

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 136/2016

Date of Institution ... 08.02.2016

Date of Decision ... 29.09.2017

Kashif Ullah S/O Shakir Ullah R/O Gaidar P.O Charsadda Tehsil and District Charsadda (Ex-Constable Computer Operator).

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through IGP, Khyber Pakhtunkhwa and 2 others.

... (Respondents)

MR. AAMIR HUSSAIN,
Advocate

--- For appellant.

MR. KABIR ULLAH KHATTAK,
Assistant Advocate General

--- For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN

... CHAIRMAN
... MEMBERJUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant is aggrieved from impugned order dated 11.11.2013 whereby he was removed from service for the reason that his recruitment was illegal. Against the said order the appellant approached this Tribunal in the first round and this Tribunal vide order dated 10.11.2015 directed the department to pass speaking order on the departmental appeal. The department in consequence

thereof has passed fresh order on departmental appeal on 08.01.2016. Thereafter the appellant has filed present appeal. .

ARGUMENTS

3. The learned counsel for the appellant argued that only one new reason has been given by the appellate authority in fresh order and i.e regarding non production of diploma of Computer Operator. That the department has not adhered to the judgment of this Tribunal regarding retention of other similar placed employees recruited alongwith the appellant. That non compliance of order of this Tribunal would benefit the appellant.

4. On the other hand learned Assistant Advocate General argued that the department has rightly passed the speaking order. He relied upon the two judgments reported as 2010 SCMR 354 and 2003 SCMR 1269.

CONCLUSION.

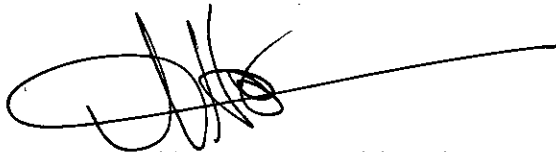
5. The department in the original appellant order as well as in the impugned order did not give the reason of non production of diploma. The only reason given was the illegalities committed by the department by not advertisement of the post and non holding of DPC. In the fresh order dated 08/01/2016 the same reason have been repeated with the addition that the appellant failed to produce the Diploma. Bu there is no mention of all other alleged illegally appointees in the fresh order.

6. The judgment relied upon the by learned Assistant AG of 2003 SCMR 1269 is not related to the present case as it pertains to adhoc appointments. Coming to the second judgment of 2010 SCMR 354 the said judgment is also not delivered under circumstances similar to the present appeal. The present

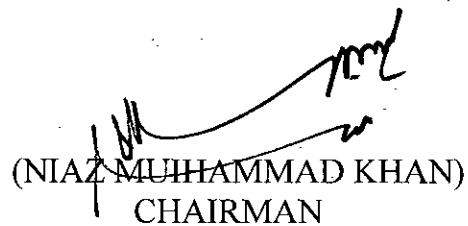
situation has been dealt with by the august Supreme Court of Pakistan in a number of judgments reported as 2004-SCMR-1077, 2006-SCMR-678, 1996-SCMR-413 and 2009-SCMR-663 in which it has been held that if any illegal appointment is made and the appointing authority ^{is} responsible for the same has not ^{been} proceeded ^{against} then the appointees cannot be penalized.

7. As a consequence to the above discussion the present appeal is accepted.

Parties are left to bear their own cost. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER




(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
29.09.2017

08.06.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 29.09.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member

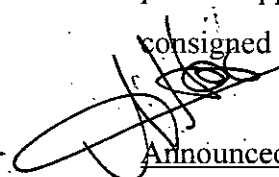

(Gul Zeb Khan)
Member

Order

29.09.2017

Appellant with counsel and Asst: AG alongwith Mr. Atta-ur-Rehman, SI (Legal) for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the present appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.


Announced:
29.09.2017


Chairman

Member

19.09.2016

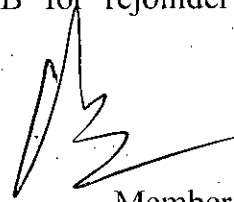
Appellant in person and Mr. Javed Iqbal, Inspector(Legal) alongwith Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 04.11.2016 before S.B.



Member

14.11.2016

Counsel for the appellant and Assistant AG alongwith Javed Iqbal, Inspector Legal for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 17.1.2017.



Member

17.01.2017

Clerk counsel for appellant and Mr. Sheraz, H.C alongwith Mr. Kabirullah Khattak, Assistant AG for respondents present. Rejoinder not submitted. Clerk counsel for appellant requested for time to file rejoinder. Adjourned. To come up for rejoinder and arguments on 08.06.2017 before D.B.



(AHMAD HASSAN)
MEMBER



(ASHFAQUE TAJ)
MEMBER

17.02.2016

Counsel for the appellant present. He submitted that copy of Computer Diploma is appended in this appeal and this has wrongly and falsely been stated by appellate authority in the impugned order that the appellant does not possess the required computer qualification. He further submitted that the appellant was unlawfully removed where as his other colleagues namely Farooq Khan, Sadam Hussain and Sajjad Anwar etc were not touched despite the fact that the entire proceedings of recruitment was the same. Thus the appellate authority has ignored order of this Tribunal dated 10.11.2015 and the impugned order ^{was} passed in violation of the law.

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 28.4.2016.

Appellant Deposited
Security & Process Fee

27-4-2016


Member


28.4.2016

Agent of counsel for the appellant and Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 04.08.2016 before S.B.


Chairman

04.08.2016



Agent to counsel for the appellant and Addl. AG for respondents present. Notices shall be issued to the respondents to submit reply. To come up for reply on 19-9-16


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 136/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08.02.2016	<p>The appeal of Mr. Kashif Ullah presented today by Mr. Aamir Hussain Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	9-2-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>17-2-16</u>.</p> <p> CHAIRMAN</p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Appeal no. 136/2016

Kashif Ullah

VERSUS

Govt of KPK and others

INDEX

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Grounds of Appeal alongwith Affidavit	-	01 - 05
2.	Addressed of the parties	-	06
3.	Copy of the removal order	A	07
4.	Copy of the Appeal for reinstatement in service, order of appeal dismissed	B	08
5.	Copy of the appointment order 14-06-2013	C	09
6.	Copy of the Appeal No 208 and order dated 10 th November, 2015	D	10 - 12
7.	Copy of the letter to Registrar Service Tribunal dated 08-01-2016	E	13
8.	Copy of the order dated 08-01-2016	F	14
9.	Copy of the certificate and pay slips	G	15 - 18
10.	Wakalat Nama (In original)	-	19

Appellant

Through:

hussain
(AAMIR HUSSAIN)
Advocate,
High Court, Peshawar
Cell # 0300-5909234

Dated: -29-01-2016

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No 136 / 2016

G.W.F. Province
Service Tribunal
Diary No. 91
Date 08-2-2016

Kashif Ullah S/O Shakir Ullah R/O Gaidar P.O Charsadda Tehsil
and District Charsadda (Ex-Constable Computer Operator)

(Appellant)

VERSUS

1. Government of KPK through IGP, Khyber Pukhtoon Khwa
2. Deputy Commandant Elite Force Khyber Pakhtunkhwa
Peshawar
3. Assistant Inspector General of Police (Elite Force) Khyber
Pakhtunkhwa Peshawar

(Respondents)

Appeal under Section 4 of the K.P.K Service
Tribunal Act, 1974 against the impugned order No
15361-68 EF dated 11-11-2013 and No 406/EF
dated 13-01-2014 of the learned Respondent No
2, and Respondent No 3 also dismissed the appeal
on 08-01-2016 whereby departmental appeal of
the Appellant was dismissed in a cursory manner

Respectfully Sheweth:-

The Appellant humbly submits as under:-

- 1) That the Appellant was appointed as constable computer operator (BPS-5) in the Respondent's department vide Elite Force order No 8634-39/EF dated 11-11-2013.
- 2) That after serving devotedly and sincerely for almost 05 months in the department and was removed from service without any plausible reason vide order No 15361-68/EF dated 11-11-2013. (Copy is attached herewith).
- 3) That thereafter the Respondent No 2 appointed (1) constable driver Farooq Jan 1780 (2) constable driver Sadam Hussain 1746 (3) constable computer operator Sajjad Anwar 866 and (4) constable computer Mazhar 1375, it is, note worthy that the above mentioned candidates have been appointed instead of Appellant.
- 4) That feeling aggrieved the Appellant preferred a departmental appeal for reinstatement before the learned Respondent No 2, but the same was turned down vide order No 406-EF dated 13-01-2014. (Copy is attached herewith).
- 5) That the Appellant filed an appeal before this Honourable Tribunal bearing Appeal No 208/2014, in the said appeal, the Honourable Tribunal issued direction dated 10-11-2015 to the Respondents to handle the departmental of Appellant in a proper and legal way after the due consideration. (Copy of the appeal and order dated 10-11-2015 is attached herewith).

- 6) That the Respondent No 3 again dismissed the appeal of Appellant on 08-01-2016 and the point for the dismissal of the said appeal raised by the Respondent No 3 in his order is baseless and flimsy and has no concern with the reality. (Copy of the order dated 08-01-2016 is attached herewith).
- 7) That feeling aggrieved the Appellant moves the instant appeal for setting aside the impugned office orders dated 11-11-2013, 13-01-2014 and 08-01-2016 on the following grounds inter-alia:-

GROUNDS:-

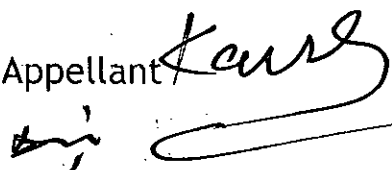
- A) That the impugned office orders dated 11-11-2013, 13-01-2014 and 08-01-2016 are against facts of the case, law on the subject and not tenable in the eyes of law at all.
- B) That the learned Respondents the fact that neither any notice was ever served upon the Appellant for personal hearing nor was ever allowed to be heard in person, so principle of "Audi Alterum Partum" has blatantly been violated.
- C) That neither any inquiry was ever conducted, nor was the Appellant ever asked to appear before any inquiry officer.
- D) That neither there has ever been issued any statement of allegations, nor a charge sheet has ever been served upon the Appellant and thus has been condemned unheard.

- E) That there is/was no adverse entry against the Appellant, hence the removal of the appellant from service is void, ab-initio and unwarranted under the law.
- F) That the Appellant hails from a poor family and is the only earning hand in the whole family and after being dismissed from service, the whole family is forced to suffer fatigue and starvation.
- G) That the impugned orders of the Respondent No 2 is clearly discrimination, hence liable to be set aside.
- H) That the other grounds not here specifically may also graciously be allowed to be raised at the time of arguments.

It is, therefore, most respectfully prayed that on acceptance of this Appeal, the impugned orders dated 11-11-2013, 13-01-2014 and 08-01-2016 of the learned Respondents may graciously be set aside and the Appellant be reinstated in the service with all back benefits.

Appellant


Through:


(AAMIR HUSSAIN)
Advocate,
High Court Peshawar

Dated: -29-01-2016

NOTE:-

No such appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.


Advocate

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR


Kashif Ullah

VERSUS

Govt of KPK and others

AFFIDAVIT

I, Aamir Hussain Advocate, Peshawar (as per information given by my client) all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.


Advocate



BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Kashif Ullah

V E R S U S

Govt of KPK and others

MEMO OF ADDRESSES

APPELLANT

Kashif Ullah S/O Shakir Ullah R/O Gaidar P.O Charsadda Tehsil
and District Charsadda (Ex-Constable Computer Operator)

RESPONDENTS

1. Government of KPK through IGP, Khyber Pukhtoon Khwa
2. Deputy Commandant Elite Force Khyber Pakhtunkhwa
Peshawar
3. Assistant Inspector General of Police (Elite Force) Khyber
Pakhtunkhwa Peshawar

Through:

Appellant.


(AAMIR HUSSAIN)

Advocate,
High Court, Peshawar

Dated: 29-01-2016



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar



7

No. 15361-68 /EF

Dated: 11/11 /2013.

ORDER

Mr. Kashif Ullah No. 537 s/o Shakirullah r/o Mohallah Khankhel District Charsadda was appointed as Constable Computer Operator in Elite Force vide Order No. 8634-39/EF dated 14.06.2013.

His recruitment is illegal as the post was neither advertised in any newspaper nor he has appeared in selection examination, which is must for such recruitments.

Therefore, he is removed from the service with immediate effect.

(DILAWAR KHAN BANGASH)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Copy of above is forwarded to the:-

1. Addl: IGP Elite Force Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Police Elite Force Peshawar.
3. Office Superintendent Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI Elite-Force Khyber Pakhtunkhwa Peshawar.
5. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC/EC Elite Force Khyber Pakhtunkhwa Peshawar.



Office of the Addl:IGP, Elite Force
Khyber Pakhtunkhwa Peshawar



8


No. 406 /EF

Dated: /3 /1/2014.

To : Mr. Kashif Ullah S/O Shakir Ullah
Address : Mohallah Khan Khel P/O Charsadda Distt: Charsadda.
Contact No. 0311-8125624

Subject : **APPEAL FOR RE-INSTATEMENT IN SERVICE**

Your appeal has not been accepted for re-instatement in service and Rejected by the competent authority.


(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar

9

Ph: 091-9211079
Fax: 091-9212793



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

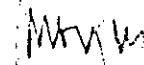


No. 8634-38 /A/F

Dated: 24/06/2013.

ORDER

Mr. Kashif Ullah s/o Shakir Ullah r/o Gaidar P/O Charsadda Tehsil & District Charsadda is hereby appointed as Constable/Computer Operator in BPS-05 (5400-260-13200) subject to medical fitness and fulfillment of all codal formalities from the date on which he actually report for his duty.

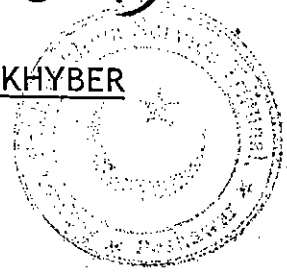

(MUHAMMAD IQBAL)
Deputy Cominandañt
Elite Force Khyber Pakhtunkhwa Peshawar

Copy of above is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. PSO to PPO Khyber Pakhtunkhwa Peshawar.
3. Office Superintendent Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant Elite Force Khyber Pakhtunkhwa Peshawar
5. OASI Elite Force Khyber Pakhtunkhwa Peshawar.
6. SRC Elite Force Khyber Pakhtunkhwa Peshawar.

A-e-D

IN THE HONOURABLE SERVICE TRIBUNAL KHYBER
PUKHTUNKHWA, PESHAWAR



10

Service Appeal No 208 / 2014

169
11-2-14

Shahid Ullah S/O Shakir Ullah R/O Gaidar P.O Charsadda Tehsil
District Charsadda (Ex-Constable Computer Operator)

(Appellant)

VERSUS

1. Government of KPK through IGP, Khyber Pukhtoon Khwa
2. Deputy Commandant Elite Force Khyber Pakhtunkhwa
Peshawar

(Respondents)

ATTESTED
11/2/14

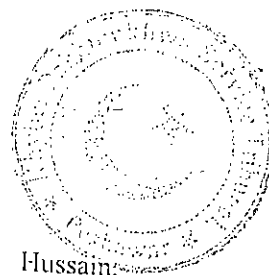
Appeal under Section 4 of the NWFP Service Tribunal Act, 1974 against the impugned order No 15361-68 EF dated 11-11-2013 and No 406/EF dated 13-01-2014 of the learned Respondent No 2, whereby departmental appeal of the Appellant was dismissed in a cursory manner

Respectfully Sheweth:-

ac-submitted to-409
and filed.

The Appellant humbly submits as under:-

18/2/14



10.11.2015

Counsel for the appellant (Mr. Aamir Hussain, Advocate) and Mr. Javid Iqbal, Inspector (Legal) along with Mr. Kabirullah. Khattak, Asst: AG for respondents present.

The appellant was appointed as Constable/Computer Operator (BPS-05) vide order dated 14.06.2013 who was again removed from service vide impugned order dated 11.11.2013 on the ground that his recruitment was illegal as the post was not advertised in any newspaper nor he had appeared in any selection examination. His departmental appeal was also rejected vide order dated 13.01.2014. hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974,

1. Arguments heard and record perused.

3. This arguments of the learned counsel for the appellant that after appointment the appellant had received salary for the period he served was not denied on behalf of the respondent-department. Hence if the post was not advertised or appellant did not go through the selection processes, how and why he was given charge and why he was paid salary? The record on perusal also shows that neither charge sheet nor any show cause notice has been given to the appellant nor any enquiry has been conducted against the appellant. Departmental appeal of the appellant has been rejected vide order dated 13.01.2014 in which no reasons what so ever is given under Section 24-A of the General Clauses Act. When those officials like Constable Driver, Farooq Jan, Constable Driver, Sadam Hussain and Constable/Computer Sajjad

Handwritten signature and stamp of the Tribunal.



Office of the Addl. Inspector General of Police
Elite Force Kyber Pakhtunkhwa Peshawar



Dated 08 01 2016

No. 444

ORDER

This order is passed in compliance with judgment of the Kyber Pakhtunkhwa Service Tribunal dated 10.11.2012 passed in Service Appeal No. 2082014, titled Kasir Ullah VS Government of Kyber Pakhtunkhwa, through Inspector General of Police and one another

Facts leading to the instant order are as follows:-

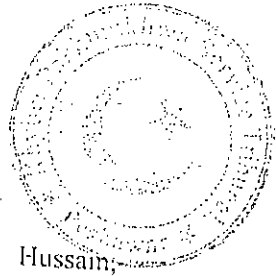
That Kasir Ullah son of Shakir Ullah was recruited as Constable/Computer Operator in Elite Force Kyber Pakhtunkhwa, Peshawar vide order No. 8834-397EF dated 14.06.2013 issued by the then Deputy Commandant Elite Force.

During checking of the service dossier of the said Constable/Computer Operator it came to light that he was recruited as Constable/Computer operator without producing the Computer diploma/certificate. Notice to this effect was issued to him vide No. 15227EF dated 02.11.2013 by the Deputy Commandant Elite Force to produce computer course qualification diploma/certificate on 07.11.2013 but he failed to produce the requisite diploma/certificate. The record further revealed that no proper procedure of advertising the post and constituting a selection committee was adopted before his enlistment as Constable/Computer Operator. Therefore, he was removed from service vide order of 1361-687EF dated 11.11.2013 of Deputy Commandant Elite Force. He preferred departmental appeal but the same was filed as there was no force and substance in his departmental appeal.

On receipt of the file from the Service Tribunal, he was summoned and was heard in detail and he failed to establish his recruitment in accordance with due procedure. The examination of the record further revealed that he has still failed to provide computer diploma/certificate. He was tested in computer knowledge but he was having no knowledge of computer.

Kasir Ullah was recruited without adopting proper procedure of recruitment. He had not produced computer diploma/certificate. He is still ignorant of computer knowledge, and his recruitment was against merit policy therefore, his retention in service is against law and rules on the subject matter. He is heard in person and failed to satisfy the undersigned. Therefore, his prayer for re-instatement is without force and substance hence rejected.

(TARIQ JAVED) P.S.P.
Additional Inspector General of Police
Elite Force, Kyber Pakhtunkhwa Peshawar



10.11.2015

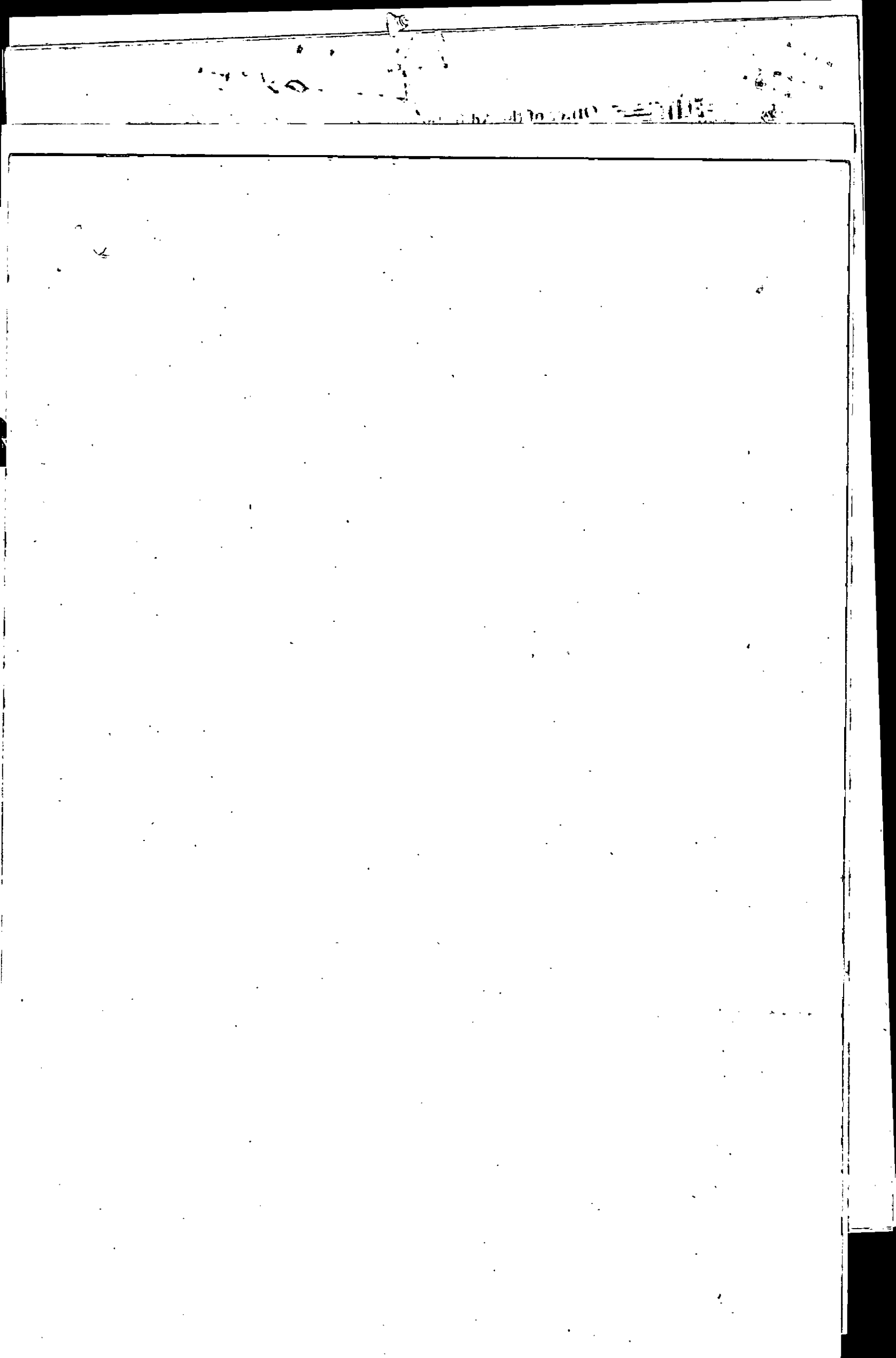
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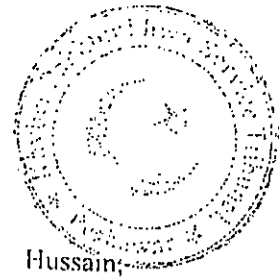
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APPELLANT
COUNSEL
FOR THE APPELLANT





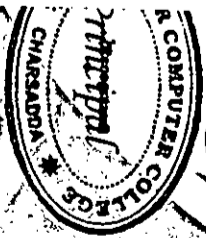
10.11.2015

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URDU)

/2010

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12

Ahmad, all appointed alongwith the appellant, were retained in the service and the appellant was removed, so justice and law demands that he should have been shown entire grounds of action and he should also have been given opportunity of defense. In These circumstances, the Tribunal is of the view that case of the ^{appellant} Tribunal has not been properly handled. Order of the appellate authority dated 13.01.2014 is non-speaking ~~and~~. Hence order of the Appellate Authority dated 13.01.2014 is set aside the appeal is remitted to him with the directions to the appellate authority to examine the case of the appellant strictly in accordance with law and rules and to decide his appeal on merits in the light of the above discussion of this Tribunal. Appeal of the appellant be decided within a period of two months after receipt of this judgment failing which it shall be presumed that the respondent-department has failed to decide his appeal in the stipulated period in which case the appeal be deemed to have been allowed. Back benefits shall be subject to the outcome of order of the appellate authority. Disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record. *W*

Signature
Signature

Announced
 10.11.2015

Sys
Members

Sys
Members

13-11-2015
 1200
 8
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 13-11-2015
 13-11-2015



Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



13

No. 524-26 /EF

Dated 8 / 01 / 2016

To : The Registrar,
Service Tribunal,
Khyber Pakhtunkhwa, Peshawar.

Subject: JUDGMENT

Memo:

Please refer to your office letter No. 1772/ST, dated 16.11.2015.

Enclosed please find herewith copy of the order passed in pursuance of the judgment received vide your office above quoted reference.

(ASHIQ IQBAL MOHMAND) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy to the:-

1. Addl: IGP Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Kashif Ullah (Ex-Constable Computer Operator) S/O Shakir Ullah R/O Gaidar P.O Charsadda Tehsil and District Charsadda through SP HQrs: Elite Force Peshawar.



Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



14

No. 494 /EF

Dated 08/01/2016

ORDER

This order is passed in compliance with judgment of the Khyber Pakhtunkhwa, Service Tribunal dated 10.11.2015 passed in Service Appeal No. 208/2014, titled Kashif Ullah VS Government of Khyber Pakhtunkhwa, through Inspector General of Police and one another.

Facts leading to the instant order are as follows:-

That Kashif Ullah Son of Shakir Ullah was recruited as Constable/Computer Operator in Elite Force Khyber Pakhtunkhwa, Peshawar vide order No. 8634-39/EF dated 14.06.2013 issued by the then Deputy Commandant Elite Force.

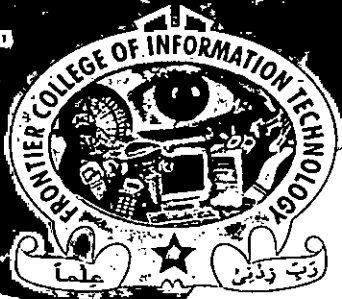
During checking of the service dossier of the said Constable/Computer Operator, it came to light that he was recruited as Constable/Computer operator without producing the Computer diploma/certificate. Notice to this effect was issued to him vide No. 15227/EF dated 05.11.2013 by the Deputy Commandant Elite Force to produce computer course qualification diploma/certificate on 07.11.2013 but he failed to produce the requisite diploma/certificate. The record further revealed that no proper procedure of advertising the post and constituting a selection committee was adopted before his enlistment as Constable/Computer Operator, therefore, he was removed from service vide order of 15361-68/EF dated 11.11.2013 of Deputy Commandant Elite Force. He preferred departmental appeal but the same was filed as there was no force and substance in his departmental appeal.

On receipt of the file from the Service Tribunal, he was summoned and was heard in detail and he failed to establish his recruitment in accordance with due procedure. The examination of the record further revealed that he has still failed to provide computer diploma/certificate. He was tested in computer knowledge but he was having no knowledge of computer.

Kashif Ullah was recruited without adopting proper procedure of recruitment. He had not produced computer diploma/certificate. He is still ignorant of computer knowledge, and his recruitment was against merit policy therefore, his retention in service is against law and rules on the subject matter. He is heard in person and failed to satisfy the undersigned. Therefore, his prayer for re-instatement is without force and substance hence rejected.

(TARIQ JAVED) P.S.P.
Additional Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.





Amir & G
Frontier
College of Information Technology
Charsadda (Pakistan)

Recognized with K.P.K Board of Technical Education Peshawar.

15

Certificate

Amir & G
This is to certify that Miss/Mr. *Kashif Ullah S/O Shakir Ullah*

has successfully completed three months Computer training course

in this institute under my supervision from 05/05/2010 to 05/08/2010

Registration No 500/10 in the following subjects.

MS DOS/MS WINDOW, MS EXCEL, MS WORD, INTERNET & INPAGE (URDU)

We wish him/her good luck & success in his/her future life.



16

00702498 KASHIF ULLAH		Prev Pers No:	Desig: CONSTABLE	(00000394)	Grade: 05 NTN:	Buckle No.: 537	Gazetted/Non-Gazetted: N	
P A Y M E N T S		A M O U N T	DEDUCTIONS	A M O U N T	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	5,400.00	3005 GPF Subscription - Rs	465.00-			GPF#:		930.00
1001 House Rent Allowance	1,503.00	3511 Adtl Group Insurance	7.00-					
1210 Convey Allowance 20	1,840.00	3604 Group Insurance	67.00-					
1300 Medical Allowance	1,000.00							
1547 Ration Allowance	681.00							
1567 Washing Allowance	100.00							
1646 Constabulary R Allow	300.00							
1901 Risk Allowance (Poli	5,010.00							

Accounts Office AG NWFP PESH
 PAYROLL REGISTER
 For the month of August ,2013

Page : 2,250
 Date : 04.09.2013

DDO : PR5128 DIG/ Commandant Elite Force NWFP

1902 Special Incentive Al	775.00
1938 Elite Force Allowanc	3,000.00
1971 Adhoc Allowance 2011	501.00
2118 Adhoc Relief Allow (1,080.00
2148 15% Adhoc Relief All	810.00

Payroll Section : 006 Section 6

PAYMENTS	22,000.00	DEDUCTIONS	539.00-	NET PAY	21,461.00	01.08.2013	31.08.2013
Branch Code:		Payment through DDO			Accnt.No:		

17

00702498 KASHIF ULLAH							
Prev Pers No:		Desig: CONSTABLE		(00000394)		Grade: 05 NTN:	
Buckle No.: 537		Gazetted/Non-Gazetted: N					
PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	5,400.00	3005 GPF Subscription - Rs	465.00-		GPF#:		1,860.00
1001 House Rent Allowance	1,503.00	3511 Addl Group Insurance	7.00-				
1210 Convey Allowance 20	1,840.00	3604 Group Insurance	67.00-				
1300 Medical Allowance	1,000.00						
1547 Ration Allowance	681.00						
1567 Washing Allowance	100.00						
1646 Constabulary R Allow	300.00						
1901 Risk Allowance (Poli	5,010.00						
1902 Special Incentive Al	775.00						
1938 Elite Force Allowanc	3,000.00						
1971 Adhoc Allowance 2011	501.00						
2118 Adhoc Relief Allow (1,080.00						
2148 15% Adhoc Relief All	810.00						
PAYMENTS	22,000.00	DEDUCTIONS	539.00-	NET PAY	21,461.00	01.10.2013	31.10.2013
Branch Code:		Payment through DDO			Acct.No:		

18

0702498 KASHIF ULLAH

Prev Pers No:

Desig: CONSTABLE

(00000394)

Grade: 05 NTN:

Buckle No.: 537

Gazetted/Non-Gazetted: N

PAYMENTS

AMOUNT

DEDUCTIONS

AMOUNT

LOAN/FUND

PRINCIPAL

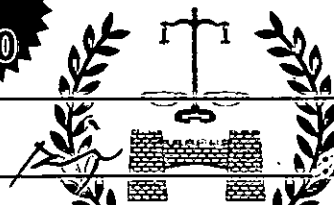
REPAID

BALANCE

001 Basic Pay	5,400.00	3005 GPF Subscription - Rs	465.00-					
001 House Rent Allowance	1,503.00	3511 Addl Group Insurance	7.00-					
010 Convey Allowance 20	1,840.00	3604 Group Insurance	67.00-					
000 Medical Allowance	1,000.00							
047 Ration Allowance	681.00							
067 Washing Allowance	100.00							
046 Constabulary R Allow	300.00							
001 Risk Allowance (Poli	5,010.00							
002 Special Incentive Al	775.00							
38 Elite Force Allowanc	3,000.00							
71 Adhoc Allowance 2011	501.00							
18 Adhoc Relief Allow (1,080.00							
48 15+ Adhoc Relief All	810.00							

PAYMENTS 22,000.00 DEDUCTIONS 539.00- NET PAY 21,461.00 01.09.2013 30.09.2013
Inch Code: Payment through DDO Accnt.No:

قیمت
10 روپے



41205

ایڈووکیٹ اور محتسب
بار کونسل اباد اسیوی ایشن
10-779
رابطہ نمبر 233 59092 03100

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سر سید شریف حسین صاحب

منجانب: مسٹر کاسٹھان	دعوی:
کاسٹھان	علت نمبر:
مست	موردہ:
	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام مسٹر کاسٹھان کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر جانش و فیصلہ برطین دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق زریں ہر دستخط کرنے کا اختیار ہوگا، نیز پیروی و پیروی کا مکلفہ یا اہیل کی برآمدگی اور منسوخی، نیز دائر کرنے اہیل نگرانی و نظر جانی و پیروی کرنے کا شمار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ملاحظہ ہر ذمہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سب سے ہوگا وہ وکیل موصوف و وکیل کے کار حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا عد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 3-2-16

بد العباد گواہ شد العباد

مقام سید عمر کے لئے منظور ہے۔

نوٹ: اس کالت نامہ کی کارروائی ناقابل قبول ہے

سید عمر

کمال جنب جبرئیل علیہ السلام منزه عن الذل والنقص

کاشف الله

حکومت

داخواند همراه اعزاز حضرت در کورث فیس

در عدد عنوان ۱۱۰

کتابخانه
۲۸۰

ص ۱۰۱

میز ۱۱۰۱ در عدد عنوان ۱۱۰ ۲۸ $\frac{4}{16}$ تاریخ ویدیو مورخ

میز ۱۱۰۲ در عدد عنوان ۱۱۰ ۱۷ $\frac{2}{16}$ کورث فیس در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

میز ۱۱۰۳ در عدد عنوان ۱۱۰ در عدد عنوان ۱۱۰

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 136/2016

Kashif Ullah.....(Appellant)

Versus

Government of Khyber Pakhtunkhwa, through Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and one other (Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) Appellant has wrongly impleaded Assistant Inspector General of Police (Elite Force) Khyber Pakhtunkhwa, while there is no such post in Elite Force. The post of Addl: Inspector General of Police, Elite Force exists. Hence the appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) That the appellant has got no cause of action and locus standi.
- e) The appellant is estopped by his own conduct to file the appeal.
- f) The appeal is barred by law & limitation.
- g) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Correct to the extent that appellant was recruited in Police department as constable Computer Operator but later on it came to light that the appellant was recruited without adhering to the patent policy of recruitment as neither committee was constituted for recruitment nor the post was advertised. Furthermore, the appellant failed to produce the requisite diploma/certificate of Computer therefore, he was removed from service vide order dated 11.11.2013 of Respondent No. 2.
2. Incorrect, the reason behind the removal of appellant were given in the order. Furthermore, orders illegal ab-initio do not create any right.


3. Incorrect, the subsequent recruitment was made in accordance with law and policy of recruitment in vogue.
4. Correct to the extent that the departmental appeal of appellant was filed.
5. Correct to the extent that this Honorable Tribunal remanded the case of appellant to appellate authority, however the original order dated 11.11.2013 was maintained by the Tribunal which got finality and appellant did not challenge the order before Honorable Supreme Court of Pakistan, anyhow, proper speaking order was passed in pursuance of the directions of the Honorable Tribunal accordingly. Copy of the order is already enclosed with the original appeal.
6. Incorrect, detailed and speaking order has been passed in compliance with the judgment of this Honorable Tribunal passed in the earlier appeal of appellant.
7. Incorrect, appeal of appellant is not maintainable on the given grounds.

GROUNDS:-



- a. Incorrect, the impugned orders are just, legal and have been passed in accordance with law and rules.
- b. Incorrect, appellant was heard in person and he failed to establish his recruitment in accordance with due procedure. He also failed to provide computer diploma/certificate. He was also tested in Computer knowledge but he was having no knowledge of computer.
- c. Incorrect, the very appointment of appellant was made against law and rules and policy of recruitment. He failed to produce computer diploma/certificate. Therefore, there was no need of departmental proceedings.
- d. Incorrect, on remand of the case of appellant by this Honorable Tribunal, he was heard in person and tested in computer. He failed to produce diploma/certificate and also was having no knowledge of computer.
- e. Incorrect, appellant was not removed from service on charges of adverse entry but his very appointment found against the law and rules.
- f. Incorrect, belonging to poor is no defense ground.

- g. Incorrect, appellant was treated in accordance with law and rules and was never discriminated.
- h. Respondent may also be allowed to raise additional grounds during hearing of the case.

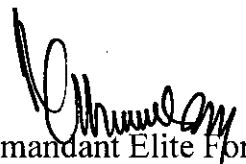
It is therefore, prayed that the appeal may please be dismissed with costs.



Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)



Addl: Inspector General of Police
Elite Force, Khyber Pakhtunkhwa
Peshawar
(Respondent No. 3)



Deputy Commandant Elite Force
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Kashif Ullah

V E R S U S

Government of KP and others

RE-JOINDER ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTIONS:-

- A) That all the preliminary objections raised by the Respondents are illegal, against the law, facts, based upon mala-fide and false; because in the earlier round of litigations, the Respondents never raised any objection such like.

REPLY ON FACTS:-


- 1) Para No 1 of the comments is incorrect, against the facts and already decided by this Honourable Tribunal in earlier round of litigations.
- 2) Paras No 2 and 3 of the comments of Respondents are incorrect, false and against the law. Furthermore, paras No 2 and 3 of the appeal is correct.
- 3) Para No 4 is needs no comments.
- 4) Para No 5 is incorrect in the sense, in which it has been expressed. The Appellant has a legal right to reinstate upon the post because as per order dated 11-11-2013 of this Honourable Tribunal was very much clear regarding the setting aside of orders of the authorities.

- 5) Para No 6 and 7 are incorrect and based upon concealment of facts and also mislead this Honourable Tribunal.

REPLY ON GROUNDS:-

- A) All the replies given by the Respondents with the connections of grounds taken by the Appellant in his appeal are false, misconceived, misled, based upon mala-fide against the facts and law. Because objection raised by the Respondents in grounds of comments is introducing by first time, in earlier round of litigation never ever Respondents taken any objection regarding the educational qualification of the Appellant.

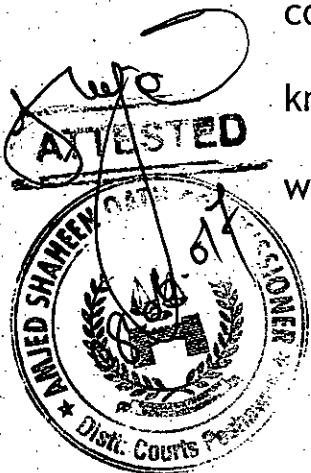
It is, therefore, respectfully prayed that on acceptance of this rejoinder, the above titled appeal may kindly be accepted in favour of the Appellant and against the Respondents.

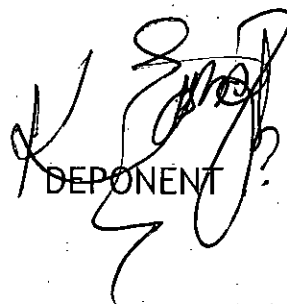
Through: Plaintiff

(AAMIR HUSSAIN)
Advocate,
High Court, Peshawar

Dated: -08-06-2017

AFFIDAVIT:-

It is, solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.




DEPONENT