

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	23.08.2016	<p align="center"><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p align="center">Appeal No. 873/2015</p> <p align="center">Mst. Sheeba Versus Commandant FRP, Khyber Pakhtunkhwa Peshawar and 2 others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG for respondents present.</p> <p>2. Mst. Sheeba daughter of Waris Khan hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 24.4.2015 vide which reinstatement order dated 11.06.2014 passed in favour the appellant by respondent No. 3 (Deputy Commandant, FRP) was withdrawn by respondent No. 1 (Commandant FRP).</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as constable when her resignation was accepted vide order dated 13.12.2013 and where-after she submitted application for reinstatement in service which was accepted and appellant reinstated in service on 11.6.2014 and allotted constabulary No. on 16.06.2014. The said order was withdrawn by respondent No. 1 vide order dated 24.4.2015 where-against departmental appeal dated 04.05.2015 was not</p>

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23.08.16

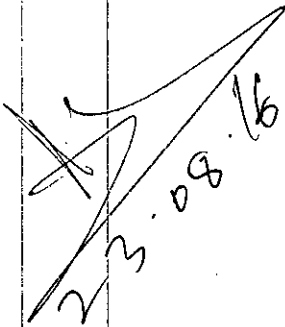
answered and hence the instant service appeal on 04.08.2015.

4. Learned counsel for the appellant has argued that the appellant was reinstated by respondent No. 2 on 16.6.2014 as she had submitted no application for resignation. That the said order could not be annulled by respondent No. 1 unilaterally and without affording opportunity of hearing to the appellant. Reliance was placed on case law reported as 2005-SCMR-678.

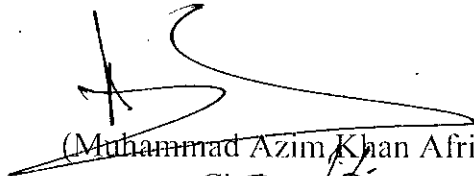
5. Learned Government Pleader has argued that the impugned order is in accordance with law. That when a civil servant tenders application for resignation and when the same is acted upon then the same cannot not be subsequently withdrawn. He referred to page-106 of Esta-Code wherein it has been observed at S.No. 2 that when a resignation tendered by government servant is accepted then it become final and such resignation could not be subsequently withdrawn.

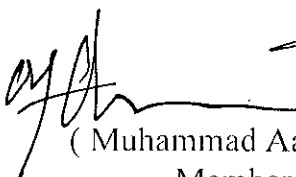
6. We have heard arguments of learned counsel for the appellant and perused the record.

7. According to the stance of the appellant she has tendered no application for resignation and in such circumstances the application on the basis of which the resignation of the appellant was accepted, could not be attributed to the appellant. The order impugned before us dated 24.4.2015 was passed by respondent No. 1 without affording any opportunity to the appellant and the appellant was therefore condemned unheard.

A handwritten signature and the date '23.08.16' are written in the left margin of the page.

8. In view of the afore-stated discussion we are constrained to accept the instant service appeal, set aside the impugned order dated 24.4.2015. The appellant therefore stood reinstated in service as order~~vide~~ office order dated 11.06.2016. The respondents are placed at liberty to probe into the matter to ascertain as to whether the application for resignation acted upon by the department was submitted by the appellant or otherwise and there-after pass orders deemed appropriate by the competent authority within a period of two months from the date of receipt of this judgment. Needless to add that the appellant be afforded opportunity of participation in the enquiry in the manners prescribed by law. Parties are left to bear their own costs. File be consigned to the record.


(Muhammad Azim Khan Afridi)
Chairman



(Muhammad Aamir Nazir)
Member

ANNOUNCED

23.08.2016

06.04.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder not submitted. Requested for further time for submission of rejoinder. To come up for rejoinder and arguments on 1-7-16.


Member


Member

01.07.2016

Junior to counsel for the appellant and Assistant AG for respondents present. Rejoinder not submitted. Junior to counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 23-8-16.


Member


Member

11.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable in FRP when on an application dated 13.12.2013 she was relieved from service on the allegations of submission of resignation application which order was questioned by the appellant in departmental representation dated 2.6.2014 which was accepted and appellant reinstated in service vide order dated 11.6.2014 where-after appellant resumed her duty but vide impugned order dated 24.4.2015 passed by the Commandant FRP she was again relieved from service and where-after another representation dated 5.5.2015 was preferred which was not responded and hence the instant service appeal on 4.8.2015.

Appellant Deposited
Security & Process Fee



That the appellant has neither submitted any application for resignation nor the said order is factually or legally correct.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 13.10.2015 before S.B.


Chairman


13.10.2015

Counsel for the appellant and Mr. Ihsanullah, ASI (legal) alongwith Addl. A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 23.12.2015 before S.B.


Chairman

23.12.2015

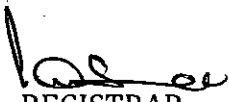

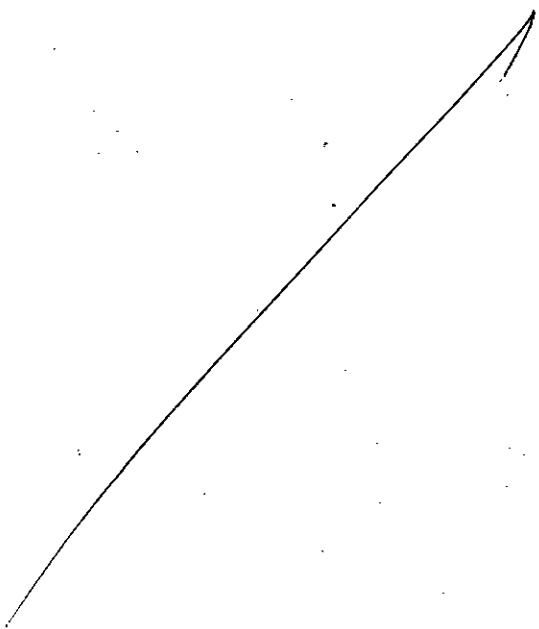
Counsel for the appellant and Mr. Ihsanullah, Head Constable alongwith Addl. AG for respondents present. Comments submitted. The appeal is assigned to DB for rejoinder and final hearing on 06.04.2016.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 873 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.08.2015	<p>The appeal of Mst. Sheeba Bibi presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	<u>10-8-15</u>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>11-08-15</u>.</p> <p> CHAIRMAN</p> 

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 873 /2015

Sheeba

Versus

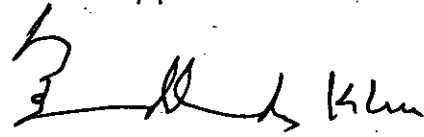
Commandant & others

I N D E X

S.No	Documents	Annex	P. No.
1.	Memo of Appeal		1-3
2.	Enlistment Order, 20.09.2013	"A"	4
3.	Application for Resignation,	"B"	5
4.	Order of Acceptance, 13.12.2013	"C"	6
5.	Application for Reinstatement, 02.06.2014	"D"	7
6.	Reinstatement Order, 11.06.2014	"E"	8
7.	Fresh Constabulary No, 16.06.2014	"F"	9
8.	Withdrawal Order, 24.04.2015	"G"	10
9.	Representation, 04.05.2015	"H"	11-13

Appellant

Through



Dated. 04.08.2015

Saad Ullah Khan Marwat
Advocate.

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

1

BEFORE KPK, SERVICE TRIBUNAL PESHAWAR

S.A No. 873 /2015

Sheeba D/o Waris Khan, R/O Andarai
Kooruna, Tarnab Road Charsadda,
ExConstable No. 1352, FRP, Headquarter,
Peshawar. Appellant

**A.W.F Provincial
Service Tribunal**
Diary No. 931
Dated 04-8-2015

Versus

1. Commandant FRP, KP, Peshawar.
2. Provincial Police Officer, KP,
Peshawar.
3. Deputy Commandant, FRP, KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, AGAINST OFFICE ORDER NO. 3560-
63/EC, DATED 24.04.2015 OF R. NO. 1,
WHEREBY ORDER OF REINSTATEMENT DATED
11.06.2014 REINSTATING APPELLANT IN
SERVICE WAS WITHDRAWN FOR NO LEGAL
REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant has at her credit the educational qualification of FA, passed with distinction.
2. That on 20.09.2013, appellant was enlisted as Constable by Deputy Commandant, FRP, Peshawar after observing the due codal formalities. (Copy as annex "A")
3. That someone has submitted application to the authority for tendering resignation from service on behalf of appellant. The said application was thumb impressed by someone else and not by her. Conspiracy was made to oust her from service by unknown person(s)/official(s) for ulterior motive. She is highly educated and never thumb impressed any


4/8/15

document/application but used to make signature. (Copy as annex "B")

4. That on 13.12.2013, Deputy Commandant, FRP, Peshawar accepted her resignation from service. (Copy as annex "C")
5. That on 02.06.2014, appellant submitted representation before R. No. 1 for withdrawal of order dated 13.12.2013 which was accepted on 11.06.2014. (Copies as annex "D" & "E")
6. That on 16.06.2014, appellant was allotted fresh Constabulary No. 1352 by Deputy Commandant, FRP, Peshawar. (Copy as annex "F")
7. That monthly salary bills were submitted by the department to Accountant General Office which were returned un-passed and thereafter the matter was reviewed and order of re-instatement dated 11.06.2014 was withdrawn by R. No. 1 vide order dated 24.04.2015 without any notice to appellant. (Copy as annex "G")
8. That on 04.05.2015, appellant submitted representation before R. No. 2 for reinstatement in service but without any response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That as stated earlier in the body of appeal, appellant is highly qualified and never thumb impressed any document, application, letter, etc.
- b. That appellant became victim of conspiracy of some of the official(s)/person(s) to oust her from service having nefarious designs in mind and they succeeded in their plan.
- c. That in order dated 11.06.2014 and 24.04.2015, it has been categorically stated that somebody else has tendered her resignation from service and not by the appellant herself.

- d. That order dated 11.06.2014 and 24.04.2015 are very much clear regarding the subject matter. The same requires worth perusal as she never tendered resignation on her behalf.
- e. That when request of appellant in reinstatement in service was accepted by Commandant, FRP, Peshawar, reinstating her in service, then the same was not open to review/revision.
- f. That order dated 24.04.2015 is illegal as neither appellant was served with any notice nor any enquiry was conducted in the matter, being mandatory.
- g. That as per law and verdict of the apex Court, the authority is not vested with unbridled and unfettered powers to remove, shunt away, terminate, dismiss employee from service at her own whims and wishes without re-coursing to law.
- h. That order dated 11.06.2014 be treated as ground for reinstatement of appellant in service.
- i. That the impugned order dated 24.04.2015 is not per the mandate of law, so is not only illegal, ab-initio void but is also based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 24.04.2015 of R. No. 1 be set aside and order dated 11.06.2014 be restored with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Dated.4.08.2015

Through

Sheeba
Appellant
Saad Ullah Khan Marwat
Arbab Saiful Kamal
Miss Rubina Naz
Advocates.

A

4

20-9-13

ENLISTMENT ORDER

M: Sheeba S/O Wazir Khan

R/O Shalqwa Charsadda

PS Charsadda District Charsadda is hereby

Enlisted as Constable in BPS (05) with effect from 20-09-013

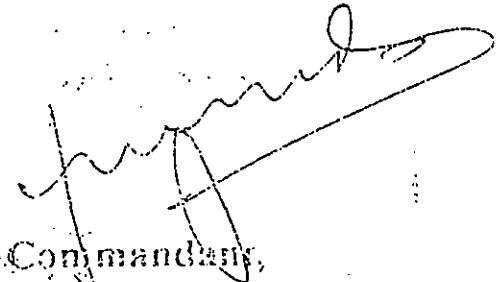
And allotted Constabulary No. _____

Height 5-3 Chest Nil

Education 10th D/C/Birth 4-02-92

Age on enrolment _____ Year _____ Months & _____ Days.

His service is purely on temporary basis and liable for Termination at any Time without any notice.



By: Commandant,
Frontier Reserve Police,
Chyber Pakhtunkwa, Peshawar

O.B NO. 790

Dated. 20-09-013



ATTESTED



جناب عالیٰ

5

B

گزارش دیکھ سائید کے لئے پورے لئے کوشش
کرتی ہو گی کہ جو سائل گھریلوں کے جوڑوں کو جو بے لگ
رہتی جا رہی ہیں رکھ سکیں جو کہ سائل انتہائی ہیں

لہذا آپ صاحبان سے ذریعہ رخصت اسٹاک کے سائل
کی عیبوں کو مدنظر رکھ سائل کی اشرفی منظور کرنے کا حکم

عبدلغفور خان

صاحب

اللہ

انکوائری کے لئے کوشش کیا گیا 13/9/13

ATTESTED

Call for signature

20-9-2013

صاحب

C
P-16

ش 6
13-12-13

ORDER.

Lady Constable Sheba No. 1314 of FRP HQrs: Peshawar has tendered resignation from service, therefore her resignation is hereby accepted.

[Signature]
Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

07
K

11-12-2013

No. 9049-51 /EC dated Peshawar the, 13 / 12 / 2013.

Copy of above is sent for information and necessary action to the:-

1. Accountant FRP, HQrs: Peshawar.
2. SRC/OSI, FRP HQrs, Peshawar.

[Signature]
ATTESTED

جناب عالی

درخواست ہزار بحالی سرحد

کہ 38
6

گزارش کی ضرورت نہ سمجھتے ہیں FRP/Hon میں بطور تیزی لکھیں کہوں جو

سندھ اپنی ڈیوٹی لیا ہے خوش استوری سے منہ الیام ڈرہم لکھی سنا کہیں FA کے حکم

حاضر نہ تھے۔ دوستانہ ڈیوٹی سائیکل کو سولم خواہ کہ ڈیوٹی سے استعفیٰ دیا ہے۔ اور میرے

طرح سے کسی انداز انٹو لیا ہے۔ حالانکہ میرا اصل حکم یا سہ ہوں اور انٹو لیا ہے

دستخط کی ہیں۔ سائیکل لکھی استعفیٰ غریب خاندان سے ہے۔ جو کہ کل 9 لکھتے ہیں

اس سلسلہ میں ان تمام کا واہد لکھیں ہے۔ حال یہ پورے پتے پر جو کہ اکثر تیار ہیں جنہیں پتہ

سائیکل کے بارے میں فرقہ ہے۔ اور اب وہ تیار ہیں۔ اب سائیکل کے استعفیٰ منظور ہو چکا ہے۔

سائیکل اپنی ڈیوٹی سے الیام دینا ہے۔ اور سائیکل کے خدمت کے حوالہ لکھیں

لکھنا ہے کہ درخواست منظور ہے۔ کہ سائیکل کے طالب ڈرہم لکھیں اور غریب کو منظور لکھیں

سائیکل کے FRP/Hon میں اپنی سائیکل کے بارے میں لکھیں اور سائیکل کے سٹور فرمائیں

میں غریب لکھیں

اللہ
FRP/Hon 1314 کے حکم لکھیں

ATTESTED

E

8

11-6-14

ORDER.

This order shall dispose off the case of Ex-Lady Constable Sheba No. 1314 of FRP HQrs: Peshawar who stated that somebody has tendered her resignation from service in her place.

In this connection Police Rule 14.11 is reproduce below.

1. Resignation of police officers may only be accepted by the officer empowered to appoint them.
2. An enrolled police officer who intends to resign from the police service shall give notice to the effect in writing and ordinary shall not be permitted to withdraw himself from the duty until two months have elapsed from the date on which his resignation was tendered. Provided that the superintendent may at his discretion, allow a head constable or constable to credit to government two months pay in lieu of notice.
3. Ordinarily a head constable or constable who has agreed to serve of three shall not be permitted to resign within that period.
4. Probationary inspector, sergeants, sub-inspector, assistant sub-inspector of police, whose appointments involve training at the police training school, phillaur, shall not be permitted to resign within three years of the date of their appointment.

According to Establishment Code NWFP 2000 Page No. 142 Para 4 is re-produced below:-

Where an appellate authority finds that the resignation was not tendered voluntarily or that it is otherwise null and void, the appellate authority may re-instate the Govt: servant concerned. On re-instatement the Govt: servant shall be regarded as having continued in service throughout.

As such she denied from the said application i.e. (for resignation), therefore, Ex-Lady constable Sheba No: 1314 of FRP HQrs: Peshawar is hereby re-instated in service with immediate effect.

ATTESTED

Add: IGP/Commandant
Frontier Reserve Police

Khyber Pakhtunkhwa Peshawar

No. 4752-54 /EC dated Peshawar the

11/06/2014

Copy of above is forwarded for information and necessary action to the:

1. Accountant FRP HQrs: Peshawar.

2

F

9

W 16-6-14

ORDER

Ex Lady Constable Sheba No.1354 of FRP HQrs: Peshawar is hereby Re-Instated in service vide Order No:4752-54/EC Dated 11.06.2014 and allotted Constabulary No.1352 with immediate effect.

Sd -

Dy: Commandant,
Frontier Reserve Police,
Khyber Pakhtunkwa, Peshawar.

No. 4937-38/OSI, dated Peshawar the 16/06/2014.

Copy of above is forwarded for information and necessary action to the:-

1. Acctt/SRC of FRP HQrs: Peshawar.


ATTESTED

G

10

24-4-15

P-16

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(3)

ORDER.

Ex- Lady Constable Sheeba No.1358 enlisted on 20.09.2013 tendered resignation and her resignation was accepted vide this office Endst; No.9049-51/EC, dated 13.02.2013. the above named Ex-official was reinstated in service vide this office Endst; No.4752-54/EC, dated 11.06.2014 and her salary bill was submitted to the office of Accountant General of KPK Peshawar for pre-audit which was returned with the observations that according to Esta Code page NO.106 at S.No 2 when a resignation tendered by Govt; Servant which is accepted is become final there can be no question of allowing him/ her to withdraw the resignation.

Keeping in view the above grounds her reinstatement order is hereby with drawn with retrospective effect

all

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. 3560-63 /EC, dated Peshawar the, 24 / 4 / 2015.

Copy of above is forwarded for information and necessary action to the:-

1. Deputy Commandant FRP KPK Peshawar.
2. SRC/OASI/Accountant FRP HQrs: Peshawar.

ATTESTED

No- 1546

Dated - 05-05-15

To,

Provincial Police Officer,
KP, Peshawar.

**SUBJECT:- APPEAL AGAINST OFFICE ORDER NO. 3560-63/EC,
DATED 24.04.2015 WHEREBY ORDER OF
REINSTATEMENT DATED 11.06.2014 WAS
WITHDRAWN FOR NO LEGAL REASON.**

Respected Sir,

1. That appellant has at her credit the educational qualification of FA, passed with distinction.
2. That on 20.09.2013, appellant was enlisted as Constable by Deputy Commandant, FRP, Peshawar after observing the due codal formalities.
3. That someone has submitted application to the authority for tendering resignation from service. The said application was thumb impressed by someone else and not by the appellant. Conspiracy was made to oust her from service by unknown person(s)/official(s). She is highly educated and never thumb impressed any document/application but used to make sign.
4. That on 13.12.2013, Deputy Commandant, FRP, Peshawar accepted her resignation from service.
5. That on 02.06.2014, appellant submitted representation before Commandant, FRP, Peshawar for withdrawal of order dated 13.12.2013 which was accepted on 11.06.2014.
6. That on 16.06.2014, appellant was allotted fresh C. No. 1352 by Deputy Commandant, FRP, Peshawar.

ATTESTED

7. That monthly salary bills were submitted by the department to Accountant General Office which were returned unpassed and thereafter the matter was reviewed and order of re-instatement dated 11.06.2014 was withdrawn by Commandant, FRP, Peshawar vide order dated 24.04.2015 without any notice to appellant.

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That as stated earlier in the body of appeal, appellant is highly qualified and never thumb impressed on any document, application, letter, etc.
- b. That appellant became victim of conspiracy of some of the official(s)/person(s) to oust her from service and they succeeded in nefarious designs.
- c. That in order dated 11.06.2014 and 24.04.2015, it has been categorically stated that somebody else has tendered her resignation from service and not by the appellant herself.
- d. That order dated 11.06.2014 and 24.04.2015 are very much clear regarding the subject matter. The same requires worth perusal as she never tendered resignation.
- e. That when request of appellant in reinstatement in service was accepted by Commandant, FRP, Peshawar, reinstating her in service, then the same was not open to review/revision.
- f. That order dated 24.04.2015 is illegal as neither appellant was served with any notice nor any enquiry was conducted in the matter, being mandatory.
- g. That as per law and verdict of the apex Court, the authority is not vested with unbridled and unfettered powers to remove, shunt away, terminate, dismiss employee from

ATTESTED

service at her own whims and wishes without adhering to legal course.

- h. That order dated 11.06.2014 be treated as ground for reinstatement of appellant in service.
- i. That the impugned order dated 24.04.2015 is not per the mandate of law, so is not only illegal, ab-initio void but is also based on malafide.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 24.04.2015 of Commandant, FRP, Peshawar be set aside and order dated 11.06.2014 be restored with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Dated:- 04.05.2015

Applicant

Sheeba

Sheeba D/o Waris Khan,
R/o Andafai Kooruna,
Tarnab Road Charsadda,
Ex-C No. 1352, FRP,
Headquarter, Peshawar.

[Signature]
ATTESTED

بعد الت جناب سرسٹریٹونل صوبہ سرحد پشاور

منجانب اسٹارٹ

شعبہ _____ بنام _____
دعویٰ _____ اصل _____

باعث تحریر یہ اینکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے سعد اللہ خان سرور سے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقریر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست پر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پڑے یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم

العبد

العبد

العبد

سعد اللہ خان سرور
ایڈووکیٹ ہائی کورٹ
مس روہتہ ناز
ریڈ ویٹ

Sheeba
شعبہ

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 873/2015.

Ex- Lady Constable Sheba No. 1352/FRP/HQrs D/o Waris Khan R/o
Andarai Koruna Tarnab Road Charsadda
.....(Appellant)

VERSUS

1. Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer KPK/Peshawar.
3. Deputy Commandant FRP/KPK.....Respondents.

WRITTEN REPLY ON BEHALF OF RESPONDENTS IS AS

UNDER:-

RESPECTIVELY SHEWITH:-

PRELIMINARY OBJECTIONS:

1. That the appeal is badly time-barred.
2. That the appellant has not approached the Hon'ble Court with clean hands.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal

ON FACTS.

1. Pertains to the appellant record needs no comments.
2. Para No. 2 correct needs no comments
3. Incorrect, that the appellant willfully submitted an application for tendering resignation from service by her self with her thumb impression. After fulfillment the due codal formalities, her resignation was accepted. The plea of high qualification/signature is after thought story.
4. Correct to the extent that after fulfillment of all codal formulates, her resignation was accepted.
5. Correct no comments.
6. Correct.

7. Correct to the extent that her salary bills were submitted to the office of Accountant General for pre audit which were returned un-passed with the observation that according to ESTA Code page No. 142 at Serial No. 02, that when a resignation tendered by Govt: Servant has been accepted it become final there can be no question of allowing him/her to withdraw the resignation. Therefore in the light of a foreside law, her re-instatement order was withdrawn. (Copy of ESTA Cod Page No. 142 is attached as annexure "A")
8. That departmental appeal submitted by the appellant before the respondent no. 02 which is still under consideration.

GROUND.

- a. Correct to the extent, that it is also a matter of fact that the appellant has affixed her thumb impression on resignation application.
- b. Incorrect, the allegations are false and baseless as the appellant submitted resignation application voluntarily/deliberately and in this regard she was not compelled by some one official / officer and if any, so it is for the appellant to prove.
- c. Incorrect, the para has already been explained in the preceding Para (B).
- d. Incorrect that the appellant submitted departmental appeal which was accepted by the competent authority. After re-instatement in service, her Salary Bills were submitted to the office of Accountant General for pre-audit, which were returned with the observation that according to Esta Code page No. 142 at Serial No. 02 that when a resignation tendered by a Govt: Servant has been accepted, it become final, there can be no question of allowing him/her to withdraw the resignation. Keeping in view the above facts her re-instatement order was withdrawn.
- e. Incorrect, that the appellant was reinstated in service in view of leniency but subsequently her salary bills were returned by the office of Accountant General of KPK Peshawar, with the observation discussed above. Her case was reconsidered and found that according to law she was not entitled for re-instatement in service, therefore, the same order was withdrawn.

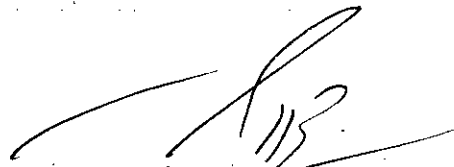
- f. Incorrect, that the order dated 24.04.2015 is legally justified and in accordance with law as the same was passed in the light of observation added by the office of Accountant General on the Salary Bills of the appellant.
- g. Incorrect, the verdict of the apex court mentioned in the Para is not at par with the case of the appellant. However, after reconsideration, her re-instatement order was withdrawn as per law.
- h. Incorrect, the order dated 11.06.2014 was reconsidered and found against the law, thus withdrawn.
- i. Incorrect, that the order dated 24.04.2015 is legally justified and in accordance with law.

PRAYERS:

Keeping in view of the above mentioned facts/submission the instant service appeal may very kindly be dismissed with cost.



**Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)**



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)**



**Deputy Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)**

Commandant, Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

Servants Revised Leave Rules, 1981. In the light of Rule 12 *ibid*, a willful absence of more than five years shall not be converted into leave without pay.

5. It is therefore, requested that the above instructions may be brought to the notice of all concerned for strict compliance in future:

(Authority: S&GAD's letter No. SOXII(S&GAD)6(37)/89, dated 3rd Oct., 1989)

Determination of seniority of officials who are allowed to withdraw their resignation

A question has arisen whether a Government servant who resigned and has subsequently been allowed to withdraw his resignation should be assigned seniority and given other benefits which would have accrued to him had he not resigned.

~~2. When a resignation tendered by a Government servant has been accepted and the acceptance has been communicated to him, it becomes final. There can be no question of allowing him to withdraw the resignation.~~

3. Where a Government servant who has tendered resignation withdraws it before it is accepted by the competent authority, or where, after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation, he continues in the post held by him without a break and the question of re-fixation of his seniority, etc. does not arise.

4. Where an appellate authority finds that the resignation was not tendered voluntarily or that it is otherwise null and void, the appellate authority may re-instate the Government servant concerned. On re-instatement the Government servant shall be regarded as having continued in service throughout.

5. If a Government servant, whose resignation has been accepted and communicated to him, is appointed to Government service thereafter, such appointment shall be regarded as a fresh appointment. The seniority, pension, leave, etc, of such a Government servant shall be fixed in accordance with the rules applicable to him as if this appointment was his first appointment to Government service.

6. There may, however, be cases in which it may not be fair to treat such a re-employed Government servant as a new recruit and it is proposed to give him any benefit in relaxation of the rules, the orders of the Government should invariably be obtained.

(Authority S&GAD letter No. SOXII/2-96/59, dated 24.12.59)

Preparation/issuance of seniority list of Government Servants

I am directed to say that sub-section (1) of Section 8 of the NWFP Civil Servants Act, 1973, *inter alia* provides that for proper administration of service, cadre or post, the appointing authority shall cause to prepare a seniority list of the members for the time being of such service, cadre or post. Similarly, the note below clause (e) of sub-rule (2) of the rule 6 of the NWFP Service Tribunals Rules, 1974, enjoins upon the appointing authority or any other authority which has been delegated the powers to make decision regarding seniority of

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1414 /ST

Dated 29 / 8 / 2016


To

The Deputy Commandant FRP,
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 23.8.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR.