

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 344/2016

Date of institution ... 18.03.2016

Date of judgment ... 19.07.2019

Sher Wali Khan, Retired Store Keeper, C&W Division,
Miran Shah, North Waziristan Agency

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar.
3. The Chief Engineer FATA, C&W Department, Warsak Road, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 11.03.2011 WHEREBY THE APPELLANT WAS REINSTATED INTO SERVICE BUT WITHOUT BACK BENEFITS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD.

Mr. Noor Muhammad Khattak, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Riaz Gul, Admin Officer for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in C & W Department as Store Keeper. He was imposed major penalty of dismissal from service as well as recovery of Rs. 1,37,98000/- vide order dated 18.04.1994 on the allegation of misappropriation. After availing of remedy of departmental appeal, the appellant filed service appeal the service.

M. Amin
19.7.2019

appeal of the appellant was partially accepted and the case of the appellant was remanded to the respondent-department for fresh inquiry under the relevant rules with further direction to dig out the shortage (shortages/losses) and loss and fix responsibility of the misconduct on those responsible, so that the real culprits are appropriately punished according to the extent of mis-conduct committed by them in the present case vide judgment dated 31.12.1995. After conducting de-novo inquiry, the appellant was again imposed major penalty of dismissal from service and also recovery of Rs. 1, 37, 98000/- vide order dated 26.01.20002. Again after availing of departmental appeal, the appellant filed service appeal which was partially accepted, the appellant was reinstated into service and repeated the directions given in the judgment dated 31.12.1995 with a change that the proceedings be conducted in accordance with the provisions of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000, with a chance of hearing to the appellant to cross-examine the official witnesses and to check the record produced against the appellant, with a right to cross-examine the witnesses who may be the custodian of such records. The appellant shall have a right to record his detailed statement and to produce his own evidence, if any, and to be heard in detail regarding the evidence so produced. He shall have also a right to be heard, besides submitting written reply to the show-cause notice, if any. The period of non-availability of the appellant for duty due to his dismissal from service till reinstatement as aforesaid shall be treated by the competent authority in accordance with the rules on the subject and the parties were directed to appear before the competent authority on 20.06.2018 vide judgment dated 03.06.2008. Feeling aggrieved from the said judgment dated 03.06.2008, the respondent-department challenged the said before the august Supreme of Pakistan and the august Supreme Court of Pakistan observed in the judgment that since case pertains to the year 1988 and the proceedings have already been initiated against the respondent under the N.W.F.P Government

M. Amin
19.7.2019

Servants (Efficiency & Discipline) Rules, 1973 and according to Section-13 of the Ordinance, the proceedings which had already been initiated before the commencement of the Ordinance shall continue in accordance with the law under which it had already been initiated. Since Service Tribunal while remanding the case has directed that the fresh proceedings to be taken under the Provisions of the Ordinance which are conflict with Section-13 of the Ordinance, therefore, while maintaining the order of remand for fresh inquiry/disciplinary proceedings, the same may be taken under the N.W.F.P Government Servants (Efficiency and Discipline) Rule, 1973 and not under the Ordinance and the appeal was allowed in the above terms vide judgment dated 02.02.2010. In the meanwhile, the respondent-department in compliance with the judgment/order dated 02.02.2010 of the august Supreme Court of Pakistan in CPLA No. 17-P of 2009 and the judgment of Khyber Pakhtunkhwa Service Tribunal dated 03.06.2008 in Service Appeal No. 402/2002, reinstated the appellant in service with immediate effect and the period from the date of his dismissal till his reinstatement in service treated as extra-ordinary leave (Leave without pay) vide order dated 11.03.2011. The appellant filed departmental appeal on 11.04.2011 but the same was not responded. The appellant was also retired from service by the respondent-department on attaining the age of superannuation vide order dated 22.05.2013 and thereafter the appellant filed present service appeal on 18.03.2016.

M. Amin
19.7.2019

3. Learned counsel for the appellant contended that the appellant was serving in C&W Department as Store Keeper. He was imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 98000/- vide order dated 18.04.1994 on the allegation of misappropriation. It was further contended that the appellant challenged the said order through service appeal, which was partially accepted vide order dated 31.12.1995 with the direction to respondent-department to conduct de-novo inquiry to dig out the shortage (shortages/losses)

and loss and fix responsibility of the misconduct on those responsible. It was further contended that again the respondent-department had not conducted proper de-novo inquiry as per direction of the Service Tribunal and imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 89000/-vide order dated 26.01.2002. It was further contended that the appellant challenged the same through Service Appeal and the Service Tribunal accepted ^{of appeal} ~~of appeal~~ ^{and} the appellant and repeated the direction to respondent to conduct de-novo proceeding as per direction in the judgment vide judgment dated 03.06.2008. It was further contended that the respondent-department challenged the said judgment before the august Supreme Court of Pakistan and the august Supreme Court of Pakistan maintained the order of Service Tribunal with modification that the de-novo inquiry be conducted under the N.W.F.P Government Servants (Efficiency and Discipline) Rules, 1973 instead of N.W.F.P Removal from Service (Special Powers) Ordinance 2000 vide judgment dated 02.02.2010. It was further contended that the respondent-department reinstated the appellant and treated the period from the date of his dismissal till reinstatement in service as extra-ordinary leave (Leave without pay) vide order dated 11.03.2011 without any inquiry. It was further contended that from the material available on the record and conduct of the respondent-department, it is clearly manifest that the appellant was imposed major penalty of dismissal from service for his no fault, otherwise, the respondent-department would not have reinstated the appellant into service without de-novo inquiry therefore, it was contended that the respondent-department was bound to treat the period from the date of his dismissal from service i.e 18.04.1994 till is reinstatement i.e 11.03.2011 with back benefits but the respondent-department has illegally treated the period from the date of his dismissal till his reinstatement as leave without pay and prayed that the period from the date of dismissal of the appellant i.e 18.04.1994 till his reinstatement i.e 11.03.2011 may be treated with full back benefits.

*Applicant
18.04.1994 to 11.03.2011*

^u
~~u~~ On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 98000/- vide order dated 18.04.1994 on the allegation of misappropriation. It was further contended that a proper regular inquiry was conducted and after conducting a regular inquiry, the appellant was imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 98000/- for misappropriation vide order dated 18.04.1994. It was further contended that the appellant filed Service Appeal which was partially accepted and the respondent-department was directed to conduct de-novo inquiry vide judgment dated 31.12.1995. It was further contended that again de-novo inquiry was conducted and after conducting de-novo inquiry, the appellant was again imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 98000/- for misappropriation vide order dated 26.01.2002. It was further contended that the appellant again challenged the said order through Service Appeal and the Service Appeal of the appellant was partially accepted and the respondent-department was directed to conduct de-novo inquiry vide judgment dated 03.06.2008. It was further contended that the respondent-department challenged the said judgment in the august Supreme Court of Pakistan and the august Supreme Court of Pakistan maintained the judgment of the Service Tribunal with modification that a de-novo inquiry be conducted under the N.W.F.P Civil Servants (Efficiency & Discipline) Rules, 1973 instated of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 vide judgment dated 02.02.2010. It was further contended that the since the appellant was going to be retired on 22.05.2013, therefore, the respondent-department reinstated the appellant with immediate effect and the period from the date of his dismissal till reinstatement in service was treated as extra-ordinary leave (Leave without pay) vide order dated 11.03.2011. It was further contended that since the appellant

M. Amin
 19.7.2019

has not performed any work/duty during the period from the date of dismissal from service till his reinstatement therefore, the respondent-department has rightly reinstated the appellant without back benefits on the principle of no work no pay. It was further contended that the Service Tribunal also directed the respondent-department that the period of non-availability of the appellant for duty due to his dismissal from service till reinstatement shall be treated by the competent authority in accordance with rules on the subject vide judgment dated 03.06.2008 therefore, it was ^{the} further contended that the competent authority has rightly treated the intervening period as leave without pay and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was imposed major penalty of dismissal from service and recovery of Rs. 1, 37, 98000/- by the competent authority vide order dated 18.04.1994 on the allegation of misappropriation. The record further reveals that the appellant challenged the said order through Service Appeal, the Service Appeal of the appellant was accepted vide judgment dated 31.12.1995 and the respondent-department was directed to conduct de-novo inquiry so that to dig out the shortage (shortages/losses) and loss and fix responsibility of the misconduct on those responsible vide judgment dated 31.12.1995. The record further reveals that after conducting a de-novo inquiry, the respondent-department again imposed major penalty of dismissal from service upon the appellant and recovery of Rs. 1, 37, 98000/- vide order dated 26.01.2002. The record further reveals that the appellant challenged the said order through Service Appeal and the Service Appeal of the appellant was accepted and the respondent-department was again directed to conduct de-novo inquiry with further direction that the period of non-availability of the appellant for duty due to his dismissal from service till reinstatement shall be treated by the competent authority in accordance with rules on the subject vide judgment dated 03.06.2008. The record further reveals

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19.7.2019
in

that the respondent-department reinstated the appellant and treated the period from the date of his dismissal from service till reinstatement in service as extraordinary leave (Leave without pay) vide order dated 11.03.2011. Admittedly, the Service Tribunal directed the respondent-department that the period of non-availability of the appellant for duty due to his dismissal from service till reinstatement shall be treated by the competent authority in accordance with rules on the subject and even otherwise under Section-17 of the Civil Servants Act, 1973 it was discretion of the competent authority to decide the issue of back benefits/payment of arrears etc. It is also clear beyond the doubt that the appellant has not performed any duty during the intervening period so by following the principle of no work no pay, the appellant is not entitled for back benefits and the competent authority has rightly treated the intervening period as leave without pay on the principle of no work no pay. Hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.07.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

30.05.2019

Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Riaz Gul, Admin Officer for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available today. Adjourned. Case to come up for arguments on 17.07.2019 before D.B.



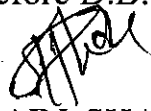
Member



Member

17.07.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Riaz Gul, Admin Officer for the respondents present. Arguments heard. To come up for order on 19.07.2019 before D.B.



(HUSSAIN SHAH)
MEMBER



(M. AMIN KHAN KUNDI)
MEMBER

19.07.2019


Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Riaz Gul, Admin Officer for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of seven pages placed on file, the appellant is not entitled for back benefits and the competent authority has rightly treated the intervening period as leave without pay on the principle of no work no pay. Hence, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.07.2019



(HUSSAIN SHAH)
MEMBER



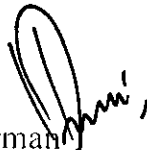
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.11.2018

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned senior counsel for appellant is reported to be busy before the Hon'ble High Court in a number of cases today. A request for adjournment^{is} made at the bar. Adjourned to 24.01.2019 for arguments before the D.B.


Member


Chairman

24.01.2019

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Zia Ur Rehman Superintendent as representative for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 25.03.2019 before D.B


Member

Member

25.03.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Abdur Rashid Tareen, Admin Officer for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 30.05.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

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Member

Chairman

05.04.2018

None present on behalf of appellant and Mr. Riaz Paindakheil, learned Assistant Advocate General alongwith Fazal Amin Superintendent for the respondents present. Adjourn. To come up for arguments on 11.06.2018 before D.B


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

11.06.2018


Learned counsel for the appellant and Mr. Muhammad Jan, learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.08.2018 before D.B

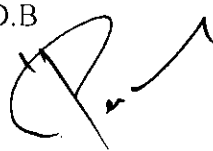

(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

09.08.2018

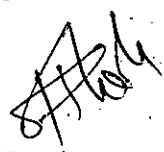
Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zia Ur Rehman Superintendent for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 10.10.2018 before D.B

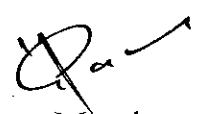

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

10.10.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney learned Deputy District Attorney present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 27.11.2018 before D.B.


Member



Member

06.04.2017

Counsel for the appellant and Mr. Mukhtiar Khan, Accountant alongwith Addl. AG for the respondents present. Argument could not be heard due to incomplete bench. To come up for final hearing on 27.07.2017 before D.B.

27.07.2017


Counsel for the appellant and Mr. Muhammad J. Deputy District Attorney alongwith Mr. Abdur Rashid Tareen, A.O and Mr.M. Bakhtiar, Accountant for respondents present. Learned AAG seeks adjournment. Adjourned. To come up for arguments on 24.11.2017 before D.B.



(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

24.11.2017


Clerk to counsel for the appellant present. Learned Deputy DDA for the respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourn. To come up for argument on 02.02.2018 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

02.02.2018

Agent to counsel for the appellant and Mr. Riaz Pinda Kheil; learned Assistant Advocate General along with Fazal Amin Superintendent for the respondents present. Junior to counsel for the appellant seeks adjournment as counsel is not available. Adjourned. To come up for arguments on 05.04.2018 Before D.B


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

244/16

30.05.2016

Agent of counsel for the appellant and Mr. Shoaib, Assistant alongwith alongwith Addl AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 27.07.2016 before S.B.


Chairman

27.07.2016

Appellant with counsel and Mr. Miuhammad Shoaib, Assistant alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.11.2016.


Chairman

22.11.2016

Clerk to counsel for the appellant and Mr. Abdur Rasheed Tareen, Administrative Officer alongwith Assistant AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 6.4.17.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ABDUL LATIF)
MEMBER

13.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as Store Keeper in Communication & Works Department vide appointment order dated 01.08.1978 and stood retired from service on attaining the age of superannuation on 22.5.2013. That while serving as Store Keeper he was subjected to departmental enquiry on different grounds including embezzlement etc. and vide order dated 18.04.1994 dismissed from service with the direction of recovery of public money to the tune of Rs. 1, 37,98,000/- where-against the appellant preferred service appeal No. 10/1995 which was decided on 31.12.1995 with the direction to the respondents to conduct denovo enquiry where-after the competent authority maintained the previous penalty vide order dated 26.1.2002 constraining the appellant to prefer service appeal No. 402/2002 which was decided on 03.06.2008 by reinstating the appellant in service and conducting enquiry in the light of provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. That against the said judgment of this Tribunal respondents preferred CPLA No. 17-P/2009 decided on 2.2.2010 directing the respondents to conduct the said enquiry in the light of provisions of Government Servants (E&D) Rules, 1973. That vide order dated 11.3.2011 appellant was reinstated in service however he was deprived of the benefits of his service w.e.f. the date of suspension i.e. 04.09.1988 till 11.3.2011 which proceedings are against facts and law and which has materially affected the entitlement of the appellant to pensionary benefits where-against departmental appeal was preferred on 11.4.2011 which was not responded and hence the instant service appeal on 01.4.2016. That since the financial benefits accrued to the appellant are at stake as such time limitation would not hamper the cause of the appellant. Places reliance on judgment reported as 2002-PLC(C.S) 1388.

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 30.05.2016 before S.B.



Appellant Deposited
Security & Process Fee

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 344/2016

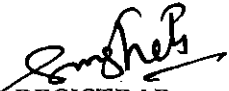
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01.04.2016	<p>The appeal of Mr. Sher Wali Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-04-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13.4.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sher Wali Khan-retired Store Keeper C&W Department received to-day i.e. on 18.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures-E & F of the appeal are illegible which may be replaced by legible/better one.

No. 467 /S.T,

Dt. 21/3 /2016

for 
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,

That judgment ~~also~~ annexure^E on page 19 to 27 is readable and objection on annexur - F Page - 28 has been removed therefore, the appeal may be put up before the bench.

1/4/2016.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 344 /2016

Sher Wali Khan

VS

Govt: of KPK

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1-3.
2.	Condonation application	4.
3.	Appointment order	A	5.
4.	Service book	B	6- 16.
5.	Orders	C & D	17- 18.
6.	judgment	E	19- 27.
7.	Order	F	28.
8.	S.T Judgment	G	29- 31.
9.	Supreme Court Judgment	H	32- 33.
10.	Re-Instatement order	I	34- 36.
11.	Departmental appeal	J	37- 38.
12.	Vakalat nama	39.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 344 /2016

K.W.F. Province
Service Tribunal
Diary No. 238
Dated 18-3-2016

Mr. Sher Wali Khan, Retired Store Keeper, C&W Division,
Miran Shah, North Waziristan Agency.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Chief Engineer FATA, C&W Department, Warsak Road, Peshawar.....**RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11.3.2011 WHEREBY THE APPELLANT WAS RE-INSTATED INTO SERVICE BUT WITHOUT BACK BENEFITS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD.

PRAYER:

That on acceptance of this appeal the order dated 11.3.2011 may be modify to the extent of allowing back benefits to the appellant for the intervening period i.e. the date of dismissal till re-instatement i.e. from 18.4.1994 till 11.3.2011. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That appellant was initially appointed as Store Munshi in the respondent Department vide order dated 01.08.1978. That later on the appellant was promoted to the post of Store Keeper vide order dated 01.12.1984. Copies of the first appointment order and service book are attached as annexure.....**A & B.**

2- That appellant while serving as Store Keeper in the respondents Department an order dated 4.9.1988 was issued against the appellant whereby the appellant was suspended on account of absence. That later on vide dated 18.4.1994 the appellant was dismissed from service along

File copy
Sher Wali Khan
Registered 18.3.16

re-submitted to-day
and filed.

Registered
17/4/16

with recovery of Rs. 1, 37, 98000/- (One Cror, thirty seven lacs and ninety eight thousand only). Copies of the orders are attached as annexure **C & D.**

3- That appellant feeling aggrieved from the order dated 18.4.1994 filed Departmental appeal and then after filed Service appeal No. 10/1995 before this august Service Tribunal. That this august Service Tribunal vide judgment dated 31.12.1995 accepted the appeal of the appellant by setting aside the impugned dismissal order with further directions to respondents to conduct denovo inquiry under the relevant rules. Copy of the judgment is attached as annexure **E.**

4- That on the said judgment of this august Service Tribunal the respondents issued another order dated 26.01.2002 whereby the appellant was again dismissed from service along with recovery of Rs. 1, 37, 98000/- (One Cror, thirty seven lacs and ninety eight thousand only). That appellant feeling aggrieved again knocked the door of this august Service Tribunal in appeal No. 402/2002. That this august Service Tribunal decided the appeal of the appellant while re-instating the appellant into service with the directions to conduct the proceedings in light of provisions of the NWFP Removal from Service Special Power Ordinance 2000. Copies of the order dated 26.1.2002 and judgment dated 3.6.2008 are attached as annexure **F & G.**

5- That the respondents filed CPLA No. 17-P/2009 before the august Supreme Court of Pakistan against the judgment of this august Service Tribunal issued on 3.6.2008 in appeal No. 402/2002. That the august Supreme Court of Pakistan deciding the above mentioned CPLA issued direction to the respondent Department to conduct the proceedings against the appellant under the NWFP Government Servant E&D Rules 1973. Copy of the judgment of Supreme Court is attached as annexure **H.**

6- That finally vide order dated 11.3.2011 the appellant was re-instated into service but without back benefits (by treating the intervening period of the appellant as leave without pay). That appellant feeling aggrieved filed Departmental appeal for the grant of back benefits of the intervening period but sadly no reply has been received so far. That in the meanwhile the appellant was retired on superannuation basis vide dated 22.5.2013 without enjoying full pensionary benefits. Copy of the re-instatement order and Departmental appeal are attached as annexure **I & J.**

7- That having no other remedy appellant filed this Service appeal on the following grounds amongst the others.

GROUND:

- A- That not allowing back benefits to the appellant by the respondents inspite of rendering more than 33 years service in the respondent Department are against the law, facts and norms of natural justice.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That not allowing back benefits and full pension to the appellant the respondents violated the law of natural justice.
- D- That the respondents acted in arbitrary and malafide manner by not allowing the appellant back benefits and full pension inspite of the fact that appellant has served the respondent department for more than 33 years.
- E- That the respondents violated Article 38(e) of the Constitution of Pakistan 1973 by not releasing the pension and other back benefits to the appellant.
- F- That according to section 13 sub section b of the Civil servant Act 1973 the appellant is fully entitled for the grant of pension but inspite of that the respondents are not willing to do the same.
- G- That according to settled law pension is not the bounty of the state but rather it is the inalienable right of that Civil servant who rendered services for the same.
- H- That the respondents discriminated the appellant on the subject noted above and as such the respondents violated the principles of natural justice.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 8.3.2016

APPELLANT


SHER WALI KHAN

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2016

Sher Wali Khan

VS

Govt: of KPK

APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

APPELLANT


SHER WALI KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

OFFICE OF THE EXECUTIVE ENGINEER DEV: B&R DIVISION MIRANSHAH.

OFFICE ORDER.

NO. 999/5-E

Dt: Mirn: the 1/8/78


Mr. Sher Wali Khan S/O Ayub Khan of Miranshah is hereby appointed as Store Munshi against the existing vacancy @ Rs. 315/- P.M. plus usual allowances as admissible under Rules in the Revised R.P.S. of Rs. 315-12-399/14-525 with effect from 1/8/78.


EXECUTIVE ENGINEER
B&R DIVISION, MIRANSHAH

Copy to the S.D.O. B&R Sub Divin: Miranshah for information & n/action.

Copy to the Divisional Accountant (Local) for information & n/action.

Mr. Sher Wali Khan for information.


ATTESTED

B-16

1. Name *Mr. Sher Wali Khan*

2. Race *Muslim (Pakistani)*

3. Residence *Village Plangzai P.O. & Tehsil M/Sher*

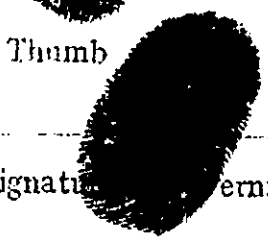
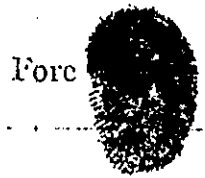
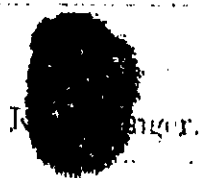
4. Father's name and residence *Mr. Ayub Khan as above*

5. Date of birth by Christian Era as early as can be ascertained. *5-2-1953*

6. Exact height by measurement *5-5*

7. Personal marks for identification *A small black mole at the base of nose (left side)*

8. Left hand thumb and finger impression of (non-gazetted) officer



ATTESTED

9. Signature of Government servant *Sher wali Khan*

10. Signature and designation of the Head of the Office, or other Attesting Officer

Mirza Shah
Sub Divisional Officer
B. & E. Sub Division
Mirza Shah
19/8

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state - (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
<u>315-12-399/14-525</u>	Mr. Sher Wali Khan Store Munsiff Temporary ✓		Rs. 315/-	-	-	1/8/78	Sher Wali Khan
<u>315-12-399/14-525</u>	Mr. Sher Wali Khan, Store Keeper officiating		315/-			18/1/79	Sher Wali Khan
"	"	"	327/-	-	-	1 12/79	
/25	"	"	339/-	✓		30 11/80 FN	
- do -			339/-				
4. 315-12-399/14-525/16-605			Rs. 351/00			1 7/87 FN	

Cont

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9	10	11	12	13	14	15
Signature and name of the officer or other attesting officer in attestation of columns	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave		Reference to any recorded punishment for censure, or reward or praise of the Government servant
				Nature and duration of leave taken	Period to which debitable	

Appointed as a Store Munshi vide
 Gen Dev. R/R Division Miran Shah office
 order No: 2199/5-E dt: 1/8/78. w.a. 6 1/28 FRI

[Signature]
 Sub-Divisional Officer
 B. & R. Sub Division
 Miran Shah
 19/8

Appointed as a Store keeper vide
 Chief Engineer Gen. C & W Department
 N.W.F.P. Dehraun office order no
 213-E/221-22/AE(1) dt: 10/1/59

Granted Annual Increment

[Signature]
 Executive Engineer (Dev.)
 C & W DIVISION,
 N.W.A. MIRAN SHAH

[Signature]
 Executive Engineer (Dev.)
 C & W DIVISION,
 MIRAN SHAH

For the period V.E.P. 1/2/78 (L.P.N.)
 30/11/79 (A.E.) the office of
 the Sub-Divisional Officer
 Miran Shah office.

Granted Annual Increment

[Signature]
 Executive Engineer (Dev.)
 C & W DIVISION,
 N.W.A. MIRAN SHAH

[Signature]
 Executive Engineer (Dev.)
 C & W DIVISION,
 N.W.A. MIRAN SHAH

ATTESTED

10/12/79
 289
 11/3

Granted advance
 increment vide
 Pesh. No 3/1E/65/4-28/
 AE(3) dt: 11.7.81

Order No: 355/15/79
 B.R. & R. section allowances for the year
 1980-81 dt: 16/9/80

Brown Rest & Res
 section allowances for the year
 1980-81 dt: 16/9/80
[Signature]
 B.A.N.P.

[Signature]
 Executive Engineer (Dev.)

[Signature]
 Executive Engineer (Dev.)

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state - (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
<u>Store Munchi</u> 315-12-399/14-525/16-65	Officiating/ Tempy.		Rs 363/- P.M.			1 ¹² / ₈₁ (F.N)	
- do -	do		Rs 375/- P.M.			1 ¹² / ₈₂ P.M.	
<u>Store Keeper</u> 25 540-20-940	"		Rs 640/- P.M.			1 ⁷ / ₈₃ P.M.	
- do -	"		Rs 660/- P.M.			1 ¹² / ₈₃ (F.N)	

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9	10	11	12	13	14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave Allocation of periods of leave on average pay up to four months for which leave salary is debit-able to another Government Nature and duration of leave taken Period to which Government-ent to which debit-able	Signature of the head of the office or other attesting officer	Reference to any recorded punishment for censure, or reward or praise of the Government servant
<p>Granted Annual Increment 30¹¹/₈₁ (A.N.)</p> <p><i>[Signature]</i></p> <p>Executive Engineer (Dev) C & W Division Miran Shah</p> <p>Granted Annual Increment 30¹¹/₈₂ (A.N.)</p>	<p>30¹¹/₈₁ (A.N.)</p>	<p>Granted Annual Increment</p>	<p><i>[Signature]</i></p>	<p>Leave</p>	<p>Signature of the head of the office or other attesting officer</p>	<p>Reference to any recorded punishment for censure, or reward or praise of the Government servant</p>
<p>Executive Engineer (Dev) C & W Division Miran Shah</p> <p>15/12</p>	<p>30¹¹/₈₂ (A.N.)</p>	<p>Granted Annual Increment</p>	<p><i>[Signature]</i></p>	<p>256</p>	<p>Executive Engineer (Dev) C & W Division, Miran Shah</p>	<p>55 4/2 Drawn Rest Recreation Allow For The Calendar Year 1982 - During 2/82 For 187/50</p> <p>Distt: A/Cs Officer BANNU</p> <p>Service Verified by E.P. 1-12-79 to 30-11-82 from the office copy of pay bill-acquittance rolls maintained in this office.</p>
<p>Executive Engineer (Dev) C & W Division Miran Shah</p>	<p>30¹¹/₈₃ (A.N.)</p>	<p>Granted Annual Increment</p>	<p><i>[Signature]</i></p>	<p>256</p>	<p>Executive Engineer (Dev) C & W Division, Miran Shah</p>	<p>Granted 60 (Sixty) days E/leave vide CE (Dev.) C & W Deptt. Peshawar. OO No: 2/19-E/1832-33/1832-9-83 and reported departure on 20/8-83/1832-9-83</p>
<p>Executive Engineer (Dev) C & W Division N. W. A. MIRAN SHAH</p>	<p>30¹¹/₈₃ (A.N.)</p>	<p>Granted Annual Increment</p>	<p><i>[Signature]</i></p>	<p>256</p>	<p>Executive Engineer (Dev) C & W Division, N. W. A. MIRAN SHAH</p>	<p>Service Verified W.E.P. 1-12-82 to 30-11-83 from the office copy of pay bill-acquittance rolls maintained in this office.</p> <p>Executive Engineer (Dev) C & W Division, N. W. A. MIRAN SHAH</p>

ATTESTED

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	Officiating state - (i) substantive appointment or (ii) whether service counts or pension under Art. 37, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term 'Pay'	Date of appointment	Signature of Government servant
<u>Store Keeper</u> 540-20-940.	offg.		Rs. 680/- P.M.			12 1-8-85 (F.N.)	
do	offg.		Rs. 700/- P.M.			12 1-8-85 (F.N.)	
do	do		Rs. 720/- P.M.			12 1-1988 (F.N.)	
<u>Store Keeper</u> 725-28-1295	do		Rs. 977/- P.M.			1-7-87 (F.N.)	

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9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken	Allocation of periods of leave on average pay to four months for which leave salary is debitable to another Government		Reference to any recorded punishment for censure or reward or praise of the Government servant
					Period	Government to which debitable	
<p>Signature and position of the head of the office or other attesting officer in attention of column 8</p>				<p>Signature of the head of the office or other attesting officer</p>		<p>Signature of the head of the office or other attesting officer</p>	
<p>Signature and position of the head of the office or other attesting officer in attention of column 8</p>				<p>Signature of the head of the office or other attesting officer</p>		<p>Signature of the head of the office or other attesting officer</p>	
<p>Signature and position of the head of the office or other attesting officer in attention of column 8</p>				<p>Signature of the head of the office or other attesting officer</p>		<p>Signature of the head of the office or other attesting officer</p>	
<p>Signature and position of the head of the office or other attesting officer in attention of column 8</p>				<p>Signature of the head of the office or other attesting officer</p>		<p>Signature of the head of the office or other attesting officer</p>	
<p>Signature and position of the head of the office or other attesting officer in attention of column 8</p>				<p>Signature of the head of the office or other attesting officer</p>		<p>Signature of the head of the office or other attesting officer</p>	

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Granted annual increment

[Signature]

16/12/84

Annual increment

[Signature]

Executive Engineer (Dev)
S & W Division Miranshal

30/11/86 (A7)

Granted Annual Increment

Hamidullah
Executive Engineer (Dev)
S & W Division Miranshal

Hamidullah
Executive Engineer (Dev)
S & W Division Miranshal

Pay fixed in New B.P.S. No: 6

i.e. Rs. 725-28-1285 @ R, 977/- P.M.

w.e.f. 1-7-87 (F.N) with next

increment on 1-12-87 (F.N) vide

Let. of NWFP Finance Dept. No. 1000

Notification No. FD(PRC)/1-1/87-VIII dated 22/7/87.

Hamidullah

Executive Engineer (Dev)
S & W Division Miranshal

Service Verified on 12-8-83 to 30-11-84 in the office copies of pay bills and attendance rolls submitted in this office.

[Signature]

Executive Engineer (Dev)
S & W Division Miranshal

16/11/84

Service Verified on 12-8-84 to 30-11-85 in the office copies of pay bills and attendance rolls submitted in this office.

[Signature]

Executive Engineer (Dev)
S & W Division Miranshal

Service Verified on 12-12-1985 to 30-11-86 in the office copies of pay bills and attendance rolls submitted in this office.

Hamidullah
Executive Engineer

Dev. S & W Divn: Miranshal

ATTESTED

[Signature]

1	2	3	4	5	6	7	8
Name of post	Whether substan- tive or officiating, and whether permanent or temporary	If officiating note - (i) substantive appointment or (ii) whether service counts for pension under Art. 371. C.S.R.	Pay in substantive post	Additional pay for officiating	Other allowments falling under the term 'Pay'	Date of appointment	Signature of Government servant
<u>Store Keeper</u> 725-28-1285	P.H.		Rs. 1005/- P.M.			17th FEB 1987	
<u>do</u>	<u>do</u>		Rs. 1005/- P.M.			-	
<u>do</u>	<u>do</u>		Rs. 1005/- P.M.			-	

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9	10	11	12	13 Leave Allocation of periods of leave on average pay up to four months for which leave salary is debitable to another Government		14	15
Signature and name of the head of the office or other attesting officer in attestation of columns 9 to 12	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Period to which debitable	Signature of the head of the office or other attesting officer	Reference may be recorded for censure, or reward or praise of the Government servant
<p>Granted Annual Increment on 1/12/1987 (E.N.)</p>			<p>Hanichullah Executive Engineer C/W Division Mirambah</p>			<p>Hanichullah Executive Engineer C/W Division Mirambah</p>	<p>Service No. W E 11-12-1986 to 30-11-87 Three copies of pay bill, etc. to be sent to this office.</p>
<p>The official concerned is reportedly absent from duty since 2-4-1988 whose whereabouts are not known. He is commanding leave bet. Pakistan from 1-7-1988 to 31-8-1988 (62 days) to an absentee's meaningless. Also the grants of leave (Haj Pilgrimage) cannot be relied upon as the deserter is involved in shortage of store worth Rs. 1,08,39,840/- (Rs. one crore, eight lacs, thirty nine thousand, eight hundred and forty) only approximately. The leave cannot therefore be considered vide Chief Engineer (Dev) C/W D/Lt. CWPP Mirambah letter no. 2/6-4/2335 of 4-9-1988.</p>							
<p>The official is hereby suspended with immediate effect on the following charges vide Chief Engineer (Dev) C/W D/Lt. CWPP Mirambah No. 2/474/2336-38 of 4-9-1988.</p> <ol style="list-style-type: none"> i) Absence from duty since 2/4/1988. ii) Shortage of cement, steel and Distemper worth Rs. 1,08,39,840/- (Rs. one crore, eight lacs, thirty nine thousand, eight hundred and forty). iii) Taking away stock recpt. including stock register etc. <p>Subsistence allowance as per rules will be admissible to him during suspension.</p>							
<p>ATTESTED</p>						<p>Executive Engineer (Dev) C/W Division Mirambah</p>	

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[Handwritten signature]

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1	2	3	4	5	6	7	8
Name of post.	Whether substantive or officiating, and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 371. C.S.R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term 'Pay'	Date of appointment	Signature of Government servant
<u>store keeper.</u>							
725-28-1285.		offg.	R. 1005/-P.M.			-	
do	do		R. 1005/-P.M.			1-5	

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9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken	Allocation of periods of leave on average pay up to four months for which leave salary is debitable to another Government		Reference to any recorded punishment for censure, or reward or praise of the Government servant
					Period	Government to which debitable	
			<p>In light of findings of Enquiry officer, the Chief Engineer/Authority imposed the following major penalties against Mr. Sher wali store keeper (under suspension) with immediate effect under Rule 5 (4) of NWFP Efficiency & Disciplinary Rules - 1973, communicated vide No. 2/69-E/517 dt 18.4.1994.</p>				
				<ol style="list-style-type: none"> 1) Dismissal from service. 2) Recovery of Rs. 1,37,98,000/- (Rupees one crore, thirty seven lacs, & ninety eight thousand only) from the accused store keeper. (Mr. Sher wali). 			
				<p>Execut. Engineer (Dev.) C/W Division Mirza Shab</p>			
				<p>In light of Judgment of NWFP Service Tribunal Peshawar in Appeal No. 10/1995 lodged by the store keeper & subsequent Chief Engineer Dev. C/W Dept. NWFP Peshawar office order No. 6/22-E/664, dt 14.03.1996, Mr. Sher wali Khan re-instated with effect from the date of his suspension i.e. 01.04.1988 (F.No. 1).</p>			
				<p>Execut. Engineer (Dev.) C/W Division Mirza Shab</p>			
<p>ATTESTED</p> <p><i>(Signature)</i></p>							

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating, and whether permanent or temporary	If officiating state— (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C.S.D.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term 'Pay'	Date of appointment	Signature of Government servant
<u>store keeper</u> 725-28-1285.		offg	Rs. 1033/-P.M.	✓		1-12-88 (F.N)	
—do—	—do—		Rs. 1061/-P.M.	✓		1-12-89 (F.N)	
—do—	—do—		Rs. 1089/-P.M.	✓		1-12-90 (F.N)	
1075-6 <u>store keeper</u> 1065-54-1875.		—do—	Rs. 1605/-P.M.	✓		1-6-91 (F.N)	

9	10	11	12	13		14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the head of the office or other attesting officer	Allocation of periods of leave on average pay up to four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or reward or praise of the Government servant
				Period	Government to which debitable		

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Granted Annual Increment.

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Granted Annual Increment.

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Granted Annual Increment.

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Services verified w.e.f.

1-12-87 to 30-11-88 from the office copies of Pay Bills & Acq: Rolly

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Services verified w.e.f.

1-12-88 to 30-11-89 from the office copies of Pay bills & Acq: Rolly

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Services verified w.e.f.

1-12-89 to 30-11-90 from the office copies of Pay Bills & Acq: Rolly

Fazal munsif
Executive Engineer

Dist: Osht. Divn: Miran Shah

Pay departmentally fixed on 1-6-91 in Rev: BPS-06

(1965-54-1875) C.R. 1605/- P.M. vide Govt. of NWFP

Finance Deptt: Pakistan Notification No: FD(PRC)1-1/89 dated 11-8-1991.

ATTESTED

Fazal munsif

Executive Engineer

Dist: Osht. Divn: Miran Shah

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1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating, and whether permanent or temporary	If officiating state - (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Govt. serv.
Store Keeper. 1065-54-1875.	offg.		Rs. 1659/- P.M.			1-12-91 (F.N)	
do	do		Rs. 1713/- P.M.			1-12-92 (F.N)	
do	do		Rs. 1767/- P.M.			1-12-93 (F.N)	
Store Keeper. 1440-73-2535.	offg.		Rs. 2389/- P.M.			1-6-94 (F.N)	

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9	10	11	12	13		14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment for censure, or reward or praise of the Government servant
				Nature and duration of leave taken	Allocation of periods of leave on average pay up to four months for which leave salary is debitable to another Government		
				Period	Government to which debitable		

Granted Annual Increment.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

Services verified w.e.f. 1-12-90 to 30-11-91 from the office copies of Pay Bills & Acq: Rolls.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

Granted Annual Increment.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

Services verified w.e.f. 1-12-91 to 30-11-92 from the office copies of Pay Bills & Acq: Rolls.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

Granted Annual Increment.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

Services verified w.e.f. 1-12-92 to 30-11-93 from the office copies of Pay Bills & Acq: Rolls.

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

pay departmentally fixed on 1-6-94 in Rev: BPS-06 (1480-81-2695) @ Rs. 2389/- P.M. vide Govt. of NWFP Finance Deptt. permissive Notification No. FD(PRC)1-1/94 dt. 30-6-1994.

ATTESTED

Fum mms
Executive Engineer
Deo: O&T Divn: Miran Shah

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating state - (i) substantive appointment or (ii) whether service counts for pension under Art. 37, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term 'Pay'	Date of appointment	Signature of Government servant
<u>Store Keeper.</u> <u>1440-73-2535.</u>						1-12-94 (F.N)	
<u>do</u>						1-12-95 (F.N)	

7.36
2.4.96
2595
263-96

Drawn by allowance
by 264-95 to 21-1-96
B - 26243/76

AGENCY ACCOUNTS SECTION
(N.W.A.S.)
MISCELLANEOUS 12

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9	10	11	12	13	14	15	
Nature and date of the order attesting in attestation of columns 8	Date of termination of appointment	Reason of termination (such as promotion transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Allocation of periods of leave or average pay up to four months for which leave salary is debitable to another Government or Government- owned or controlled corporation or institution	Signature of the head of the office or other attesting officer	Reference to any recorded punishment for censure, or reward or praise of the Government servant

14

Granted Annual
Increment.

Fazl Munsif
Executive Engineer

Date: 04/11/93 Dron: Miran Shah

services verified w.e.f.
1-12-93 to 30-11-94 from
the office copies of Pay Bills
& Acq. Rolls.

Fazl Munsif
Executive Engineer

Date: 04/11/93 Dron: Miran Shah

Granted Annual
Increment.

Fazl Munsif
Executive Engineer

Date: 04/11/93 Dron: Miran Shah

services verified w.e.f.
1-12-94 to 30-11-95 from
the office copies of Pay
Bills & Acq. Rolls.

Fazl Munsif
Executive Engineer

Date: 04/11/93 Dron: Miran Shah

$\frac{7.593}{26-3-96}$

Drawn half pay of suspension
period due to reinstatement
wef 1-5-88 to 31-1-94 B = 50518/50

Miran Shah
Agency A. S. Miran Shah
(N. W. A.)
Miran Shah 12

$\frac{7.594}{26-3-96}$ = Drawn Pay allowance
wef 1-2-94 to 31-3-95

$\frac{7.591}{26-3-90}$ = Drawn Pay allowance
wef 22-1-86 to 28-2-96

Miran Shah
Agency A. S. Miran Shah
(N. W. A.)
Miran Shah 12

ATTESTED

1-4076/96

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9	10	11	12	13	14	15	
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Nature and duration of leave taken	Period of leave up to which salary is debit-able to another Government	Signature of the head of the office or other attesting officer	Reference to any recorded punishment for censure, or reward or praise of the Government servant
							<p>Service verified w.o. from 1.12.95 to 30.11.96 from the office copies of pay bills & Acquittance Rolls.</p> <p>Executive Engineer Div. C & W Divn Miranshah Executive Engineer C.S.W division Miranshah. (Done)</p>
							<p>Service verified w.o. from 1.12.96 to 30.11.97 from the office copies of pay bills & Acquittance Rolls.</p> <p>Executive Engineer Div. C & W Divn Miranshah Executive Engineer C.S.W division Miranshah</p>
							<p>Service verified w.o. from 1.12.97 to 30.11.98 from the office copies of pay bills & Acquittance Rolls.</p> <p>Executive Engineer Div. C & W Divn Miranshah Executive Engineer C.S.W division Miranshah</p>
							<p>Service verified from 1.12.98 to 30.11.99 from the office copy of pay bill & Acquittance Roll.</p> <p>Executive Engineer (Div. C & W Divn Miranshah)</p>

ATTESTED

Pay fixed in Rev. Pay Scale 2001 in
lymt 2 Finance Dept NWFP. Ref: Govt
Circular No. FD (PRE) 1-1/2001 dt. 27-10-2001
Pay fixed provisionally Rs. 38107/-
in Rev. Pay Scale No 6 dt. 1-12-2001

Executive Engineer (DOP)
Div. C & W Divn Miranshah

Executive Engineer (Div. C & W Divn Miranshah)

1	2	3	4	5	6	7	8
Name of post	Whether substan- tive or officiating, and whether permanent or temporary	Officiating State— (i) substantive appointment or (ii) whether service counts for pension under Art. 371, C. S. R.	Pay in substantive post	Additional pay for officiating	Other emoluments falling under the term "Pay"	Date of appointment	Signature of Government servant
1 2 @ 2160-110-5360 (BPS-6)				Rs. 3810/-		10-4-2011	
@ 3430-175-8680 (BPS-6)				Rs. 6057/-		11-4-2011	FD.
Revised B.P.S. 2011 @ 5600-290-14300 (BPS-6)				Rs. 9950/-		1-7-2011	FD.

16

9	10	11	12	13	14	15
				Leave		
Date of termination of appointment				Nature and duration of leave taken	Allocation of periods of leave or average pay up to four months for which leave salary is debitable to another Government	
Reason of termination (such as promotion, transfer, dismissal etc.)					Period	Government to which debitable
Signature of the head of the office or other attesting officer				Signature of the head of the office or other attesting officer		Reference to any recorded punishment for censure, or reward or praise of the Government servant

Service forfeited w/e 1-12-99 to 30-11-2011 from the office of Supt. 2 Pay order adog bill.

Executive Engineer (Highway Division) (N.W.A.)

In light of Judgement order of Supreme Court of Pak dt: 2/2/2010 in CPLA No.17 of 2009 & Judgement of K.P.K. Service Tribunal dt: 3/6/2008 in Appl. No. 402/2002, & Subsequent Chief Engineer (Centre) G.W. Deptt: K.P.K. Peshawar Order No. 38E/519/CE/PCWB dt: 11.3.2011 - Mr. Shauqat Ali Storekeeper be reinstated in service with effect immediate effect, and the period from the date of his dismissal till re-instatement treated as Extra ordinary leave (Leave without pay). (Reported arrival on 11-4-2011) F.B.

Executive Engineer
Highway Division (N.W.A.)

Pay fixed in minimum pay deparly.

Executive Engineer
Highway Division (N.W.A.)

ATTESTED

Pay fixed in Revised Basic Scale B.P.S. 6. (2011) vide Finance Deptt. Peshawar No. 16/2011 dt: 4.7.2011

Executive Engineer
Highway Division (N.W.A.)

Drawn Rs = 51523/- on 9/11/2011 up to pay and allowances w/e 11/4/2011 to 31-7-2011.

Executive Engineer
Highway Division (N.W.A.)

C-17

OFFICE OF THE
CHIEF ENGINEER DEVELOPMENT
C&W DEPARTMENT NWFP PESHAWAR.

NO. 2/475/2336-138

Dated Peshawar, the 4/19/1988.

OFFICE ORDER.

Mr. Sher Wali Khan, Store Keeper attached to Dev: C&W Division, Miranshah is hereby suspended with immediate effect on the following charges :-

- i. Absence from duty since 2-4-1988.
- ii. Shortage of Cement, Steel, & bitume. worth Rs. 1,08,39,840/ approximately.
- iii. Taking-away stock record including stock Register etc:

Subsistence allowance as per rules will be admissible to him during suspension.

244/25-E
14-9-88

3A/HK
2
13/8

SDO Miran Shah
for preparation of C/Sheet
copy forwarded to the :-

SENIOR MOST STAFF OFFICER
C/O CHIEF ENGINEER DEV;
C&W DEPT: NWFP PESHAWAR.

1. Superintending Engineer, C&W Circle Bannu with ref: to Executive Engineer Dev: C&W Division Miranshah No. 335/1-8 dated 17-8-88 for information. Charges sheet/statement of allegations should be furnished in triplicate for vetting and service on the accused immediately.
2. Executive Engineer, Dev: C&W Division Miranshah for information and necessary action with ref: to his letter cited above.
3. Mr. Sher Wali Khan, Store Keeper C/O Executive Engineer Dev: C&W Division Miranshah for information.

SENIOR MOST STAFF OFFICER
C/O CHIEF ENGINEER DEV;
C&W DEPT: NWFP PESHAWAR.

No. _____ dated _____/____/88.

Copy to the SDO, Dev: C&W Sub Division Miranshah for information and necessary action.

ATTESTED

[Signature]

Executive Engineer (Dev)
C&W DEPT

D-18
AOK
A. J. J.

OFFICE OF THE CHIEF ENGINEER (DEV.)
COMMUNICATION & WORKS DEPARTMENT
N.W.F.P. PESHAWAR.

NO.2/69-E/517.

Dated Pesh: the 18-4-1994.

OFFICE ORDER.

WHEREAS, Mr. Sher Wali Store-keeper attached to (Dev:) C&W Division Miranshah was charge sheeted for the pilfrige mis-appropriation and shortage of Govt store worth Rs.1,37,98000/- (Rupees one Crore, Thirty seven lacs and ninty eight thousands only).

AND WHEREAS, for the said act of Mis-conduct, he was served with charge-sheet/statement of allegations under the Govt Servants (E&D) Rules, 1973 to which he replied.

AND WHEREAS, Engr. Hazrat Sultan Superintending Engineer of the C&W Deptt: was appointed as ENQUIRY OFFICER vide Chief Engineer (Dev) C&W Deptt: NWFP Peshawar order No.2/69-E (Confidential)/2540 dated 05-09-1989, who after conducting enquiry submitted his report.

NOW, THEREFORE, the Authority, after having considered the charges, the material on record, the explanation of storekeeper concerned, as well as reply of the storekeeper to the Final Show Cause and the findings of Enquiry Officer, in exercise of the powers conferred by Rule-5(4) of the NWFP Govt Servants (E&D) Rules, 1973, has been pleased to impose the following Major Penalties on the store-keeper Mr. Sher Wali with immediate effects:-

1. Dismissed from Service.
2. Recovery of Rs.1,37,98,000/- (Rs. One Crore, Thirty seven Lacs and Ninty eight thousand only) from the accused store-keeper (Mr. Sher Wali).

Sd/-----
CHIEF ENGINEER (DEV.)

Copy to:-

1. The Secretary to Govt of NWFP C&W Deptt: Peshawar for information w.r.to his No.50(E)C&W/8-4/90 dated 6-1-94.
2. The Chief Engineer C&W Deptt: for infor: & n/action.
3. The Superintending Engineer C&W Circle Miranshah for infor: & n/action.
4. The Executive Engineer (Dev) C&W Div: Miranshah for information & n/action.
5. The Political Agent, N.W. Agency for information and incontinuation of this Office D.P. letter No.2/69-E/161 dated 28-1-93 and further with the case as per rules/regulations for the recovery to the tune of Rs.1,37,98,000/- from the above said accused individual.
6. The Asstt: Director FIA Sub Circle DIK for infor: and w.r.to case No.12/1991 dated 27-11-91 for further n/a.
7. The Director Anti-corruption Estab: Pesh: for infor: and n/action.
8. The Manager Govt Printing & Sty: Deptt: Pesh: for the publication in the Gazette Notification under intimation to all concerned.
9. The Director, information NWFP Pesh: for infor: & n/action.

ATTESTED

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

in memoriam

(29)

E-19

Appeal No. 10/1995

Date of institution .. 22.12.94

Date of decision .. 31.12.95

Haji Sher Wali Khan S/O Haji Mohammad
Ayub Khan Village Palangzai, Tehsil
Miran Shah Waziristan Agency. (APPELLANT)

VERSUS

1. The Government of NWFP through the Chief Secretary NWFP.
2. The Secretary C&W Department, NWFP Peshawar.
3. The Chief Engineer (Development) C&W Department, Peshawar. (RESPONDENTS)

Mr. Inayatullah Khan,
Advocate.

..For appellant.

Mr. Muhammad Zubair,
Government Pleader.

..For respondents.

MR. HEDAYATULLAH KHAN
MR. TAJ MUHAMMAD KHAN

..MEMBER.
..MEMBER.

JUDGMENT.

HEDAYATULLAH KHAN, MEMBER:- This appeal has been filed by Haji Sher Wali Khan, against the order dated 18.4.94 passed by respondent No.3, whereby the appellant was dismissed from service and suspension order dated 11.9.88 issued by the Senior Most Staff Officer, office of the Chief Engineer (Dev), C&W Department. The prayer of the appellant is that the impugned order may be set aside and he be reinstated in service w.e.f. 4.4.88 with all back benefits.

Brief history of the case is that the appellant was appointed as Store Keeper of the C&W Stores at Miran Shah, N.W. Agency on 18.1.79. The appellant was selected by the Government of NWFP as a Group Leader (Nazim) of the personnel

ATTESTED

20

who were allowed to perform Haj in the year 1988 with the direction to report at the Elementary College D.I.Khan, on 1.4.88 for pre-Haj Training Scheduled to commence on 2.4.88 (Annexure-A). In compliance with the instruction of the Govt; the appellant left for D.I.Khan on 1.4.88, leaving the keys of the stores with the S.D.O. and Work Munshi. Leave application from 2.4.88 to 5.4.88 is attached as Annexure-B with the appeal. On 4.4.88, while the appellant was on Haj Training at D.I.Khan, Mr. Abdur Rauf Khattak, the then Political Agent, N.W. Agency, on the pretext of some irregularities, allegedly reported to him, directed his Assistant Political Officer to seal the C&W Stores at Miranshah (Annexure-C). In compliance with the order of P.A. N.W. Agency, the APO Miranshah took physical possession of the Stores the same day at 15.00 hours on 4.4.88 and sealed the stores without any physical stock taking of the stores in the absence of the appellant (Annexure-D). Since 4.4.88, the C&W Stores at Miranshah were handled under the direct control of the Political Authorities till 21.9.88 (over 5½ months), when the stores were desealed and handed over to the C&W Authorities at Miranshah; Bannu (Annexure-E). On his return from D.I.Khan on 6.4.1988, the appellant seeing the scene at the stores ^{reported} the matter to the C&W Authorities regarding the illegally sealing and handling the C&W Stores at Miranshah. The appellant appeared before the Governor's Inspection Team, while it was on a routine inspection visit to Miranshah from 26.6.1988 to 29.6.88 and handed over all the Stores Ledgers and registers duly completed till 31.3.88 to the Executive Engineer C&W, which were kept in safe custody by the appellant due to the fear of manipulation by the Political Authorities (Annexure-G). On 7.7.88, the appellant left for Haj (Annexure-H) and returned on 31.8.88 and submitted his arrival report on 1.9.88 (Annexure-J). The Political Authorities were bent upon the suspension of the

ATTESTED

appellant from the very outset to prevail upon the Chief Engineer and he was suspended vide office order No.2/47-E/2336-38 dated 4.9.88, on the charges of absence from duty since 2.4.88, shortage of cement, steel and bitumen worth Rs. 1,08,39,840/- approximately and taking away stock record including stock register etc (Annexure-K). On the request of Secretary C&W Department, the Governor's Inspection Team also carried out the check-up of the C&W Stores at Miran Shah and submitted their report on 25.4.90 (Annexure-L). Mr. Abdur Rauf Khan, the then Political Agent, after elapse of four years, registered a case against the appellant at the FIA Police Station D.I.Khan on 17.11.91. Photocopy of the FIR is Annexure-M with the appeal). The appellant was granted pre-arrest Bail on 19.1.92 by the Special Judge Anti-corruption NWFP (Annexure-N), investigations by the Anti-corruption NWFP are still in progress and are yet to be finalised. In August 1993 a charge sheet alongwith statement of allegations was issued by the Authorised Officer, C&W Department without any mention of the Enquiry Officer/Enquiry Committee (Annexure-C), to which the appellant submitted his reply(Annex-P). Without conducting a regular enquiry, the appellant was served with a final show cause notice on 23.3.94 (Annexure-Q), to which reply was given by the appellant, denying vehemently all the charges (Annexure-R). On 18.4.94, respondent No. 3 passed the impugned office order, whereby the appellant was dismissed from service and directing the recovery of Rs. 1,37,98000/- from him without any intimation to appellant (Annexure-S). Although the dismissal order was intentionally not served on the appellant, yet as soon as he came to know about it, he submitted his departmental appeal as pre-emption to the Secretary C&W Department Peshawar (Respondent No. 2) on 16.5.94 (Annexure-U). On the receipt of the departmental appeal of the appellant, the Chief Engineer (Dev) had no

ATTESTED

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other option but to direct the Executive Engineer(Dev) C&W Division Miranshah to hand over a copy of dismissal order to the appellant, who sent the same to the appellant who sent the same to appellant on 19.6.94 (Annexure-V), against which the appellant filed another departmental appeal to the Secretary C&W Department on 11.7.94 (Annex-W). In spite of requests and reminders, Secretary C&W Department appears to be deliberately evading reply to the departmental appeal. As no reply is given in response to the appeals of the appellant, hence the present appeal.

Respondents have filed their reply, contested the appeal and denied the claim of the appellant.

Arguments heard and file perused.

In this case the Tribunal will rely on what has been admitted/contended by respondents in their reply and during arguments of the case.

While replying to ground-I of the appeal, respondents have emphatically stated that the action taken against the appellant was in accordance with the E&D Rules 1973. It has also been admitted by the respondents in reply to Ground-21 of the appeal that all the disciplinary actions against the appellant was taken under Rule-5(4) of the Government of NWFP, E&D Rules, after proper Enquiry Committee/Enquiry Officer with their unanimous recommendations, holding the appellant responsible for the losses.

The Enquiry Procedure has been laid down in detail in sections 5 and 9 of the E&D Rules 1973, which provides inter-alia, the existence of an Authorised Officer, who is empowered to appoint an Inquiry Officer or Committee. After appointment of such Enquiry Officer or Committee, ^{he} shall frame charge sheet and statement of allegations to be served upon the accused officer/official to enable him to put in his defence and evidence in support thereof. It is also the requirements of law that things need to be done shall be done in the manner and sequence as prescribed/directed by law.

ATTESTED

23 63

In the instant case, the impugned order contained, the name of Engineer, Hazrat Sultan, Superintending Engineer, of the C&W Department, who was appointed as Inquiry Officer, vide Chief Engineer (Dev) C&W Department NWFP Peshawar, Order No. 2/69-E(Confidential)/2540, dated 5.8.89. The impugned order has been passed on 18.4.94, which inter-alia is based on the report of Enquiry Officer in 1989-90. Copy of the impugned office order is on file, which reveals that Hazrat Sultan was not appointed as the Enquiry Officer, but it was due to transfer of one Muhammad Islam, Superintending Engineer, C&W Department that Hazrat Sultan was substituted as Chairman of the Enquiry Committee, already constituted in the case.

As admitted by the respondents at Para-15 of their reply to the memo of appeal, the respondents have referred to this Enquiry Committee ^{in these} words "that the Enquiry Committee consisting of one Superintending Engineer, two Executive Engineers and one SDC of the department was constituted to probe into the matter. Before proceeding further into the matter, the report of the said inquiry committee was forwarded to Governor NWFP through Governor's Inspection Team. The Governor NWFP Peshawar however, made some observations, desiring fixation of responsibility over other concerned officers also i.e. Superintending Engineer/ZENs/SDOs as per their respective tenure of incumbancy. Accordingly another Enquiry Officer i.e. Mr. Saleem Javed, Superintending Engineer was appointed by the Secretary C&W Department Peshawar vide his order No. SO(E)C&W/8-4/90, dated 3.9.1991. The second Enquiry Officer also held Mr. Sher Wali Store Keeper sole responsible for the shortages in stores. The charge sheet/statement of allegations was prepared in light of the report by the Enquiry Committee/Enquiry Officer and after vetting by the Law Department, were served upon the Store Keeper by the Authorised Officer. The case has been thus thrice been enquired through":-

ATTESTED

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1. Governor's Inspection Team.
2. Enquiry Committee headed by Mr. Hazrat Sultan, S.E.
3. Mr. Saleem Javed, S.E."

From the above it is abundantly clear that the Enquiry Committee headed by Hazrat Sultan, was a preliminary enquiry, findings of which were later on submitted to the Governor, who made some observations on the findings and consequently another Enquiry was conducted by Muhammad Saleem Javed, S.E.

The Impugned order has been passed on the findings of the Inquiry Officer i.e. Hazrat Sultan, S.E, who was head of the Enquiry Committee. So it has been incorrectly referred to in the impugned order that Mr. Hazrat Sultan S.E. was appointed as Enquiry Officer. In fact he was head of the Enquiry Committee. Moreover, while substituting Hazrat Sultan S.E. as Chairman of the Enquiry Committee, the Chief Engineer C&W Department vide his letter dated 5.9.89 fixed the following terms of reference for the Enquiry Committee:-

- i. "To investigate the shortages of stores worth Rs. 1,08,89,840/- in C&W Division Miran Shah and fix responsibility on officials/officers concerned.
- ii. To investigate and fix responsibility on the officials/officers of C&W Circle Bannu for not taking action when shortages amounting to over Rs. 37 lacs were reported by XEN Miran Shah during 1986, i.e. 22nd April 1986 and 28th August 1986.
- iii. To investigate setting (solidification) of 158 bags cement and fix responsibility on the officials/officers concerned."

So this enquiry was limited to the above terms of reference and was not conducted according to charge sheet, which contain the following charges :-

"Mr. Sher Wali Store Keeper attached to Dev.C&W Division, Miran Shah, while incharge of stores of Dev.C&W Division Miran Shah, failed to report in time, to his superiors, the sealing of the stores by the Political Authorities on 4.4.1988.

ATTESTED

Instead of attending office he absented himself un-authorisedly from duty since 6.4.88 till 31.8.88.

While going into hiding he also took away the official record pertaining to the said Stores till he handed over the same to the XEN in the presence of Governor's Inspection Team on 28.6.88.

Shortages were found in the store worth Rs. 1,40,57,520/85 in the items detailed in lists annexed as A&B to the charge sheet.

He has failed to maintain proper record in respect of the stores as required under the rules and thus he made himself liable to action under Government Servants(E&D)Rules 1973."

So the report of Hazrat Sultan (Head of the Enquiry Committee), was limited to the terms of reference fixed by the Chief Engineer, C&W Department vide his letter stated above and no enquiry has been conducted to go into the charges, which have been framed in the charge sheet and statement of allegations. In nut shell the enquiry conducted by Hazrat Sultan was a preliminary inquiry, which was followed by another enquiry, conducted by Muhammad Saleem Javed, S.E. as admitted by the respondents. So according to the Rules, the preliminary inquiry of Hazrat Sultan which was limited according to ^{the} terms of ^{its} reference, could not be stated to have been constituted according to the relevant provision of E&D Rules to probe the enquiry regarding charge sheet and statement of allegations served upon the appellant on 23.3.94 in this case.

Keeping in view the above facts, the contention of the respondents that disciplinary action was taken under rule-5(4) of the Government of NWFP, E&D Rules, 1973 is not well based, because in the instant case no Enquiry Officer was appointed after the service of charge sheet and statement of allegations on the appellant in which there is no mention of appointment of any Enquiry Officer, Statement of

ATTESTED

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allegations and charge sheet were prepared after completion of all the enquiries, including that of Hazrat Sultan S.E. Moreover there is nothing on record to prove that the accused official (appellant) was associated with the proceedings of the enquiries, conducted by the Enquiry Officers.

It is pertinent to note the findings/observations of the Worthy Governor, NWFP, which are on the preliminary enquiry of Hazrat Sultan :-

"Subject:- PRELIMINARY DEPARTMENTAL ENQUIRY REPORT OF SHORTAGES OF C&W STORES AT MIRANSHAH,

This is a case of shortages amounting to Rs. One Crores and Thirty Eight lacs and not a leaf seems to be moving. In fact lot of people in the chain of responsibility ought to get shivers in their spines but so is not the case as I observed it while going through the Enquiry Report. The Enquiry Committee constituted by the Chief Engineer (Dev) have gone through the receipts and issues aspects of the store and come to the figure of discrepancy but what intrigues me is that the entire onus is placed upon a Store Keeper, Mr. Sher Wali, an official in BPS-6. The other aspect is that these discrepancies must have accumulated over an extended period."

2. It is difficult to believe that in the C&W Department the store keepers are all in all responsible for stores worth crores of rupees to play about without checks, supervision, inspections etc. by officers such as SDOs, XEMs, S.E. etc. The principle of responsibility is that it goes with the rank and is echeloned pyramidically.

3. Besides the PWA paras quoted by the Committee which are of general nature regarding accounting, storing and issuing, what are the rules/instructions on responsibility, checking, stock taking etc by the concerned SDO/XEM/SE and their responsibilities in this field. Surely none of them can be developed of the responsibilities involving huge quantity of Stores worth crores of rupees. Where does the accountability start and end?

4. May I please be guided on this vital issue before any further action is initiated."

ATTESTED

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In view of the above and the fact that relevant procedure has not been adopted as laid down under the E&D Rules, 1973, the impugned order is set aside, the appellant is reinstated in service from the date of his suspension. The case is remanded to the respondent department for a fresh enquiry under the relevant rules.

The Tribunal attaches much importance to this case specially as public money/property has been reportedly mis-used/squandered in an obvious illegal manner and therefore, directs that an inquiry committee be constituted under the E&D Rules by the Authorised Officer comprising suitable officers/Government servants who are capable to dig out the shortage (shortages/losses having spread over many officers) and loss and fix responsibility of the mis-conduct ^{on} those responsible, so that the real culprits are appropriately punished according to the extent of mis-conduct committed by them in this case.

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

ANNOUNCED.
31.12.1995.

Taj Muhammad

(TAJ MUHAMMAD KHAN)
MEMBER.

(Hidayatullah Khan)
MEMBER.

ATTESTED

[Signature]

OFFICE OF THE CHIEF ENGINEER
C&W DEPARTMENT NWFP PESHAWAR

NO.5267/2/69-N

Dated, Peshawar the 26/1/2002

OFFICE ORDER:

Notified that Mr. Sher Wali Khan Store Keeper Development C&W Division Miranshah was proceeded under the Government Servants (E&D) rules 1973 in the enquiry regarding differing mis-appropriation and shortage of Government store at Miranshah worth Rs. 1, 37, 98000/- (Rs. One crore Thirty seven Lacs and ninety eight thousand only.

- 2- That for the said act of misconduct, he was served with charge sheet/statement of allegations under the E&D Rules 1973 to which he replied.
- 3- That Mr. Muhammad Akram Executive Engineer, Dev: C&W Division the appointed and inquiry officer vide chief engineer (South) C&W Department Peshawar No. 687/269-5 dated 7.7.2000, who after conducting inquiry submitted his report to the authorized Officer.
- 4- No.273/2/69 after having considered the charges, the material on record the explanation of the Store Keeper concerned, as well as reply of the Store Keeper to the show cause notice findings of the inquiry officer, in exercise by rule-5(4) of the NWFP Government Servant (E&D) rules 1973, the authority has been pleased to impose the following major penalties on the store keeper Mr. Sher Wali with immediate effect:-
 1. Dismissal from service.
 2. recovery of Rs. 1, 37, 98000/- (Rs. One crore Thirty seven Lacs and ninety eight thousand only) from the accused store keeper (Mr. Sher Wali).

CHIEF ENGINEER

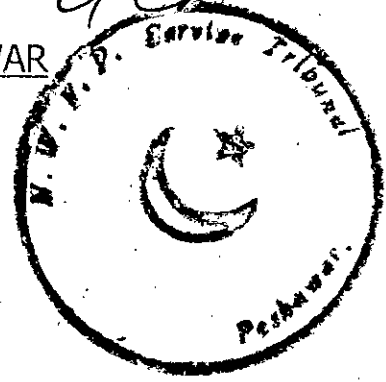
Copy forwarded to all concerned.

*Attached
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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 402/2002

Date of Institution. .. 23.4.2002
Date of Decision .. 03.6.2008



Haji Sher Wali Khan S/O Haji Muhammad Ayub Khan,
Village Palangzai, Tehsil Miranshah, North Waziristan
Agency: .. (Appellant)

VERSUS

1. Government of NWFP through Chief Secretary, NWFP Peshawar.
2. Government of NWFP through Secretary, C&W Department, Peshawar.
3. Chief Engineer (Dev:) C&W Department, Peshawar. (Respondents)

APPEAL AGAINST THE IMPUGNED ORDER DATED 26.1.2002 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND RECOVERY OF AMOUNT TO THE TUNE OF RS. 1,37,98,000/- FROM THE APPELLANT AND AGAINST THE IMPUGNED ORDER DATED 26.03.2002, WHEREBY THE APPELLANT'S APPEAL FOR REINSTATEMENT IN SERVICE WITH ALL BACK BENEFITS AND WAIVING OFF THE RECOVERY OF AMOUNT TO THE TUNE OF RS.1,37,98,000/- WAS REJECTED.

MR. SHAKEEL AZAM AWAN,
Advocate

For appellant.

MR. TAHIR IQBAL,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
DR. ABDUR RAUF,

CHAIRMAN
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- The appellant was a Store Keeper of the C&W Store at Miranshah North Waziristan Agency. He was undergoing Hajj training at D.I.Khan on 4.4.1988, when the then Political Agent North Waziristan Agency directed his Assistant Political

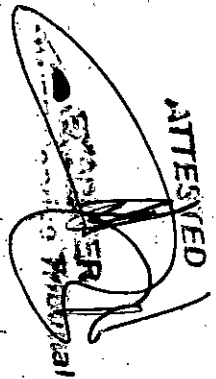
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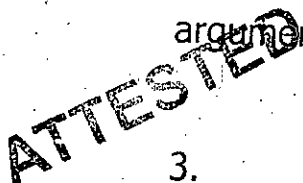
ATTESTED
EXAMINED BY
Chief Service Tribunal
Peshawar

Agent to seal the stores. The appellant returned from training and found that the stores were sealed. The matter was reported by him to the authorities. He then went for Hajj. Enquiry proceedings were conducted and, on 18.4.1994, the appellant was dismissed from service, and the penalty of recovery of Rs.1,37,98,000/- was also imposed against him. Vide judgment dated 31.12.1995 in appeal No. 10/1995 instituted on 22.12.1994, this Tribunal came to conclusion that the relevant procedure under the NWFP Government Servants (E&D) Rules, 1973 was not adopted. The appeal was accepted, the impugned order was set aside and the appellant was reinstated in service from the date of his suspension. The case was remanded to the Department for fresh enquiry with the direction that an enquiry committee be constituted under the E&D Rules by the authorized officer comprising suitable officers/government servants who are capable to dig out the shortage (shortages/losses having spread over many officers) and loss and fix responsibility of the mis-conduct on those responsible, so that the real culprits are appropriately punished according to the extent of misconduct committed by them in this case. On 10.10.2000, Muhammad Akram Executive Engineer submitted his report. The proceedings mentioned by him show that he studied the previous enquiry reports and examined the appellant in person. The S.D.O incharge and Store Munshi were also heard in person and they refused to accept that keys were handed over to them.

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2. The respondents contested the appeal. We heard the arguments and perused the record.

3. The report of the enquiry officer is not in accordance with the directions of this Tribunal. No enquiry committee was ever constituted, and, enquiry officer was appointed vide letter dated 7.7.2000. By that time, the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 had come into force. The said enquiry was not conducted in

ATTESTED


31

accordance with the provisions of the mentioned Ordinance. It is not recorded in the enquiry report that the enquiry officer had ever checked the stores' record or any other official record. He did not examine any of the witnesses in the presence of the appellant, with a right to him to cross-examine them. He did not provide a chance to the appellant to produce his evidence, if any, and to be heard in detail on the basis of the evidence of the parties. The enquiry report does not stand proper at the touchstone of the mentioned Ordinance, and the principles of natural justice.

4. We therefore, accept the present appeal, order the reinstatement of the appellant into his service, and repeat our directions as given in the judgment dated 31.12.1995 with a change that the proceedings be conducted in accordance with the provisions of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000, with a chance of hearing to the appellant to cross-examine the official witnesses and to check the record produced against him, with a right to cross-examine the witnesses who may be the custodian of such records. The appellant shall have a right to record his detailed statement and to produce his own evidence, if any, and to be heard in detail regarding the evidence so produced. He shall have also a right to be heard, besides submitting written reply to the show cause notice, if any. The period of non-availability of the appellant for duty due to his dismissal from service till reinstatement as aforesaid shall be treated by the competent authority in accordance with the rules on the subject. The parties are directed to appear before the competent authority on 20.6.2008. Parties are, however, left to bear their own costs.

ANNOUNCED
03.06.2008

[Handwritten signature]
Deputy Secretary

ATTESTED

[Handwritten signature] Justice (R) Gulim Akbar
Chairman
[Handwritten signature] Mr. Abdul Rauf
Member

Date of presentation of application	3.6.08
Number of words	1200
Copying fee	8/-
Organ	7/-
Total	15/-
Name of copyist	<i>[Handwritten name]</i>
Date of completion of copy	13.6.08
Date of delivery of copy	13.6.08

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

H-38

PRESENT

MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL APPEAL NO. 17-P OF 2009

(On appeal from the judgment of the
N.W.F.P. Service Tribunal, Peshawar,
dated 3.6.2008 passed in Appeal No.
402 of 2002)

The Government of N.W.F.P. through Chief Secretary etc Appellants

Versus

Haji Sher Wali Khan Respondent

For the Appellants: Mr. Qaiser Rasheed Khan, Addl. A. G. N.W.F.P.

For the Respondent: Mr. Waqar Ahmed Seth, ASC

Date of Hearing: 02.02.2010

JUDGMENT

MIAN SHAKIRULLAH JAN, J.- In this service matter, the only question involves is whether after remand of the case by the N.W.F.P. Service Tribunal, the fresh inquiry/proceedings were to be conducted in accordance with the provisions of N.W.F.P. Government Servants (Efficiency and Discipline) Rule, 1973 or N.W.F.P. Removal from Service (Special Powers) Ordinance, 2000.

2. Since the case pertains to the year 1988 and the proceedings have already been initiated against the respondent under the N.W.F.P. Government Servants (Efficiency and Discipline) Rule, 1973 and according to Section 13 of the Ordinance, the proceedings which had already been initiated before the commencement of the Ordinance shall continue in accordance with the law under which it had already been initiated. Since the Service Tribunal while remanding the case has directed that the fresh proceedings to be taken under the Provisions of the Ordinance which are in conflict with Section 13 of the Ordinance, therefore, while maintaining the order of remand for fresh inquiry/disciplinary proceedings,

ATTESTED

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the same may be taken under the N.W.F.P. Government Servants (Efficiency and Discipline) Rule, 1973 and not under the Ordinance.

3. The appeal is allowed in the above terms.

✓

Peshawar
February 2, 2010
Shirazi/*
3/2/2010

"NOT APPROVED FOR REPORTING"

ATTESTED



I-34

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR.

No. 38-E / 514 / CE / C&WD

Dated Peshawar the 11 / 03 / 2011

OFFICE ORDER

(54)

In compliance with the judgment orders of the Supreme Court of Pakistan dated 02-02-2010 in CPLA No. 17 of 2009, and judgment of the Khyber Pakhtunkhwa Service Tribunal dated 03-06-2008 in Service Appeal No. 402/2002, Mr. Sher Wali Store Keeper O/O the Executive Engineer C&W Division NWA (Dismissed from service vide the then Chief Engineer W&S Department Peshawar o/o No. 5267/2/69-E dated 26-01-2002) on account of pilferage, misappropriation and shortage of Govt. Store at Miranshah worth Rs. 1,37,98,000/- (One Crore Thirty Seven Lacs and Ninety Eight Thousand Only), is hereby re-instated in service, with immediate effect. The period from the date of his dismissal till re-instatement in service, is hereby treated as Extra Ordinary Leave (Leave Without Pay).

(Engr. Muhammad Ijaz Yousafzai)
CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

- 1) Secretary to Govt. of Khyber Pakhtunkhwa, C&W Department Peshawar w/r to the meeting held on 07-03-2011 in connection with Execution Petition No. 103/2010 Haji Sher Wali Khan V/S Govt. of Khyber Pakhtunkhwa and others.
- 2) Secretary Admin & Coordination, FATA Secretariat Peshawar.
- 3) Chief Engineer (FATA) C&W Department Peshawar. He is requested to initiate further proceedings afresh, as per the orders of Service Tribunal.
- 4) Registrar Services Tribunal Khyber Pakhtunkhwa Peshawar.
- 5) Political Agent NWA at Miranshah.
- 6) Section Officer (Audit) FATA Secretariat Peshawar for information with reference to Advance Para No. 299 on the Accounts of Ministry of SAFRON, Islamabad for the year 2008-09 (Audit Year 2009-10).
- 7) Executive Engineer Highway Division NWA at Miranshah.
- 8) Agency Accounts Officer NWA at Miranshah.
- 9) Official Concerned.

CE FATA W&S Deptt.
Diary No. 2474
Date 16-3-2011
Case No.
C.E. W&S
S.I. NO
TO 2/69-E
D.E. (B)
D.E. (R)
D.E. (W&S Deptt.)
A.O. ✓
BEAO

11/3/11
CHIEF ENGINEER (CENTRE)

ATTESTED

To

The Executive Engineer,
Highway Division, N.W. Agency
Miranshah.

E

39

Subject:- ARRIVAL REPORT.

Reference. Chief Engineer(C)C&W Deptt: NWFP Peshawar
Order No. 38-E/514/CE/C&WD dated 11/3/2011.

Sir,

Kindly refer to the above order, I am submitting my
arrival report today in pursuance of the Chief Engineer(C)C&W
Peshawar order cited above.

Hence, I do hereby submit my arrival report in this
office on 11/4/2011.(FN).

Your's Obediently,

Sher Wali Khan

(SHER WALI KHAN)
STORE KEEPER, HIGHWAY DIVN:
N. W. AGENCY, MIRANSHAH.

15 11/4/2011

ATTESTED

*M
q*

36

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 65-E / 1168 / CE / C&WD

Dated Peshawar the 22 / 05 / 2013

OFFICE ORDER

In pursuance to Section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973 Mr. Sher Wali Store Keeper of C&W Division Miranshah (NWA) is hereby retired from Govt. Service w.e.f. 04-02-2013 (A.N) on attaining the age of superannuation (60-years) according to his recorded date of birth viz. 05-02-1953.

(ENGR. SHAUKAT ALI SHAH)
CHIEF ENGINEER (CENTRE)

Copy forwarded to the -

- 1) Chief Engineer (FATA) W&S Department Peshawar with reference to his letter No. 1103/6/23-E dated 08-05-2013. The Service Book of the above named official is returned in original.
- 2) Superintending Engineer camp at Peshawar.
- 3) Executive Engineer C&W Division Miranshah.
- 4) Agency Accounts Officer Miranshah (N.W.A) for information.
- 5) Official concerned.

CHIEF ENGINEER (CENTRE)

AW	Serial No. 1
1460	22-5-2013
(R)	6/23
33AO	

ATTESTED

To.

J-~~37~~37

1. The Secretary to Government of Khyber Pakhtunkhwa, Communications and Works Department, Peshawar.
2. The Chief Engineer (CENTER), C & W Department, Peshawar
3. The Chief Engineer, FATA C& W Department, Peshawar

Through: Proper Channel

SUBJECT: APPEAL/REVIEW/REPRESENTATION from Office Order # 38-E/514/CE/C&WD, issued by C.E (Center), C& W D dated 11.3.2011 not yet communicated to me but received from the Khyber Pakhtunkhwa Service Tribunal on 8.4.2011 during the date of hearing in my execution petition.

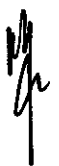
Sir,

Very kindly refer to the subject cited above. I am submitting my arrival report today in pursuance of Office Order cited above, though it has not yet been conveyed to me by your office. The Service Tribunal had reinstated me on 3.6.2008. Appeal of Government before Supreme Court was decided in my favour on 2.2.2010. Despite that, order of reinstatement was not being issued. I had to move Service Tribunal for execution and as such Office Order noted above was issued.

The period during, which I remained dismissed from service, is treated as 'Leave without Pay' per such office order but it is not known under what legal authority. I have got reservation about that portion of order for the following legal reasons:-

1. No fault can be attributed to me for that absence, as it was result of my unlawful dismissal, as can be visualized from the very judgment of the Service Tribunal upheld by the Supreme Court on 2.2.2010;
2. During that period when I remained DISMISSED, I did not do any other job or business and I had to depend for my livelihood on my children who cultivate their lands in the village;
3. I remained JOBLESS during that period;
4. The treatment of such period as Leave without Pay offends against basic norms of Constitution, Law and rules. Besides, it is against justice and fair play as well;

ATTESTED



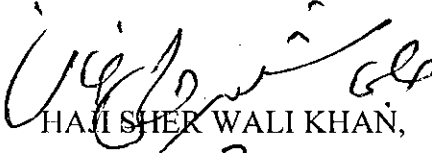
38

5. I have been condemned unheard. I was/am innocent. I remained out of job for such long time without any fault on my part. I cannot be unnecessarily burdened with such liability, as it itself amount to punishment imposed otherwise than in due course of law.
6. Your goodself has got ample powers to rectify the Office Order and treat it as reinstatement w.e.f the date of dismissal giving my all back benefits including salaries etc, to which I am entitled under the law and rules.

It is, therefore, requested that the Office Order dated 11.3.2011 may very kindly be reconsidered/reviewed and on accepting my this appeal/review/representation, the Office Order may kindly be modified by giving me reinstatement w.e.f the date of dismissal allowing my all back benefits including salaries etc, to which I am entitled under the law and rules.

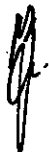
Dated 11-4-2011

Yours obediently,


HAJI SHER WALI KHAN,
Store Keeper,
C & W Division, Miranshah,
(NWA)
Khyber Pakhtunkhwa

P/C

ATTESTED



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2016

Sher Wali Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt. of KPK


(RESPONDENT)
(DEFENDANT)

I/We Sher Wali Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2016


CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

original copy

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.344/2016

Mr. Sher Wali Khan, Retired Store Keeper, C&W Divn. Miranshah
North Waziristan
Agency.....Appellant

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa Peshawar.
- 3- The Chief Engineer(FATA) C&W Department, Warsak Road,Peshawar.....Respondents

RESPECTFULLY SHEWETH

COMMENTS OF RESPONDENT(s) 1 TO 3

PRELIMINARY OBJECTION

- i) The instant Appeal is not maintainable in its present form.
- ii) The contents of the Appeal are misconceiving and the material facts have been concealed from this Hon'ble Tribunal.
- iii) The Appellant is estopped by his own conduct to prefer the instant Appeal before this Hon'ble Tribunal.
- iv) The Appeal is bad for non-joinder and miss-joinder of un-necessary parties.
- v) The Appellant has no locus standi and cause of action.
- vi) The Appellant has not come to this Hon'ble Tribunal with clean hands.
- vii) The Appeal is badly time barred as the orders were passed on 11/3/2011 & 4/5/2011. Under Section-4 of the Service Tribunal Act, 1974, the delay is on the part of Appellant who did not filed the case within the statutory period of limitation, hence the instant appeal is liable to summarily rejection in limine.

FACTS

1. Pertains to record.
2. To clear the facts, that some where in 1988, on the general complaints to Political Administration, about the mis-use of stores of C&W Division Miranshah. The Political Agent sealed the store and ordered to conduct the Inquiry to work-out losses etc. The official respondent in C&W started fact findings about the losses. Resultantly losses amounting to Rs. 1,37,98,000/- were detected and as a consequence thereto disciplinary proceedings were taken. As a result he was dismissed from service alongwith orders to recovery of losses vide order dated 18-04-1994.

3. Correct, on the orders of this Honorable Tribunal dated 31/12/1995 appellant was reinstated with all back benefit and ordered for denovo inquiry as per order of Honorable Tribunal.
4. Mis-Interpreted. Actually after finality of denovo Inquiry, the appellant was again held responsible for the losses, thus he was again Dismissed on 26/1/2002 alongwith recoveries of the ibid losses. Correct the appellant again filed Appeal No. 402/2002 in the Tribunal against these order dated 26/1/2002. At the out-set of last judgment dated 3/6/2008 passed by Tribunal, it was held that the Respondent department shall conduct the proceedings against the appellant under R.S.O.
5. Correct, Respondents filed CPLA before the Apex Supreme Court of Pakistan against the orders dated 3/6/2008 (in service appeal No. 402/2002). On the judgment dated 2/2/2010 of the Supreme Court of Pakistan in the CPLA it was held to Conduct Inquiry under E&D Rules instead of RSO, but the other connected part of the Tribunal orders dated 30/6/2008 was kept intact i.e.

“The period of non-availability of the appellant for the duty due to his dismissal from service till Reinstatement as aforesaid shall be treated by the competent authority in accordance with the rules on the subject.”

6. Thus, it was resting open to the authority to act accordingly under the rules. Taking into cognisance both the orders dated 3/6/2008 of the Tribunal & orders dated 2/2/2010 of the Supreme Court of Pakistan, the appellant was reinstated into service and the intervening period, between the dismissal and re-instatement was termed into leave without Pay (E.O.L) vide orders dated 11/3/2011. So the Prayer as sought for i.e 18/4/1994 till 11/3/2011 allowing him all back benefit is mis-conceiving, because he was Dismissed this time from Service w.e.f 26/1/2002 and re-instated on 11/3/2011, the relevant entries as recorded in the Service Book (since Annexed by the appellant) page, 11 to 16 and so on, clarify that since 1994 and thereafter he has received the perk/benefits/salaries of service even in the past when, he was firstly dismissed, no entries to this effect appears, meaning thereby that he with the connivance of office hands at Miranshah got benefits of Pay/increments as usual. At the last when the later Inquiry was ordered under the E&D Rules, the same could not reached to its finality, in the mean while, appellant was reached to the age of Superannuation on 4/3/2013, therefore under Section-13 of Civil Servant Act, 1973, his retirement orders were issued

on 22-05-2013 and the enquiry proceedings automatically stands abated as per rules. As far as his departmental appeal sent through proper channel on 11/4/2011, was responded by replying Respondent-2, and Respondent-1 & 3 were apprised vide Memo No. 38-E/ 306/CE/C&WD dated 4/5/2011 (Annex-I) that the order with regard to treating the intervening period, into leave on full pay, from the date of dismissal till reinstatement can not be considered / modified. The contention of appellant, without enjoying full pensionary benefit is baseless. Appellant shall to prefer Pension Papers for the qualifying / non-qualifying service and get it finalized.

7. The instant appeal filed on 8/3/2016, in the Tribunal is not entertainable, being badly time barred taking into account his departmental appeal dated 11/4/2011 and its further response dated 4/5/2011. Under Section 4 of the Tribunal Act, 1974 the appellant should have to file the instant appeal within the statutory period of limitation, hence liable to rejection on the following grounds.

GROUNDS

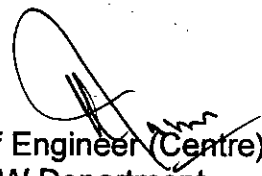
- A. Incorrect, appellant is at liberty to prefer Pension Papers alongwith other pre-requisite and to avail the Pension benefits for the Service rendered as qualifying. The act of Respondents acted as per Law.
- B. Incorrect, appellant had ever been treated with the parameter of Rules/Regulations & Laws as applicable and in pursuance to the order of Courts as passed from time to time.
- C. Incorrect-Generally, after retirement, it is the sphere responsibility of the concerned official to submit pension Paper & other requisites to the concerned authority for its process with audit and the final payment on pension rests with concerned audit, under whom jurisdiction a person has been paid last Salaries.
- D. Incorrect, as stated above, any delay (if exist), cannot be attributed to the official Respondent. He may to prove for his allegation, if he had.
- E. It is an established law that every official / Government Servant after retirement, shall be paid pension according to qualifying length of service, subject to that Pension Paper and other requisite are submitted by the claimant.
- F. Incorrect. Appellant amalgamate / mix-up the issue of Pension with that of, to term the period of Extra Ordinary Leave into leave, which gives ambition, that the appellant himself is not interested for the Pension.

G. The same as replied at Para-E.

H. Incorrect. The appellant, as stated at para-A, shall submit Pension documents complete in all respect to the relevant authority for its further process with audit.

In the wake of above submission as replied in facts and grounds as well, the instants appeal, being devoid of merits, time barred, may graciously be dismissed.


Secretary
C&W Department
Peshawar (Respondent-1)


Chief Engineer (Centre)
C&W Department,
Peshawar (Respondent-2)


Chief Engineer (FATA)
W&S Department,
Peshawar (Respondent-3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.344/2016


Mr. Sher Wali Khan, Retired Store Keeper, C&W Division Miranshah
North Waziristan
Agency.....Appellant

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa Peshawar.
- 3- The Chief Engineer(FATA) C&W Department, Warsak Road,Peshawar.....Respondents

AFFIDEVIT

I, Abdur Rashid Tareen, Administrative Officer Office of the Chief Engineer (Centre) C&W Department Peshawar, do hereby solemnly affirm and declare that the contents of attached comments are true and correct to the best of my knowledge and belief that nothing has been concealed from this honorable court.


DEPONENT

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR.

No. 38-E / 306 / CE / C&WD

Dated Peshawar the 4 / 05 / 2011

To

The Section Officer (Estt :),
C&W Department, Peshawar.

Subject: APPEAL/REVIEW/REPRESENTATION FROM OFFICE ORDER NO.38-E/CE/ C&WD ISSUED BY CE (CENTRE) C&WD DATED 11-03-2011 NOT YET COMMUNICATED TO ME BUT RECEIVED FROM THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ON 08-04-2011 DURING THE DATE OF HEARING IN MY EXECUTION PETITION.

Reference: Your memo No. SOE/C&WD/24-60/2011, dated 21-02-2011.

I am directed to refer to the subject noted above and to say that the judgment announced on 03-06-2008 in the Civil Appeal No. 402/ 2002 in Para-4 is reproduced hereunder: -

"We therefore, accept the present appeal, order the reinstatement of the appellant into his service, and repeat our directions as given in the judgment dated 31-12-1995 with a change that the proceedings be conducted in accordance with the provisions of the N.W.F.P Removal from Service (Special Powers) Ordinance, 2000, with a chance of hearing to the appellant to cross-examine the official witnesses and to check the record produced against him, with a right to cross-examine the witnesses who may be the custodian of such records. The appellant shall have a right to record his detailed statement and to produce his own evidence, if any, and to be heard in detail regarding the evidence so produced; he shall have also a right to be heard, besides submitting written reply to the show cause notice, if any. The period of non-availability of the appellant for duty due to his dismissal from service till reinstatement as aforesaid shall be treated by the competent authority in accordance with the rules on the subject. The parties are directed to appear before the competent authority on 20-06-2008. Parties are, however, left to bear their own costs".

On filing the CPLA- in Supreme Court of Pakistan No-17-Pof 2009, the orders were passed to the effect that: -

"Since the Service Tribunal while remanding the case has directed that the fresh proceedings to be taken under the provision of the ordinance which are in conflict with Section -13 of the Ordinance, therefore, while maintaining the order of remand for fresh enquiry/disciplinary proceedings, the same may be taken under the NWFP Government Servants (Efficiency and Disciplinary) Rule, 1973 and not under the ordinance".

"The appeal is allowed in the above terms".

Therefore, in light of the above the reinstatement orders in question cannot be recalled or modified by granting the benefits of salaries etc.

Matter is reported please.

Copy to the Chief Engineer (FATA) C&W Department Peshawar w/r to his memo No.1241/2/69-E, dated 26-04-2011.

(AMINULLAH KHAN)
ADMINISTRATIVE OFFICER

375/2011
ADMINISTRATIVE OFFICER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No.344/2016

SHER WALI KHAN

VS

GOVT: OF KPK

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

From I to vii:

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct by the respondents hence need no comments.
- 2- Incorrect and not replied accordingly. That appellant was served in the respondent Department as Store Keeper. That the respondent Department conducted inquiry on an anonymous complaint and later on the basis of that anonymous complaint the appellant was dismissed from his service vide order dated 18.4.1994 without any fault on the part of appellant.
- 3- Admitted correct hence need no comments.
- 4- Incorrect and misconceived. That appellant was re-instated on the directions of the Hon'ble Service Tribunal vide dated 31.12.1995. That after re-instatement appellant was serving in his respective Department quite efficiently and up to the entire satisfaction of his superiors. That after seven years i.e. on 26.1.2002 the appellant was again dismissed from service without giving chance of personal hearing/defense. That appellant was again submitted service appeal before the august Service Tribunal which was accepted by the august Service Tribunal and re-instated the appellant on his service with further directions to conduct the proceeding in light of provisions of the NWFP Removal from Service Special Order Ordinance 2000.
- 5- Admitted correct to the extent of CPLA while the remaining para is incorrect. That the Hon'ble Supreme Court directed the respondent Department to conduct the proceeding

against the appellant under the NWFP Government Servant E&D Rules 1973. That finally the respondent Department re-instated the appellant was re-instated into service but without back benefits. That appellant is fully entitled for the grant of back benefits of intervening period of the appellant.

- 6- Incorrect and not replied accordingly. That finally vide order dated 11.3.2011 the appellant was re-instated into service but without back benefits (by treating the intervening period of the appellant as leave without pay). That appellant feeling aggrieved filed Departmental appeal for the grant of back benefits of the intervening period but sadly no reply has been received so far. That in the meanwhile the appellant was retired on superannuation basis vide dated 22.5.2013 without enjoying full pensionary benefits.

GROUND:

(A to H):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules hence denied. That not allowing back benefits and full pension to the appellant the respondents violated the law of natural justice. That the respondents acted in arbitrary and malafide manner by not allowing the appellant back benefits and full pension inspite of the fact that appellant has served the respondent department for more than 33 years. That the respondents violated Article 38(e) of the Constitution of Pakistan 1973 by not releasing the pension and other back benefits to the appellant. That according to section 13 sub section b of the Civil servant Act 1973 the appellant is fully entitled for the grant of pension but inspite of that the respondents are not willing to do the same. That according to settled law pension is not the bounty of the state but rather it is the inalienable right of that Civil servant who rendered services for the same. That the respondents discriminated the appellant on the subject noted above and as such the respondents violated the principles of natural justice.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

APPELLANT

SHER WALI KHAN

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE**