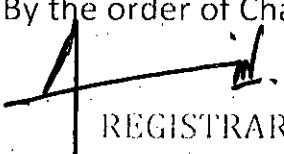


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 950/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 06.12.2023 | <p>The implementation petition of Mr. Sajjad ur Rehman resubmitted today by Roeeda Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p> |

The execution petition in appeal no. 2770/2021 received today i.e. on 24.11.2023 is returned to the counsel for the petitioner with the following remarks.

- 1- Copy of application moved by the petitioner to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file. If not, the same process be completed and then after approach to this Tribunal for the implementation of Judgment.
- 2- Annexures of the petition are unattested.
- 3- Address of the petition is incomplete be completed according to the rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.

No. 3708 /S.T,

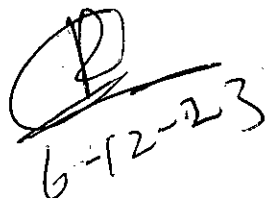
Dt. 27/11 /2023.



REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Roeeda Khan Adv.
High Court Peshawar.

In Response of objection No 1
It is stated that the appealed
petitioner do the instated execution
petition the appealed filed
execution petition No 300/2022
In Response of which the appealed
has been Reinstated on 31-8-22
which a 'Answer B'
objection No 2 has been Removed
objection No 3 has also been removed


6-12-23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 950 /2023

In
In Service Appeal: 2770/2021

Sajjad Ur Rehman S/o Haji Yaqoob Jan R/o House No 973,
Street No. 28, Sector E-5, Phase-7 Hayatabad Peshawar.

Section officer (Chines)
Home department civil Appellant /petitioner
Secretariat Peshawar -

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt of Khyber Pakhtunkhwa through Chief Secretary Home & Tribal Affairs Department Civil Secretariat Peshawar.
3. Govt of Khyber Pakhtunkhwa through secretary Establishment Civil Secretariat Peshawar.

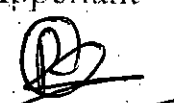
..... Respondents

Index

| S.No. | Description of documents | Annexure | Pages |
|-------|-----------------------------|----------|-------|
| 1. | Copy of petition | | |
| 2. | Copy of Judgment | A | 1-2 |
| 3. | Copy of reinstatement order | B | 3-7 |
| 4. | Wakalat Nama | | 8-9 |


Appellant

Through


Robeda Khan

Advocate High Court,
Peshawar.

(1)

BEFORE THE KHYBER PAKHTUNKHWASERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 950 /2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9431

In

In Service Appeal: 2770/2021

Dated 24-11-2023

Sajjad Ur Rehman S/o Haji Yaqoob Jan K/o House No 973,
Street No. 28, Sector E-5, Phase-7 Hayatabad Peshawar.

Section officer (Chinese)
Home Department civil Appellant/Petitioner
Secretariate Peshawar

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary
Civil Secretariat Peshawar.
2. Govt of Khyber Pakhtunkhwa through Chief Secretary
Home & Tribal Affairs Department Civil Secretariat
Peshawar.
3. Govt of Khyber Pakhtunkhwa through secretary
Establishment Civil Secretariat Peshawar.

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS FOR PROPERLY
IMPLEMENTATION OF THE JUDGMENT DATED
01/02/2022 OF THIS HONOURABLE TRIBUNAL IN
LETTER AND SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. 2770/2021
before this Hon' able Tribunal which has been accepted by this
Hon' able Tribunal vide Judgment dated 01/02/2022. (Copy of
Judgment is annexed as Annexure-A).

(2)

2. That in response of the above said Judgment the appellant has been reinstated on 31.08.2022 instead from the date of decision by the respondent department. (Copy of reinstatement order is attached as Annexure-B).
3. That the respondent department is legally bound to implement properly the judgment passed by this Honourable Tribunal.
4. That as such the impugned dismissal order dated 10.09.2020 has been set aside by this Honourable Tribunal. So the petitioner is entitled for the back benefits w.e.f 10.09.2020 to till 01.02.2022.
5. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.

It is therefore requested that on acceptance of the instant execution Petition the respondents may kindly be directed to properly implement the Judgment of this Hon' able Tribunal letter and spirit.

Through

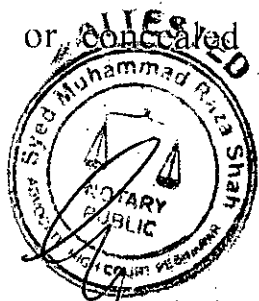

Appellant/Petitioner


Robina Khan

Advocate High Court
Peshawar

AFFIDAVIT

I, Sajjad Ur Rehman S/o Haji Yaqoob Jan R/o House No 973, Street No. 28, Sector E-5, Phase-7 Hayatabad Peshawar do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.




DEPONENT

('A') (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2770/2021

Date of Institution ... 22.11.2021

Date of Decision ... 01.02.2022



Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No. 973, Street No. 28, Sector E-5, Phase 7 Hayatabad Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others.

... (Respondents)

Zartaj Anwar,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant, while serving as Registrar in Ex-FATA Tribunal, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 10-09-2020. Feeling aggrieved, the appellant filed departmental appeal dated 25-09-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 10-09-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the


ATTESTED


Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



Constitution has badly been violated; that no proper procedure has been followed before awarding the major penalty of dismissal from service, the whole proceedings are thus nullity in the eye of law; that the appellant has not done any act or omission which can be termed as misconduct, thus the appellant cannot be punished for the irregularities, if so occurred in the recruitment process; that the allegation so leveled against the appellant regarding the non-production of recruitment record is baseless; that no proper inquiry has been conducted against the appellant, hence the appellant was deprived of the opportunity to defend his cause; that neither statement of any witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the appellant has not been served with any showcause notice, thus the whole proceedings are defective in the eye of law; that the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which the appellant was found guilty of allegations, moreover, there was not a single evidence to connect the appellant with the commission of allegation of misconduct; that mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so called allegations leveled against the appellant in the charge sheet/statement of allegation, hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law; that the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case, but he failed to do so and awarded major punishment of dismissal from service upon the appellant despite the fact that the allegations as contained in the charge sheet/statement of allegation has not been proved in the so called inquiry; that the appellant is neither involved in corruption nor embezzlement nor moral turpitude, therefore such harsh and extreme penalty of dismissal from service of the appellant does not commensurate with the nature of the guilt to deprive his family from livelihood;



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

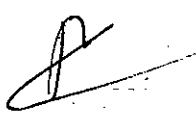

(51)

that the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore the impugned order is not tenable under the law; that the appellant has not been afforded proper opportunity of personal hearing and was condemned unheard.

03. Learned District Attorney for the respondents has contended that the appellant while serving as registrar in Ex-FATA Tribunal, has been proceeded against on account of advertizing 23 posts without approval of the competent authority and appointed 24 candidates against these posts without recommendation of the departmental selection committee; that a proper inquiry was conducted and during the course of inquiry, all the allegations leveled against the appellant stood proved, consequently, after fulfillment of all the codal formalities and affording chance of personal hearing to the appellant, the penalty of removal from service was imposed upon the appellant vide order dated 10-09-2020; that proper charge sheet/statement of allegation was served upon the appellant as well as proper showcause notice was also served upon the appellant, but inspite of availing all such chances, the appellant failed to prove his innocence.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUTS AND AUDIT RULES, 2015, where appointing authority for making appointments in Ex-FATA

**ATTESTED**
**EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar**

(b)

Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

06. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointing authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval of the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal. We have repeatedly asked the respondents to produce any such order/notification, which could show that appointing authority in respect of filling in post in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointing authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegations does not hold ground.

07. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

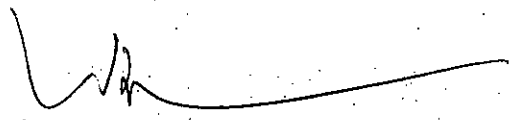
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by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

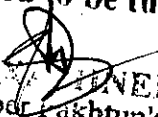
08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. As a sequel to the above, the instant appeal is partially accepted. The appellant is re-instated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


E. JINNAH
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22-3-22
 Number of Words 2050
 Copying Fee 22/-
 Urgent 51/-
 Total 261/-
 Name of Copyist _____
 Date of Completion of Copy 22-3-22
 Date of Delivery of Copy 22-3-22





MENT OF KHYBER PAKHTUNKHWA
ABLISHMENT DEPARTMENT

Dated Peshawar the August 31, 2022

NOTIFICATION

NO.SOE-II(ED)2(9)2010:-

WHEREAS, the appellant, Mr. Sajjad ur Rehman, Ex-EAC / Illaqa Qazi (BS-17), Registrar, Ex-FATA Tribunal, Peshawar was proceeded against under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 and after fulfilment of due process the Competent Authority ordered to impose upon him Major Penalty of "Removal from Service" notified vide Notification of even No. dated 10-09-2020.

AND WHEREAS, aggrieved with the decision, the appellant filed Departmental Appeal and upon regrettal, filed Service Appeals No.2770/2021 in Khyber Pakhtunkhwa Service Tribunal.

AND WHEREAS, the Khyber Pakhtunkhwa Service Tribunal partially accepted his appeal, set aside the major penalty and converted it into "Minor Penalty of Stoppage of Increment for one year through judgment dated 01/02/2022.

AND WHEREAS, the department filed CPLA against the judgment of Khyber Pakhtunkhwa Service Tribunal dated 01/02/2022 which is pending adjudication before the august Supreme Court of Pakistan.

AND WHEREAS, the appellant filed Execution Petition No.300/2022 in Service Appeal No.2770/2021 which came for hearing today on 31.08.2022; the Tribunal while rejecting the Reply to execution petition submitted by the Department on behalf of respondents directed to produce implementation report as ordained in the Tribunal judgment dated 01/02/2022/.

AND NOW THEREFORE, Chief Minister Khyber Pakhtunkhwa, being Competent Authority in terms of Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servant (Appointment Promotion & Transfer) Rules, 1989 has been pleased to order conditional re-instatement of the appellant into service by converting his major penalty of "Removal from Service" into "Minor Penalty of Stoppage of Increment for one year in compliance to the Khyber Pakhtunkhwa Service Tribunal judgement dated: 10.09.2020, subject to the final outcome of the CPLA which is pending adjudication before the Supreme Court of Pakistan

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to the:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department.
3. Accountant General, Khyber Pakhtunkhwa.
4. Secretary Finance Department, Khyber Pakhtunkhwa.
5. Secretary Law Department, Khyber Pakhtunkhwa.
6. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. SO(Secret)/SO(Admn)/EO/SO(Lit-III), Establishment & Administration Department.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
10. PS to Special Secretary (Estt), Establishment Department.
11. PS to Additional Secretary (Estt:), Establishment Department
12. PS to Additional Secretary (Judicial), Establishment Department
13. PA to Deputy Secretary (Estt), Establishment Department.
14. Officer concerned.
15. Personal file.

91
SECTION OFFICER
(ESTABLISHMENT-II)

3/108/22
SECTION OFFICER (E-II)
Establishment &
Administration Deptt

بعدالت ہدایہ سرویس سر ڈیوٹی

سروس سروس

سہ 2۰ منجانب

بنام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

کیلئے مقررہ گاہ اور وقت پر

آن مقام

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و رائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

تاریخ 20

ماہ نومبر

المرقوم 24

العبد گداہ العبد

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