific recommendations at page 76 & Removal order at page 101 of appeal file. He also called back promotion proposal of the appellant from the PSB. Promotion proposal at page 165 of appeal.

4. On the basis of such illegal, fallacious, ill-founded and mis-founded Inquiry Report, a formal Show Cause Notice was served upon the appellant which was replied, duly rebutting all the charges raised in the Show Cause Notice with factual and legal points on record. Copy of show cause Notice at **page-99**.
5. That, in fanciful distortion of legal requirement a meaningless personal hearing was afforded through the then Commissioner, Peshawar Division instead through the Competent Authority (CM) himself. Subsequently, in hot pursuit of the enquiry file the appellant was imposed upon the major

penalty of removal from service vide impugned Notification dated 10.05.2012 in pure kangaroo closure (page-101).

- 6. That, being aggrieved of the impugned Notification *ibid*, appellant challenged the same through a Departmental Appeal before the appellate authority. The same was partially allowed and the penalty of removal from service was converted into compulsory retirement vide order dated 16.01.2013 (page-102).
- 7. That, no independent and unbiased departmental proceedings were held nor fair evidence and strong defense put in by the appellant in his defense was taken into consideration by the Enquiry officer. Respondant-2 then facing damages suit of Rs. 80 million from the appellant *in personam*, unnecessarily interjected himself as authorized officer in misapplication of law contained in R.S.O 2000 to settle personal scores with the appellant and lead the planted disciplinary proceeding to the target destination. Respondant-2 who although had no true original public record in support of the charges, admittedly lost, misguided the 2nd Enquiry officer, competent authority and appellate authority on file against the facts on public record throughout. Thus, the appellant was not treated fairly and in accordance with law, was defrauded and mistreated as the entire processes and actions in disciplinary proceeding were taken incorrectly with deep conspiracy, insinuation & rancor, against the applicable law of RSO 2000, principle of natural justice, equity, due process of law and fair-play in public business.
- 8. Thereafter, the appellant approached this Hon'ble Tribunal in Service Appeal No.838/2012. The same federal-origin lot hot-pursued the appeal with hearsay accusations and fake photocopies with active support of Mohammad Jan, government pleader in this tribunal. Vide Judgment dated 19.11.2015 (Annex- F/Page-105) the appeal of the appellant was finally dismissed due to fraud & misrepresentation of the die-hard adversaries of the appellant representing the respondents in tribunal for ulterior motives. The Judgment *ibid*, was challenged before the Hon'ble Apex Court in CPLA but the same was also dismissed *in limini* vide two-lines order dated 13.09.19 (Annex-G/Page-123), allegedly for lacking element of public importance, with no consideration of merits of the case.
- 9. Simultaneously, on basis of the same set of charges Xerox leveled against the appellant in the Charge Sheet for misconduct, the same Secretary of respondent-2 department registered an F.I.R for criminal misconduct against the appellant U/S 419/420/468 vide F.I.R. No.8 dated 19.11.2013 in Police Station ACE, Hayatabad Peshawar, a 3rd time complaint in Anti-

Corruption Police, influencing the then Director ACE Peshawar, his ex-subordinate, despite that he had previously dismissed the same allegations twice and appellant was exonerated of the charges in open inquiries. Copy of F.I.R at page 125 and previous exoneration orders at pages 51 & 53.

That, Challan of the criminal case on the same set of beaten charges was put in the Court of learned Senior Special Judge Anti-Corruption (Provincial), Khyber Pakhtunkhwa, Peshawar and trial commenced. In support of the charges all witnesses of the prosecution/respondents with public record were produced & examined by the Trial Court and finally after 8 1/2 years of elongated trial the charges were repudiated and appellant was exonerated of all the charges of the **Charge sheet** meant for misconduct & criminal misconduct proceeding and he was honorably acquitted vide a detailed Judgment dated 01.12.2020 (*Annex:-I/page-129*). Worthwhile to add that each of the charge leveled against the appellant in the Charge Sheet, F.I.R registered and charges framed u/s 265-D Cr.P.C (*at pages 20,22,125,127*) were one & the same Xerox, were examined threadbare in trial vis-à-vis public record first time came before the court with respondents' evidence, the charges were repudiated by the learned Trial Court on the face of the speaking public record retrieved by the ACE police and justifiable legal grounds.

- 10. The respondents went to the Peshawar High Court in Criminal appeal **NO.21-P/2021** against the judgment on the charges. The Peshawar High Court while discussing findings of the criminal court below threadbare, dismissed the appeal vide its detail judgment dated 12.09.2022 and maintained innocence of the appellant. Criminal appeal and judgment at **pages 270 & 273** respectively. Para-12 & 13 of the judgment annexed as additional document, are self-speaking.
- 11. That, since the **very basis** of the major penalty of compulsory retirement imposed upon the appellant was set aside by two courts of competent jurisdiction, therefore, appellant immediately on obtaining attested copy of the Judgment, preferred a Representation to the Competent Authority, the respondents, for his reinstatement with back benefits as per dicta set in similar cases cited in the grounds below but the same were regretted by the two respondents which separately communicated to the appellant vide 14th January, 2021 & 01st Feb, 2021. Copies of Representations and Regret letters placed at **pages 148 to 153-A**.
- 12. **That**, appellant, being mortally aggrieved of the impugned Regret order/letter *ibid*, challenges the same, *inter-alia*, on the following **new and**

distinct grounds, accruing fresh cause of action from arrival/ announcement of the twin Judgments of the Senior Special Judge Anti-Corruption (Provincial) Peshawar & of Peshawar High Court, Peshawar, both repudiating 06 allegations of the Charge sheet forming base of the major penalty of compulsory retirement and appellant exonerated 4th time.

GROUND S:

That, respondents did not treat the appellant in accordance with relevant law, laid down procedure and dicta set by the superior courts on the subject fairly and justly and acted in violation of Article 3, 4,8,10-A,12,13,14,18,25 etc of the Constitution of Islamic Republic of Pakistan, 1973, established principles of justice, fair-play & equity and have issued the impugned regret orders/letters, unjustly and unfairly, hence not sustainable in the eye of law on the following grounds, amongst other.

- A. That, the appellant was charged for the 06 criminal acts vide Statements of Allegations & Charge sheet at Pages- 20- 24 and subsequently was charged and prosecuted vide F.IR NO. 8 dated 19.11.2013 and charge sheeted in criminal court on the same set of charges and the competent courts of law acquitted him of those criminal charges. The charges in departmental proceedings leveled against the appellant were one and the same Xerox and as the competent Courts of law has repudiated the charges, therefore, appellant is entitled for his reinstatement into service being fit & proper person for the job, with all back benefits. The charges which were baseless were evaporated in the air in the face of retrieved public record and are no more in the field. The impugned regret orders/letters of the respondents refusing reinstatement of the appellant, therefore, are unwarranted, illegal and thus not sustainable in the eye of law.
- B. That the charges, *stricto sensu*, did not fall in the confines of 'Misconduct' defined by section 2 (C) of NWFP Removal from Service (Special Powers) Ordinance, 2000 as they did not included the charges of **inefficiency, indiscipline, misbehavior, insubordination, conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or involvement for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons in the line of duty while serving with respondent-2 department i.e.**

29.09.2004 to 16.01.2013. Besides, Domicile was prepared in 1978 & corrected in 1992, MA degree obtained in 1984 whereas ex-parte court decree obtained in 1987-88. The KPK Public Service Commission, undoubtedly, having exclusive jurisdiction in select & recruitment matters, endorsed these three facts at the time of selection and recruitment of the appellant vide its final selection recommendation dated 21.06.2004 copy whereof at page 40, despite complaint from one of competitor, forwarded by respondent -2 to the Commission vide its letter of June 18th 2004 copy at page-39 of appeal. None of the charge related to act & omission during the active service period between 29.09.2004, the date of joining and 16.01.2013, the date of compulsory retirement, the period of service with respondents. Joining report at page-41 and compulsory retirement at 102. Whereas the 4th, 5th & 6th charges did not related to any act or omission allegedly committed in the line of duty while posted and working on any post in respondent-2 department, related the period when appellant had proceeded on leave without pay for one year and 40 days and was officially relieved from respondent-2 department duly handing over charge to his succeeding officer at Nowshera on 31.03.2005 (page-45). These three last charges did not fall in Rule 16 of NWFP Conduct Rules 1987 either, nor follow harsh penalty of Removal from service if were proved but recovery suit in civil court as ordained by Lahore High Court in its judgments reported in 2004 P.Cr.L.J 1895 and PLD 1961 WP Lah 686, also relied by the two courts under reference. Last but not the least, the NWFP Conduct Rules, 1987 were part of NWFP E&D Rules 1973 which later were scrapped/deleted from the confines of the 'Misconduct' provided in RSO 2000 and were no more in the field for prosecuting the appellant at the relevant time. Comparison of the two definitions contained in the two enactments is highly recommended please.

In fact, the charge in the Charges sheet are purely criminal in nature which were rightly decided by the criminal courts concurrently and appellant exonerated. If the charges are taken true and within their jurisdiction the respondents at the most, should have proceeded u/s 3 (A) of RSO 2000 by let allowing the criminal charges proved in criminal court and if proved and convicted in criminal court, the respondent-2 on the grounds of conviction should have then proceed as provided in sub-section (2) clause(a) or clause (b) of the said section, whatever the case might have been, by proceeding with departmental proceeding. The maxim (*expressio unius allerius exclusio*) (express mention of one

thing implies the exclusion of another) sit here. Anyhow, *when Law requiring a matter to be done in a particular manner, should be done in such manner and in none other manner. Reliance on 1981 S C M R 244.* Thus, respondents while proceeding against the appellant in this tribunal have clumsily breached section 3 (A) of RSO 2000, the applicable law.

- C. Since, appellant was imposed upon major penalty of compulsory retirement on account of his alleged involvement in 06 criminal offences as incorporated in the Charge sheet and then in FIR. Thus he is well within the right to claim re-instatement in service in view of repudiation of the charges by criminal courts on merits. If the charges were untrue & misfounded then perpetual right of condemning the innocent employee for ill-founded penalty of compulsory retirement imposed cannot be gained on the basis of proceeding held in this hon'ble tribunal, falsely and fraudulently implicating the appellant on the basis of hearsay allegations out of grand conspiracy, now belied by the public record 1st time produced by the respondents before the trial court & High Court, thus the allegations were no more than a smoke screen now disappeared in the air.
- D. Strictly speaking, the charges contained in the Charge sheet for departmental proceeding if taken on its face value, are criminal in nature and do not fall in the meaning of civil 'misconduct' defined in section 2 (c) of NWFP Removal from Service (Special Powers) Ordinance, 2000 explained ante. Thus the charges being criminal, were rightly considered by competent criminal court, decided and repudiated under its inherent authority and jurisdiction. The respondents were required to wait for the outcome of the criminal proceedings and if charges were proved in the court of criminal jurisdiction, should have then proceeded u/s 3-A of RSO, 2000 for departmental proceedings. In fact, by doing otherwise respondents have put the cart before the horse, causing appellant serious prejudice and resulting in grave miscarriage of justice. Thus, the departmental proceeding was pre-matured, mis-founded, void *ab-anitio*, invalid, misplaced, against the law laid down, therefore of no legal effects.
- E. It is a settled legal principle enunciated by the superior legal fora that when the basis of misconduct no more remains in the field the appellant civil servant should be reinstated into service. In the instant case, after acquittal of the appellant from the same charges on merits he stood entitled for reinstatement into service, therefore, refusal of the respondents to reinstate appellant into service after his acquittal is violative of Article-201 of the

Constitution of Islamic Republic of Pakistan, 1973 and Judgments of the Supreme Court of Pakistan delivered on the subject matter. *Reliance placed on* PLD 2010 SC 695, *Citations (g) & (h) and* 2010 PLC (CS) 1165, *Citations (a) & (b).*

F. That the disciplinary proceeding which finally culminated into the major penalty from this learned tribunal was fraught with malafide, malicious and extraneous motives in as much as the appellant had filed a Damages Suit of Rupees 80 Million against the then Minister, Secretary and Director General, Population Welfare, Khyber Pakhtunkhwa for not implementing the two Judgments of the august Supreme Court of Pakistan wherein the Apex Court had declared that the Federal origin employees working in the respondent-2 department represented & headed by the then Director General, were not Provincial employees of GOKPK and thus not entitled for seniority in the Provincial Civil Service with the appellant, should be stripped of the benefits they secured from provincial government in detriment of the appellant. Para-6 of GOKPK Law Department file-note at page 57 of appeal *"The person who have been adjusted as federal employee would not be able to retain the benefits doled out to them by the provincial government unless federal government put stamp on them"* is worth notice. That the appellant is/was eligible for seniority and promotion to next higher scale w.e.f. October 2005 when the 1st working paper for promotion to BPS-19 scale was prepared and sent to PSB (p-153) while the Federal origin employees headed by the then acting Director General are/were not ineligible being Federal employees as held by FST and Supreme Court of Pakistan and confirmed by Law Department GOKPK vide their legal opinion dated 21.12.2009 sought by the respondent-2 department itself vide its letter of 5th November, 2009 (pages- 54 to 57). Advice of Establishment Department GOKPK (P-161) had separately and additionally confirmed eligible position of the appellant for promotion against his opponents. Thus promotion made vide Notification of 19th February, 2007 (p-163) ignoring appellant stood void *ab-anitio*. Otherwise, eligibility and fitness was admitted by the respondents and case of the appellant for promotion was sent to PSB vide working paper dated 12.3.2012 latter (p-165) subsequently which was called back, blackmailing the appellant to withdraw litigation. Presently, Mr. Mohammad Wali, a junior & ineligible one comparing the appellant, has since been illegally promoted to BPS-20 on 21.04.2022 now due for retirement on 29.022024 despite belonging to the condemned federal-origin lot. The appellant has been deprived despite advice of

Establishment Department and advice/opinion of the Law Department on appeal file.

- G. That, a total of six hearsay charges was leveled against the appellant on the basis of which he was imposed upon the penalty of compulsory retirement from service. All the charges suffered from serious legal lacunas as noted by the trial court in its judgment especially in para-8 at pages 136 of its judgment which was reconfirmed and adopted by appellate court in para-11, 12 & 13 of its detail judgment annexed with application for additional documents. Now, all charges are washed away with the judgments in hand and evaporated in the air as held by the apex court in several of its reported judgments, excerpts produced in paragraphs herein below in pristine form, thus appellant stood innocent. When the very foundation on the basis of which the major penalty was imposed upon the appellant is no more in the field, continuation of penalty is nullity in the eye of law. Appellant is a fit and proper person for the job now.
- H. In the days of hearing of the appellant's appeal NO. 838/2012 in this Hon'ble Tribunal there was only two members and one Chairman in posting. The appeal was fixed before the two member bench. Since one of the member Abdul Lateef was previously Special Secretary in respondent-1 office and was privy to processing the disciplinary case of the appellant back & forth and had expressed his mind, therefore the appellant moved an application to the then Chairman Service tribunal to substitute him with another member. Appellant also requested to hon'ble member in court to recluse himself from hearing the appeal on the principle (No one should sit in his own cause). The learned Chairman excused for the reason that he has distributed tribunal work as he hears the fresh cases on preliminary stage and once admitted by him for regular hearing, are transferred to the two member bench. Thus a genuine request of the appellant was not acceded to the disadvantage of the appellant. The hon'ble member from secretariat group once himself admitted pressure from the then Secretary (DMG Group) in his retiring room when appellant was visiting him in respondent-1 office during pendency of the disciplinary proceeding. Affidavit to this effect is given below to the appeal. The Peshawar High Court has held that in Citation (b) of its judgment reported in 1968 P Cr. L J 1 Peshawar: ---Maxim- *Nemo debet esse judex in propria causa* (no one can be a Judge in his own cause) and "*nemo sibi esse judex vel suis jus decere debet*". That, No man to be his own judge and litigant)-- It is fundamental principle in the administration of justice in the civilized world that a person cannot be a

judge in a cause wherein he is interested or has been interested. Where the judge has interest in the result of a cause, he cannot sit in judgment upon it- Doctrine of possible biasness is an important principle of natural justice--Maxim" Justice should not only be done but manifestly seem to be done " apply to judicial or quasi judicial tribunals as well as administrative authorities performing quasi judicial functions. Reliance placed on **P L D 1989 Lahore 26 and P L D 2002 Karachi 131.**

I. That subsequently, appellant was appointed by respondent-1 as Chief Executive Officer, Water & Sanitation Services Swat (MP-1 position equivalent to BPS-22) on open merits but due to conspiracy of the same Officers in respondent-1 department the appellant was unceremoniously removed from the coveted post on the basis of judgment of this learned tribunal dated 19.11.2015 (page-105) from the job vide order dated 22.9.2016 (*Annex- S, page 176*), after rendering 13 months of his service while pay of the appellant is still withheld. Again, the appellant was appointed as Economist (BPS-20/21) in the Federal Government but his appointment was held in abeyance through the conspiracy of the same cut-throat adversaries of the appellant by referring impugned major penalty of compulsory retirement imposed upon the appellant, unfortunately seconded by this tribunal on misrepresentation of the appellant' opponents in respondent-2 department vide impugned judgment dated 19.11.2015 of the learned tribunal. Copy of the impugned judgment has been placed on personnel files of the appellant and widely disseminated in public offices and media which has put his career, both future and past, topsy turvy. Therefore, vacation & recall of the impugned judgment dated 19.11.2015 made in appeal 838/2012 is necessary to do substantial justice with the innocent appellant while exercising powers u/s 12-2/151 C.P.C.

That the recently arrived judgment dated 01.12.2020 of the Senior Special Judge Anti-Corruption Establishment (Provincial), Peshawar and judgment dated 12.09.2022 of the Peshawar High Court in Criminal Appeal NO.21-P/2021 has disclosed that representatives of the respondents during hearing of the service appeal NO. 838/2012 have suppressed and misrepresented material facts of the case as well as distorted relevant law on the subject and played fraud on this august tribunal, leading the learned tribunal on false, incorrect, mis-founded and misplaced 06 allegations reflecting in the Statement of Allegation and Charge sheet dated 29.08.2011 meant for departmental proceedings in this hon'ble tribunal. The official

record later retrieved by the Anti-Corruption police was considered by the Anti-Corruption court tha disclosed the following facts which were previously suppressed, concealed and misrepresented by the respondents party during hearing of the previous service appeal with malafide intension, thus played fraud and misrepresentation by leading the learned tribunal to travel on incorrect premises and surmises and thus got an erroneous & invalid judgment dated 19.11.2012 from this august tribunal fraudulently in collusion of government pleader. The recovered official record presented before the two courts, not presented before this tribunal previously, divulged the following undeniable facts floating on the official record now:

- J. That hence before, in Service Tribunal Khyber Pakhtunkhwa the case of the appellant was totally misrepresented by the functionaries representing respondent-2 department, hailing from the affected federal-origin lot, cut-throat adversaries of the appellant who on concealment of true record, claiming lost of appellant's 3 personnel files from the department, misled the service tribunal on surmises and conjectures to reach a unsuitable conclusion which seriously prejudice the appellant's innocence. The entire gagged record has since been retrieved now, produced before the trial court and exhibited on judicial file and thus appellant was exonerated of the charges honorably. Some of such documents are annexed to rejoinder of the appellant and appellant's application submitting additional document as of latest.
- K. That, during the impugned proceeding of the respondents, findings of facts were involved in the appellant' case. However, unfortunately, the theory of presumption and hearsay ruled in departmental proceedings which suffered from many probable deficiencies, suppressions of facts, error of sources and untrustworthiness, lied underneath the bare untested assertions of the respondents in the departmental proceeding and before the tribunal. Now, the judgment of Senior Special Judge Anti-Corruption Peshawar, the court of evidence, has best brought facts to the limelight about the charges and exposed the whole truth through the tests of examination & cross-examination of witnesses and perusal of record. The full-fledged trial in the Anti-Corruption court has knocked out and washed away the charges of misconduct and appellant declared innocent on merits. Peshawar high Court has withheld the judgment with vehemence duly comparing the charges and appellant' defense put against. The Appellate court has held:

“Needless to say that an acquitted accused earns double presumption for his innocence which right cannot be taken away from him unless & until it is proved that the judgment of the acquittal is either perverse or against the evidence on record , which is not the case here. In this respect wisdom is derived from the case of “Muhammade Zaheer Vs Muhamad Ijaz & others (2017 SCMR 2007.

L. The retrieved official record presented before the two courts divulged the following undeniable facts floating on the official record:

1. That the official relevant record contained in three personnel files of the appellant were lost from the department on 02.02.2010 and the same was not available for departmental enquiry as well as for examination of the learned tribunal at the time of hearing and decision on the service appeal 838/2012, also so corroborates from loss report, enquiry report of the 1st & 2nd Enquiry Officer, judgment of this learned tribunal dated 19.11.2012 and judgment dated 01.12.2020 of the Senior Special Judge Anti-Corruption Establishment (Provincial), Peshawar. Kindly see at page-27, 29 (para-1),31&33,34 &35 of appeal.
2. That the charges, *stricto sensu*, did not fall in the confines of misconduct' defined by section 2 (C) of NWFP Removal from Service (Special Powers) Ordinance, 2000 but purely criminal offences as decided by the Anti-Corruption court Peshawar and endorsed by Peshawar High Court. In Charge sheet the charges are purely criminal in nature and did not included the charges of **inefficiency, indiscipline, misbehavior, insubordination, conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or involvement for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons.**
3. That, all the 06 charges were not relatable to the normal duty and functions of the appellant civil servant but were beyond his official functions, stay stint and 'duty' in the respondent-2 department, therefore, did not fall in the domain of 'Misconduct' either. The first three charges of the charge sheet relatable to pre-service private life of the appellant as Domicile was prepared in 1978 & corrected in 1992, MA degree obtained in 1984 whereas ex-parte court decree obtained in 1987-88. So far as the last three charges are concerned it was dubbed as violation of Rule 16 of the NWFP Conduct Rules, 1987. Fact to be noted that NWFP Conduct Rules, 1987 were part of NWFP E&D Rules 1973 which later scrapped/deleted from the confines of the 'Misconduct' provided in RSO 2000 and were no more effective for prosecuting the appellant thereabout. Point further be noted that FR 9 (6) excludes Leave without pay and suspension period from the pail of 'duty. Therefore no allegation of misconduct can be leveled for any act or omission relatable the said interregnum. The last three alleged charges of the Charge sheet relates to the period of leave without pay and suspension from service, therefore out of the purview of 'duty' defined by

FR 9 (6), therefore no misconduct allegedly committed within the meaning of the term contemplated by section 2 (C) of NWFP RSO 2000.

4. Since, the first three charges of having dual domicile, tempering of degree and determination of age limit were related to the recruitment & selection process for which jurisdiction and *locus standi* for their questioning lied with Khyber Pakhtunkhwa Public Service Commission, which had neither filed any complaint against the accused nor was party in the departmental proceedings, rather endorsed appellant stated faultless position during examination & cross-examination through its senior law Officer Faheemullah Khan as prosecution witness (P-88). Undoubtedly, Commission is constitutionally independent body under Article 242 of the Constitution of Islamic Republic of Pakistan, 1973, free from government influence in Recruitment & selection functions and have exclusive jurisdiction in the selection and recruitment in BPS-16 & above posts by virtue of section 7 of NWFP Public Service Commission Ordinance, 1978 (pages 36-38 of appeal). The jurisdiction for raising objection on Domicile, Academic Qualification and Date of Birth, now proved false, unequivocally lied with NWFP Public Service Commission under Regulations, 20, 19 & 15 respectively, of Khyber Pakhtunkhwa Public Service Commission Reregulation 2003. Thus, functions determining DOB & age under Reg-15, function determining qualification & Experience of a candidate under Reg-19 & function determining citizenship/domicile of a candidate under Reg-20 were specifically and exclusively relatable to the functions of Public Service Commission Khyber Pakhtunkhwa and not the respondent-2 department.
 5. That, enquiry proceedings as well as enquiry report of the Enquiry officer was defective on several accounts, without having support of relevant public record for his impugned findings, admittedly, lost from the department and was not available for enquiry, the fact admitted by the 2nd enquiry officer during his cross-examination in criminal court. The 2nd enquiry officer under the misconception of relevant law recommended the appellant for pre-mature retirement u/s 13(1) of the NWFP Civil Servant Act, 1973 r/w provisions of NWFP E&D Rules 1973 as he admitted before the trial court as respondents' witness. On the other hand secretary of respondent-2 department while posing as authorized officer, when he was not so clothed, recommended the appellant for dismissal from service as he, the DG and Minister of Population Welfare, all were facing damages suit of RS 80 million *in personam* from the appellant at the relevant time.
 6. The enquiry which was conducted was not on the instance of any actual or legal person but was based on a pseudonymous complaint with the fictitious name of Khairullah S/O Hizbullah, an Afghan Refugee, which later was reported fake by the Anti-corruption Police vide its report at page-50 of the appeal. Pertinent to point out that Anti-corruption Police had previously exonerated the appellant of the same 06 allegations twice vide its orders at pages 51 & 53 of the appeal. Furthermore, action on pseudonymous complaint was unjustified in view of barring instruction of the respondent-1 circulated vide S&GAD letter NO.SORII(S&GAD) 5 (29) 97 Vol II dated 15.11.1999 copy whereof placed at page 47 of the appeal, the last & latest instruction of its kind at the relevant time dealing with anonymous and pseudonymous complaints by the government departments.
- M. That, the facts 1 to 6 in paragraph L above has raised questions both on the jurisdiction and validity of the judgment dated 19.11.15 of this august

tribunal and provided it the authority u/s 12-2 C.P.C to review, re-consider, recall or vacate its previous judgment dated 19.11.2015 obtained on fraud and misrepresentation of facts as well as relevant law in addition to confirm the payers sought u/s 4 of the NWFP Tribunal Act, 1974 in fresh appeal accruing from the two concurrent favourable judgments on the charges. Processing departmental proceeding and taking decision without observing standard principles of law, evidence and procedure are against the natural justice, is a miscarriage of justice and renders the judgment so obtained in misrepresentation of facts is nullity in the eyes of law. Section 12-2 C.P.C deriving strength from section 7 (2) of NWFP Service Tribunal Act, 1974, undoubtedly, confers jurisdiction on this hon'ble court to re-consider its previous judgment secured on fraud and misrepresentation of facts and law.

- N. That the previous judgment of the tribunal delivered on 19.11.2015 do not and cannot derogate true status from this hon'ble tribunal nor has taken away its inherent jurisdiction to protect its judgment from the taints of fraud & misrepresentation. The power rests with this august tribunal to ensure that stream of justice ran pure and clean. 12-2/151 C.P.C provides mechanism to recall and rectify unsavory outcome of any sinister or oblique manipulation of the facts and points of law misrepresented. Appellant's competitors and cut-throat opponents in the respondent-2 office were behind the impugned misrepresentation who at the relevant time were in litigation with the appellant in the matters of seniority, promotions and status of service.
- O. There is no clog on the authority of the learned tribunal to re-examine its earlier decision u/s section 12-2/151 C.P.C with a view to secure the end of justice and prevent abuse of its jurisdiction for personal motives invalidly. Misrepresentation and fraud un redeemedly vitiate the very solemnity of the adjudication, a wrong that cannot be countenanced and must be remedied through dynamic application of relevant equitable law contemplated under 12-2 C.P.C *inter alia*. Such approach had been approved by the Supreme Court of Pakistan in a good number of cases.
- P. An order obtained by fraud can be regarded as being voidable at the instance of the party adversely affected by it. The preponderance of judicial authority is in favour of applying such power to the tribunal on the general principle that fraud vitiates even the most solemn proceeding and no party should be allowed to take advantage of his fraud. The duty to undo this effect lies on the authority on which fraud has been practiced. Even the

tribunal of limited or special jurisdiction has the powers to *suo moto* recall or review an order obtained from it by fraud or misrepresentation of facts or relevant law. *Reliance is placed on (1) 2021 SCMR 1145 (2) PLD 1975 Supreme Court 331 (3) 1998 PLC (CS) 588 (4) 1992 SCMR 917.*

- Q. The cause of action for raising the instant issue u/s 12-2/151 C.P.C accrued to the appellant from judgment dated 01.12.2020 of Senior Special Judge Anti-Corruption Establishment (Provincial), Peshawar, copy whereof prepared and received to him on 11.12.2020, which has 03 years limitation from preparation of copy of the judgment of the learned ACE Court so disclosing the facts and points of law hence remedy u/s 12-2/151 C.P.C has properly been invoked as adequate remedy. The 12-2 application should be taken as part & parcel of the service appeal filed and pending before the tribunal.
- R. This is an admitted fact that at the time of hearing of service appeal in this august Service Tribunal, the original service record containing credential and testimonials of the appellant were already lost, also noted by the tribunal in its judgment, therefore, were not presented before the tribunal in support of the charges during the 1st round despite appellant's written request, then moving the learned bench/tribunal to call the official true record including personnel files of the appellant from the department for inspection (**see annex-Page-103**). The respondents failed to produce it; rather the respondent-2 office misrepresented the facts before the tribunal through hearsay assertions & speculations. The shaded facts now well scrutinized through pro & contra evidence in the court of Senior Special Judge Anti-Corruption, Peshawar. The true evidence has come forth before the Anti-Corruption court which has belied the charges and appellant exonerated on merits. Attested record of the trial court has additionally been added to the appellant's appeal pending before the learned tribunal. The departmental proceedings were not initiated for any good public cause but to settle personal scores with appellant for ulterior motive. State has not prosecuted the appellant for public goods but a few persons for ulterior motives while wearing the state robe on the shoulders and using state operatus in personal hands. They are themselves in the dock now.
- S. That, the charges in the Charge sheet of the respondents before the tribunal, F.I.R and charge-frame before the criminal court are one and the same Xerox. All the charges are criminal in nature and were asserted so before the two forums in the same criminal tenor and tone. The court of Senior Special Judge Anti-Corruption under its inherent criminal jurisdiction put

to the litmus the charges in most natural way and cleared the appellant in unequivocal terms. The charges did not included **inefficiency, indiscipline, misbehavior, insubordination, conduct against good order or service discipline during the service** etc but are criminal offences which dated back to appellant non-public service tenure referred ante. Therefore, the criminal court has rightly considered and repudiated.

- T. Indeed, disciplinary proceeding and criminal proceeding can run simultaneous within two separate domains with varied outcome provided there are two set of allegations with distinct characteristics and when there is nothing common between the two sets of the allegations. In present case allegations are one & the same which are predominantly criminal in nature and became the sole ground for penalty of compulsory retirement. Respondents filed complaint with ACE police, registered F.I.R , framed charges under section 265-D Cr.P.C and prosecuted the appellant for the charges before the criminal court of Senior Special Judge Anti-Corruption Establishment KPK Peshawar and went to Peshawar High Court with the same charges in criminal appeal NO 21-A/2021 against the appellant. Thus facts admitted need no proof and facts judicially noticeable need no proof. The instant charges did not fall in section 2© of misconduct of RSO 2000 as they were not related to **inefficiency, indiscipline, misbehavior, insubordination, conduct prejudicial to good order or service discipline during the service or unbecoming conduct of a civil servant in the line of duty but fraud, cheating & impersonation simpliciter** which could properly be dealt with u/s 3-A of RSO 2000, thus rightly examined and determined by the criminal court and appellant exonerated. Now, he is a fit and proper person for civil service he was compulsorily retired from.
- U. That, the appeal against the judgment in apex court was not decided on merits but, apparently, for lacking the element of public importance. This argument was advanced before the Anti-Corruption Court (Provincial) Peshawar as well as Peshawar High Court which was rejected. Even in similar circumstance the apex court has held that " sole and alone ground of conviction in criminal case had evaporated and stigma had extinguished after his acquittal by High Court which created a fresh cause of action in his favour. Termination order based on conviction of appellant could not remain when conviction itself has not attained finality from High Court. After passing of judgment of acquittal from High Court judgment of conviction passed by trial court lost its validity, thus, grounds of termination of service could be considered through fresh appeal--Fresh cause of action was created in favour of appellant to file afresh

appeal before service tribunal , which was competent. Supreme Court remanded case to service tribunal for deciding appeal on merits". (Partial citation from 2010 PLC CS 1165 Supreme court).

V. In case of acquittal from the criminal charges which were the sole base of the departmental proceedings in appellant case, the Supreme Court of Pakistan has held:

"When an official is tried on a definite charge and is acquitted either in the original court or on appeal and there is no question of the acquittal being merely on technical ground of evidence having been suppressed. In such cases, and when no facts are established in the course of the trial that would justify action being taken for disregard of departmental rules, the decision of the court on the facts should be accepted and no departmental action should be taken.

Similarly, when the charge is dismissed without any suggestion by the court that the conduct of the accused has been suspicious or any indication that it is merely giving the accused the benefit of a doubt; the acquittal should be treated as an honourable acquittal and no further departmental action should be taken.

W. Constitution of Pakistan (1973), Art.212(3)--civil servant's dismissal from service based on his conviction of criminal charge—civil servant having been acquitted of criminal charge, his dismissal was set aside and he was ordered to be reinstated in service with back benefit ". (Citations: 1991 S C M R 209).

X. The Hon'ble Supreme Court of Pakistan held in Superintendent Engineer GEPCO, Sialkot V. Muhammad Yousaf case reported in 2007 SCMR 537 that if a civil servant has been acquitted he has to be re-instated when his dismissal order was based on this very ground. (Reliance on: 2007 SCMR 537).

Y. The Supreme Court of Pakistan held in another case:
"Basis of recommendation for removal from service having been knocked out, appeal was rightly allowed by service tribunal --- judgment of service tribunal was maintained in circumstances". (Citation: 1994 S C M R 247)

Z. The Supreme court of Pakistan in the case Province of Punjab & V. Abdul Aziz Qurashi held:
"The judgment of the learned special judge leaves no slur on the conduct of the respondent (accused) and rather shows that he was made to suffer for extraneous

reasons. The very basis of the recommendations for removal from service having been knocked out (By special judge), the appeal was therefore rightly allowed by learned tribunal". (**Dictum set in 1994 SCMR 247**).

Z-1. The Lahore High Court in a service case held:

"This Specific observation seems to be directly in conflict with the basic principle of the criminal administration of justice under which a person is presumed to be innocent unless proven guilty and person though involved in criminal case, if acquitted shall also be considered as a person against whom no case was ever registered. It will be a great irony of our society entire life with an obsolete and baseless stigma that he once being involved in a criminal case that too relating to a personal vendetta. This is considered a serious threat to the criminal administration of justice and offensive to the judicial system as a whole which not only shows mistrust but also a clear disrespect to it. The said approach will also be in direct conflict with provision of section 403 Cr.P.C and Article 13-A of the constitution of Islamic Public of Pakistan, 1973 under which double jeopardy has been prohibited". (**Citation: 2018 PLC (CS) 454**).

Z.2. The Supreme Court of Pakistan has held in another similar case:

"Acquittal of civil servant in criminal case...Civil servant was re-instated in service after acquittal from a criminal case—payment of subsistence grant to the civil servant—Validity—Where the criminal charges were not established before a competent court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges would be wholly irrelevant and unjustified.—Civil servant was acquitted by the competent court of law which would mean that civil servant was not been suspended and would be entitled to all pay and allowances admissible under the rules, minus the amount which the civil servant had already drawn". (**2001 SCMR 269**)

Z.3. The Supreme Court of Pakistan held in another case.

"Frequently, however the above elements are absent, e.g. When an official is tried on a definite charge and is acquitted either in the original court or on appeal and there is no question of the acquittal being merely on technical ground of evidence having been suppressed. In such cases, and when no facts are established in the course of the trial that would justify action being taken for disregard of departmental rules, the decision of the court on the facts should be accepted and no departmental action should be taken.

Similarly when the charge is dismissed without any suggestion by the court that the conduct of the accused has been suspicious or any indication that it is merely giving the accused the benefit of a doubt, the acquittal should be treated as an honourable

acquittal and no further departmental action should be taken.---It was held in Muhammad sardar khan v. Senior Member (Establishment), Board of Revenue, Punjab, Lahore" (Citation: 1985 SCMR 1483)

Z.4. The apex court held in similar case:

"However, it does not require any elaborate argument to show that in case the sentence is set aside and accused officer is acquitted, the very basis on which such order of removal from service stands, would disappear. The result of such an event would be that the order of removal itself will render ineffective and liable to be set aside. Such being the legal consequence a void order of removal could not have been propped up by an additional ground, as done by the learned service Tribunal, for the simple reason that such additional grounds found in support of the removal order would violate the rule of natural justice, beside being violative of the mandatory requirements of the Efficiency and Discipline Rules." (Citation: 1985 SCMR 1483)

Z.5. In the judgment reported as (province of the Punjab v. Abdul Aziz Qureshi 1994 SCMR 247), the rule was established by apex court that when:

"Basis of Recommendation for Removal from Service having been knocked out, appeal was rightly allowed by service Tribunal --- Judgment of Service Tribunal was maintained in the circumstances". (Citation:1994 SCMR 247)

Z.6. In another case Supreme Court followed similar principle in following words:

"Very Basis of recommendation for removal was knocked out by judgment of acquittal which shows that the case was started on the application of the students -- -- The judgment of the learned special judge leaves no slur on the conduct of respondent and rather shows that he was made to suffer from extraneous reasons. The very basis of recommendation for removal from service having been knocked out, the appeal was rightly allowed by the learned Tribunal." (Citation: 1995 SCMR 247).

Z-7. The apex court held in identical case.

"Acquittal of civil servant from the criminal case--civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime---Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in

respect of the period he remained under suspension on the basis of murder case against him.

---Benefit of doubt---Doubt itself destroys the very basis of the prosecution case--- Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution--- Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and as such deserves to be convicted to meet the ends of justice---Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted.

---Acquittal---All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable".

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such "acquittals" All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

That term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service". (Citations: 1998 S C M R 1993)

Z.8. The Supreme Court of Pakistan has set a range of principles with the following dicta in one of its reported judgment.

"Every person was presumed to be innocent unless proved guilty---Person though involved in criminal case if acquitted was to be considered as a person against whom no case was ever registered---Any condition creating impediment on the job in the department on the basis of acquittal in criminal case would not and should not be read as disqualification---Impugned order passed by the department was set aside and Authority was directed to decide the representation of candidate in accordingly. The same principle was relied in 2011 SCMR 408, 2012 PLC (C.S) 502, 2012 SCMR 165, PLD 2010 SC 695, 2007 SCMR 537, 2009 SCMR 985, 1998 SCMR 1993, 2018 P L C (C.S) 454"

"Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge---Respondent was justified in claiming his

reinstatement in service upon earning acquittal from the competent criminal court— Supreme Court declined to interfere in the judgment passed by Service Tribunal, where by respondent was reinstated in service---Appeal was dismissed". **(Citations: P L D 2010 Supreme Court 695).**

Z.9. The apex court observed in another identical case as below:

"It will be noted that the basis of recommendation for removal from service was that a "case is under trial in the Anti-Corruption Establishment, Multan". This very basis was knocked out by the judgment of acquittal which shows that the case was started on the application of the students---The judgment of the learned Special Judge, leaves no slur on the conduct of respondent and rather shows that he was made to suffer from extraneous reasons. The very basis of the recommendation for removal from service having been knocked out, the appeal was rightly allowed by the learned Tribunal. The learned counsel for the appellant could not point out any misreading, non-reading or misconstruction. The appeal is therefore dismissed with no order as to costs. Appeal dismissed". **(Citation: 1994 S C M R 247)**

Z.10. The apex court similarly observed in another case:

"Acquittal on benefit of doubt from criminal charge ---Honourable acquittal --- Back benefits Entitlement ---Civil servant was taken on duty after his acquittal from criminal charge and his period of suspension was treated as leave on due basis--- Grievance of civil servant was that the authorities did not pay him the salary for the period ---Service tribunal allowed the appeal of civil servant and directed the authorities to pay him back benefits---Validity---civil servant who was acquitted by extending benefit of doubt would be deemed to have been acquitted honourably--- Service tribunal had rightly directed the authorities to treat him on duty and give him all financial benefits during the period of his confinement in custody on account of his involvement in criminal case---Leave to appeal was refused. **(Citation: 2007 S C M R 537)**

Z-11. In another case the apex court laid down the following dicta:

"---Acquittal--- All acquittals are "honourable" and there can be no acquittal which can be termed as "dishonourable".

"It is an admitted fact that the appellant was acquitted by learned special judge (center), Multan from the charges which were leveled against him. This court, in the case of Dr. Muhammad Islam has laid down a dictum that all acquittals are "honourable" and there could be no acquittal which could be termed as "dishonourable".

"It appears that the tribunal was of the view that, since after registration of the case, the appellant was placed under suspension, as such, penalty imposed by the responded No.3 altogether separate than the findings in the criminal case. The record does not show that any different charge was leveled against the appellant in the departmental proceedings. On the contrary, it is evident that subject-matter was the same and action against appellant was taken on the basis of said criminal proceedings. Where the those criminal charges are not established before a competent court of law and the accused acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified. Since the appellant was acquitted by competent court of law, it shall be deemed that he had not been suspended and would be entitled to all pay and allowances, admissible under the rules, minus the amount which he had already drawn. Under the circumstances, the impugned order of the tribunal is set aside and the appeal is allowed with above observations". (Citations: 2001 S C M R 269)

SENIORITY & PROMOTION:

Z-12. That, on the basis of Policy decision of the respondent-1, communicated to respondent-2 vide NO.SOR-II (E&AD) 3-249/07 Vol-I dated 30.05.2011(annex-N) and of Apex court judgment in appellant's civil appeal NO. 172-P/2010 (Annex-M), right of promotion to the BPS-19 was already mature to the appellant from year October 2005, undoubtedly when the appellant was caviled for lacking three years service in the respondant-2 department. The judgment of the apex court in paras 5, 6, 7, 8 has explicitly determined **eligibility** of the appellant from the date of controversy cropped up in year October 2005 which was the only moot point between the parties in litigation throughout. There was no controversy of 'fitness' between the parties ever. Therefore the appellant has sought his promotion on the basis of his eligibility, matured in year October 2005 as determined by the apex court. That respondent-2 moved promotion proposal of the appellant to PSB/respondant-1 accordingly but retrieved back maliciously forcing the appellant to abate his litigation which was not succumbed to (Annex-P).

Z-13. That, under Article 18 of the constitution of the Islamic Republic of Pakistan every citizen has the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. That, this hon'ble tribunal has kindly to confirm that joining further employment in

government sector is allowed to a compulsory retired employees under Rule 4 (2) of E&D Rules 2011, *inter alia*, also so held by Establishment Department in appellant case. Therefore, respondents have wrongly disturbed fresh employment of the appellant as Chief executive Officer, Water & Sanitation Services, Malakand Division Swat and service in the Ministry of Housing & Works, Government of Pakistan, Islamabad by dint of his compulsory retirement and judgment dated 19.11.2015 in Service Appeal No.838/2012 and had wrongly caviled/maligned his employment at the two relevant public forums.

Z-14. That, Anwar Qurashi Director (M&E), immediate officer of the appellant, has written last ACRs of the appellant and submitted to respondent-2 office. The same were maliciously kept pending in the department and were not fairly processed and finalized. Therefore, the tribunal is requested to direct respondents to fairly process and finalized last ACRs of the appellant submitted by his immediate officer including others from respondent-2.

Z-15. That, the judgment of acquittal has created fresh cause of action to the appellant. The Supreme Court of Pakistan has allowed 2nd and subsequent appeal to the Service Tribunal in the circumstances as hi-lighted in the forgoing paragraphs. In addition, as fundamental principle of law all judgments & orders obtained through fraud and misrepresentations are always open for correction by the same forum passing the impugned judgment or order without any hurdle or limitation period.

Z-16. Any other relief not specifically prayed for but concomitant, necessary, appurtenant to, ancillary or concomitant to the caption payer or arise during the pendency of the appeal may also be allowed, all above with cost throughout please

Z-17. That, all reliefs solicited herein service appeal fall in the pail of Terms & Condition of civil servant and this tribunal has got jurisdiction to entertain them all.

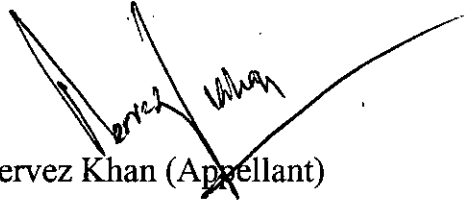
Z-18. That appellant would like to offer some other grounds during the course of arguments please.

PRAYER:

In light of the above facts, points of law as well as legal elucidation put forth above this honorable tribunal is respectfully prayed to grant relief as prayed for in heading of the service appeal and in paras herein above please.

Any other relief as deemed appropriate in circumstances of the case not specifically asked for, may also be granted to appellant.

Dated: 01-10-2023



Pervez Khan (Appellant)

Through

Khaled Rahman,

Advocate, Supreme Court of Pakistan

&



Arbab Saiful Kamal Khan

Advocate Pesh High Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 2514/2021 (amended Oct, 2023)

Pervez Khan ex-Prject Director FATA/ DPWO/EDO Population Welfare
Department Khyber Pakhtunkhwa, Peshawar.

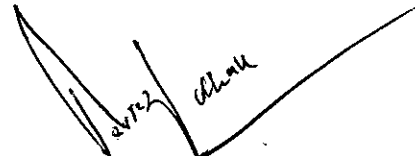
VERSUS: -

Chief Secretary KPK Peshawar & others.

AFFIDAVIT

I, **Pervez Khan s/o Fatheh Khan R/O of Palosi Tlarazai , Tehsil & District Peshawar, CNIC NO: 17301-2119883-5**, do hereby solemnly affirm and declare on oath that the contents of accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal deliberately.

Dated: 01-10- 2023



Pervez Khan

Ex- Prject Director/ EDO/DPWO
Population Welfare Department Peshawar
(Appellant)

Through

Khaled Rahman,

Advocate, Supreme Court of Pakistan

&



Arbab Saiful Kamal Khan

Advocate Pesh High Court.

