

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 517/2016

Date of Institution 16.05.2016

Date of Decision 06.08.2018

Kifayat Hussain Ex- Head Constable R/o Ghazi Abad, Village Dak Ismael Khel,
Tehsil Pabbi, District Newshehra

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer Nowshera.
4. Additional Inspector General of Police Special Branch Khyber Pakhtunkhwa. Peshawar

...(Respondents)

Muhammad Amin
05-2018

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 , AGAINST THE ORDER DATED 29.01.2016, COMMUNICATED TO THE APPELLANT ON 02.02.2016 VIDE WHICH THE DEPARTMENTAL REPRESENTATION FILED BY THE APPELLANT FOR REINSTATEMENT AFTER CONDUCTING HIS PROPER MEDICAL EXAMINATION WAS TURNED DOWN.

Mr. Zahanat ullah Advocate ... For Appellant

Mr. Muhammad Jan, Deputy District Attorney ... For Respondents

MR. MUHAMMAD AMIN KHAN KUNDI MEMBER (JUDICIAL)

MR. MUHAMMAD HAMID MUGHAL MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KUNDI, MEMBER: -, Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the official respondents also present. Arguments heard and record perused.

2. Brief fact of the case as per present appeal are that the appellant was serving in police department as Head Constable. During Service he got illness of depression and resultantly became patient of stress and depression. Thereafter, the department constituted medical board to examine the fitness of the appellant and on the advice of the medical board, the appellant was retired from service on medical ground with effect from 30.01.2014 Vide order dated 17.02.2014 The appellant filed departmental appeal (undated) against the impugned order dated 17.02.2014 which was rejected on 29.01.2016. Hence the present service appeal on 12.05.2016

3. Respondents were summoned who contested the appeal by filing written reply.

4. Learned counsel for the appellant contended that the appellant was serving in police department. It was further contended that during service the appellant got illness of depression and resultantly became patient of stress and depression therefore, department constituted medical board to examine the fitness of the appellant and on the advice of the medical board, the appellant was retired from service on medical ground with effect from 30.01.2014 Vide order dated 17.02.2014. It was further contended that the appellant started medications and medical treatment from different physician and resultantly successfully regain his health. It was further contended that the appellant submitted departmental appeal for re-instatement but the departmental appeal was rejected therefore requested that the respondent may be directed to reconstitute medical board and on the recommendation of medical board, the appellant may be re-instated. Learned counsel for the appellant in support of his case referred to the

*M. Anwar
6.8.2018*

judgments reported in PLD-1994 Supreme Court 647 and 2005 PLC (C.S) 1230.

5. On the other hand learned Deputy District Attorney opposed the contention of learned counsel for the appellant and contended that the appellant got illness of depression therefore medical board was constituted by the department and the medical board declared the appellant permanently unfit for government job. It was further contended that the appellant also filed writ petition before the worthy High Court, which was decided, and on the direction of the worthy High Court the medical superintendent Police Service hospital was approached by respondent Vide office Memo No. 7173/legal dated 09.12.2015 for opinion. However the chairman of the said medical board furnished written opinion duly signed by all the member of the board that the said board has no authority or power to review his own earlier decision. It was further contended that appellant is also estopped by his own conduct and the appeal of the appellant was also time bar. It was further contended that the appellant was declared permanently incapacitated/ unfit for government job by the medical board. Therefore the appellant was required to filed review petition before the Director General Health within seven (7) days under fundamental rule 10-A but the appellant has not filed any review petition before Director General of Health and prayed for dismissal of appeal. Learned Deputy District Attorney relied upon the judgment of this Tribunal passed in service appeal No. 236/2017 filed by Mr. Nazar Hayat Ex-Constable.

*M. Amin
6.8.2018*

6. Perused of record reveals that the appellant was serving in police department and during service, the appellant became illness of depression. Therefore the department constituted medical board to examine the fitness of the appellant, the medical board declared the appellant Permanently incapacitated for any government job in future and on the report of the medical board, the appellant was invalided from service on medical ground with effect from 30.01.2014 Vide order, dated 17.02.2014. It is also pertinent to mentioned here that in case, the appellant was aggrieved from the report of medical board, the appellant was required to file review petition within Seven (07) days before Director General Health but he has not filed any review petition before Director General Health within Seven (07) days. The record also reveals that the appellant also filed Writ petition before worthy High Court that the respondent may kindly be directed to reconstituted medical board to re-examine the petition and upon recommendation respondent may further be directed to reinstate the petition and the writ petitioner was decided by the worthy High Court Vide Order/judgment dated on 20.10.2015. The operative part of the judgment dated 20.10.2015 Passed by the worthy High Court is reproduced as under:-

During the course of hearing, learned, counsel for the petitioner pointed out that petitioner has filed representation before the competent authority for re-constituted^{07/11} of medical board but the same has not been decided as yet. We instead of passing any order, direct the competent authority to decide the representation of petitioner within a period of one month through a speaking order. If, the petitioner feels incensed by the said order, he may approach the proper forum for redressal of his grievance.

The writ petition is disposed of in the above terms.

*M. Anwar
8.8.2018*

On the direction of the worthy High Court, the respondent also approached the Medical Superintendent Vide officer Memo No. 7174 dated 09.12.2015 for opinion that whether in view of the earlier decision of the standing medical board, the petition could be re-declared fit for future service of sensitive duty of Police department. However as per claim of the respondent, the standing medical board has furnished written opinion duly signed by all the member of the board that the member of the board has no authority to review his own decision. Meaning thereby that the medical board has confirmed the earlier decision that the appellant is permanently unfit for government job. The judgments referred to by learned counsel for the appellant not found applicable to the facts and circumstances of the present case as in those judgments the standing medical board was reconstituted and the civil servants were reexamined by the standing medical board and on the examination the concerned civil servants were found fit for the government job. But in the present case, there is no finding of standing medical board in favor of appellant. The record also reveals that the appellant filed departmental appeal (undated) against impugned order dated 30.01.2014 which was rejected on 29.01.2016. Therefore it is not clear as to whether the departmental appeal was filed within time or otherwise, moreover the appellant has claimed that the aforesaid order dated 29.01.2016 was communicated to him on 02.02.2016. Therefore he was required to file service appeal within one month but the appellant has filed the present service appeal on 12.05.2016 therefore the service appeal is also time barred. Hence the

*M. Amin
6.8.2016*

force
appeal has no ~~for~~ ~~has~~ ~~no~~ file which is hereby dismissed with no order as to cost. File be consigned to the record room after completion.

ANNOUNCED

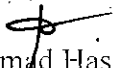
06.08.2017

Muhammad Amin
(MUHAMMAD AMIN KUNDI)
MEMBER

M
(MUHAMMAD HAMID MUGHAL)
MEMBER

04.06.2018


Counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.08.2018 before D.B.

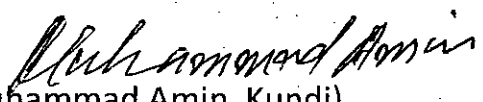

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

06.08.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Vide our detail judgment of today placed on file, the service appeal is time barred. Therefore the appeal has no force, which is hereby dismissed with no order as to costs. File be consigned to the record room.


(Muhammad Hamid Mughal)
Member


(Muhammad Amin Kundi)
Member

ANNOUNCED

06.08.2018

09.04.2018
05.02.2018


Learned counsel for the appellant preliminary arguments heard. Since 5th February has been declared as public holiday. Therefore, the case is adjourned. To come up for arguments on 29.03.2018 before D.B. Learned counsel for the appellant argued that through the present appeal the appellant has made impugned the notification dated 12.10.2017 whereby the appellant was ignored from promotion while most of the colleagues of the appellant were promoted; that the departmental appeal of the appellant was not responded.

In view of the submissions of the Learned counsel for the appellant, preadmission notices be issued to the respondent department for 04.06.2018.

29.03.2018

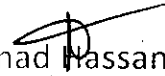
Counsel for the appellant and Asst. AG along with Mr. M. Suleman, H.C for respondents present. Arguments heard. To come up for order on 13.04.2018 before D.B.

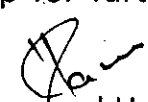

(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

13.04.2018

Appellant present. Some points need further consideration. Learned counsel for the appellant is not available. Adjourn. To come up for further arguments on 23.04.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

23.04.2018

Learned counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney along with Javid Khan S.I for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.06.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

15. 20.07.2017

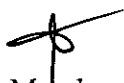
Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG alongwith Mr. Javed Khan, SI for the respondent present. Written reply submitted. To come up for rejoinder and arguments on 13.09.2017 before D.B.



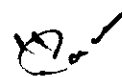
(Muhammad Hamid Mughal)
Member

13.09.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Fayaz, H.C, Mr. Muhammad Asif, DSP(L) and Mr. Javid Khan, Inspector for respondents present. Counsel for the appellant requested for time to file rejoinder. Adjourned. To come up for rejoinder and arguments on 04.12.2017 before D.B.



Member
(Executive)



Member
(Judicial)

04.12.2017

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Javed, SI for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 05.02.2018 before D.B.



Member
(Executive)



Member
(Judicial)

Appeal No. 519/2016
Kibayat Hussain vs Govt

11.05.2017

Appellant alongwith his counsel present. Mr. Muhammad Fayaz, Head Constable alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Written reply by respondents No. 2 & 3 submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from learned counsel for the appellant. Learned counsel for the appellant also submitted application for correction of address of respondent No. 4. The office is directed to make correction in the panel of respondents. Learned counsel for appellant is also directed to submit spare copy of the instant appeal there-after notice be issued to respondent No. 4 for submission of written reply. To come up for written reply/comments on behalf of respondents No. 1 and 4 on 07.06.2017 before S.B.

MA

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

07.06.2017

Clerk to counsel for the appellant and Mr. Muhammad Asif alongwith Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. Last opportunity granted. To come up for written reply/comments on 20.07.2017 before S.B.



(Ahmad Hassan)
Member

02.03.2017

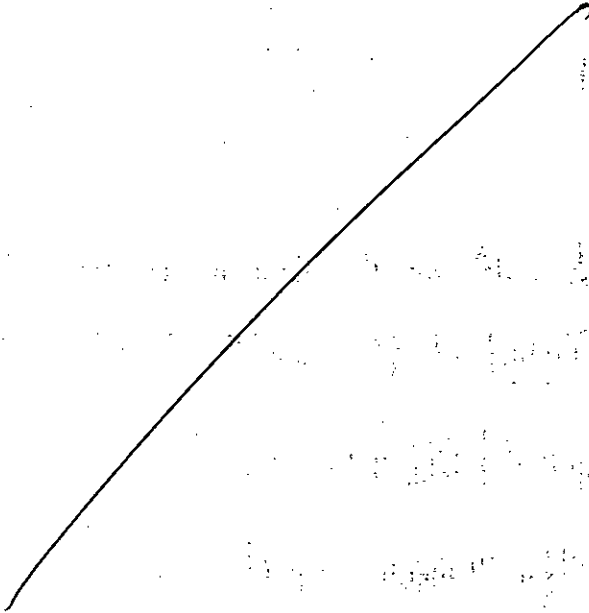
Appellant in person and Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 10.04.2017 before S.B.


Chairman

10.04.2017

Counsel for the appellant and Addl. AG for the respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is further extended subject to payment of cost of Rs. 1000/- which shall be paid by the respondents from their own pockets. To come up for written reply/comments and cost on 11.05.2017 before S.B.

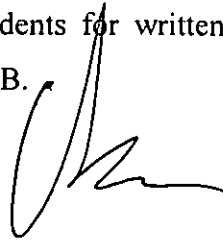

Chairman



01.11.2016

Appellant Deposited
Security Access Fee

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven (7) days, thereafter notices be issued to the respondents for written reply/comments on 20.12.2016 before S.B.



MEMBER

20.12.2016

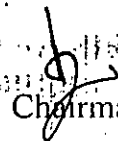
Counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up written reply/comments on 26.01.2017 before S.B.



(MUHAMMAD AAMIR NAZIR)
MEMBER

26.01.2017

counsel for the appellant and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up written reply/comments on 02.03.2017 Before S.B.



Chairman

09.08.2016

Clerk to counsel for the appellant present. Due to strike of the Bar, preliminary arguments could not be heard. To come up for preliminary hearing on 29.08.2016 before S.B.


Member

29.08.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Head Constable when invalidated from service vide order dated 17.2.2014 and retired from service w.e.f. 30.1.2014. That after due treatment and regaining health the appellant submitted application for reconstitution of Medical Board for assessing him which was not constituted constraining the appellant to prefer Writ Petition No. 2805-P/2013 wherein directions were issued to the respondents to decide representation of the appellant within a period of one month. That vide impugned order dated 29.1.2016 the representation of the appellant has been regretted without constitution of medical board and examination of the appellant by such board and hence the instant service appeal.

That the impugned order is against facts and law therefore liable to be set aside.

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 01.11.2016 before S.B.


CHAIRMAN

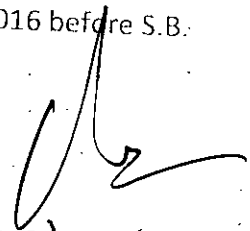
Appellant Deposited
Security & Process Fee

29.08.2016

20.05.2016

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant wants to re-constitute the Standing Medical Board as the request of the appellant in this regard has been refused by the competent authority vide impugned order dated 29.1.2016.

Since the matter required further assistance, therefore, pre-admission notice be issued to respondents for 29.06.2016 before S.B.


Member

29.6.2016

Agent of counsel for the appellant and Addl. AG for the respondents present. Seeks adjournment as counsel for the appellant is not in attendance. Adjourned for preliminary hearing to 27.07.2016 before S.B.


Chairman

27.07.2016



Counsel for the appellant and Addl. AG present. Learned counsel for the appellant seeks adjournment. To come up for preliminary hearing on 09.08.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 517/2016


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16/05/2016	<p>The appeal of Mr. Kifayat Hussain resubmitted today by Mr. Zahanat Ullah 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		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20.5.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Kifayat Hussain Ex- Head Constable r/o Ghazi Abad Village Dak Ismael Khel Tehsil Pabbi Nowshera received to-day i.e. on 12.05.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- List of parties are unsigned which may be got signed.
- 2- The authority to whom the departmental appeal was made/preferred has not been arrayed a necessary party.

No. 770 /S.T,

Dt. 13/5 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zahanat Ullah Adv. Pesh.

PTD

1957/16
John
D. [unclear]

All objections removed
and re-submitted.

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 517 /2016

Kifayat Hussain Ex-Head Constable.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. and
others.....(Respondents)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Memo of Appeal		1-7
2.	Affidavit		8
3.	Addresses of the Parties		9
4.	Copy of the order of SSP (Admin) Special Branch dated 17/02/2014	A	10-14
5.	Copies of medical prescriptions	B	11-14
6.	Copy of the medical prescription dated 07/03/2015	C	15
7.	Copy of representation	D	16
8.	Copy of the order, judgment	E	17-22
9.	Copy of order	F	22-24
10.	Copy of application dated 11/02/2016	G	25
11.	Wakalat Nama		26

Appellant

Through

Dated: 12/05/2016

Zahant Ullah
Zahant Ullah

Moamar Jalal
Moamar Jalal
Advocates High Court,
Peshawar.

& *ADY*
Muhammad Adeel Ilyas
Advocate, Peshawar.
Cell No. 0333-9554519

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 517 /2016

**K.W.P. Provincial
Service Tribunal
Diary No. 469
dated 12/5/2016**

Kifayat Hussain Ex-Head Constable

R/o Ghazi Abad; Village Dak Ismael ^{Khel}, Tehsil Pabbi,

District Nowshera.....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

2. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

3. The District Police Officer, Nowshera.

4. ^{Additional} ~~Deputy~~ Inspector General of Police / ^{special Branch} Khyber Pakhtunkhwa,

Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST THE ORDER DATED
29/01/2016, COMMUNICATED TO THE
APPELLANT ON 02/02/2016 VIDE WHICH
THE DEPARTMENTAL REPRESENTATION
FILED BY THE APPELLANT FOR
REINSTATEMENT AFTER CONDUCTING HIS
PROPER MEDICAL EXAMINATION WAS
TURNED DOWN.**

re-submitted to-day
and filed;

Registrar

16/5/16

Vide order
sheet dated
11-05-2017

Registrar

12/5/16

PRAYER IN APPEAL:

On the acceptance of this appeal, the impugned order dated 29/01/2016 may graciously be set aside and the respondents may kindly be directed to re-constituted a Medical Board to re-examine the physical and mental health of appellant and upon the recommendation the respondents may further be directed to reinstate the appellant on his job with all back benefits.

Respectfully Sheweth:

1. That the appellant joined the service of the Police Department as Constable in year 1994.
2. That later he was promoted as LHC in the year 2001 and lastly as Head Constable in the year 2010 on account of his dedication, devotion and commitment to his job. He has 20 years unblemished service record this credit.
3. That the appellant performed his duties at different stations as and when required by the department

and never disappointed his superiors regarding the performance of this duties.

4. That while performing in the said capacity, in the year 2014, due to stress of duties and illness of the sister of the appellant got depression and resultantly became patient of stress and depression.
5. That keeping in view the condition of the appellant, the department constituted Medical Board to examine the fitness of the appellant and on the advice of Medical Board the appellant was compulsory retired from service w.e.f 30/01/2014 vide order dated 17/02/2014. (Copy of the order of SSP (Admin) Special Branch dated 17/02/2014 is attached as annexure "A").
6. That thereafter, the appellant started medications and medical treatment from different physicians and resultantly successfully regain his health started spending normal life. (Copies of medical prescriptions are attached as annexure "B").

7. That recovery of the appellant is evident from the remarks given by the Doctor of the Government Hospital for Psychiatric Disease, Peshawar. (Copy of the medical prescription dated 07/03/2015 is attached as annexure "C").
8. That after getting complete recovery and being satisfied from his physical and mental health, the appellant moved an application to the respondent No. 2 for his re-instatement. (Copy of representation is attached as annexure "D").
9. That since the departmental representation was not decided by the respondent, the appellant was constrained to file constitutional petition before the Hon'ble Peshawar High Court, and the Court was kind enough to direct the respondent to decide the departmental representation of the appellant. (Copy of the order, judgment is attached as annexure "E").
10. That in the light of the judgment of Hon'ble Peshawar High Court, the respondent sent letter to

Medical Superintendent for re-medical examination of the appellant, however they refused to do so by saying that the "Earlier Medical Board" has already held him unfit for future job. Therefore the competent authority rejected the representation of appellant. (Copy of order is attached as annexure "F").

11. That the appellant is ready to surrender all the benefits/ graduates/ pension in case if this appeal is accepted.

12. That the appellant approached to the office of respondent No. 1, 2 and 3 on 11/02/2016 for reviewing its order dated 29/01/2016 and conducting a proper re-medical board for re-examination of the appellant in accordance with the observation of august High Court in Writ Petition No. 2805-P/2015, but the decision on that application is still awaited. (Copy of application dated 11/02/2016 is attached as annexure "G"), hence the present appeal, on the following grounds inter-alia:

GROUNDS:

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.

- B. 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.

- C. That the impugned order is suffering from legal infirmities and as such the same is bad in law.

- D. That the competent authority should have constituted another medical board in order to examine the mental and physical condition of appellant and thereafter should have passed any order.

- E. That the appellant has at his credit a long and spotless service career at his credit the penalty

awarded to him is too harsh and liable to be set aside.

- F. That the appellant is jobless since the imposition of illegal penalty of compulsory retirement from service.
- G. That the appellant seeks the permission of this Hon'ble Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 29/01/2016 may be set aside and the appellant may kindly be reinstated after conducting medical examination.




Appellant


Through



Zahanat Ullah

Dated: 12/05/2016

Moamar Jalal 
Advocates High Court,
Peshawar.

& 
Muhammad Adeel Ilyas
Advocate, Peshawar.

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2016

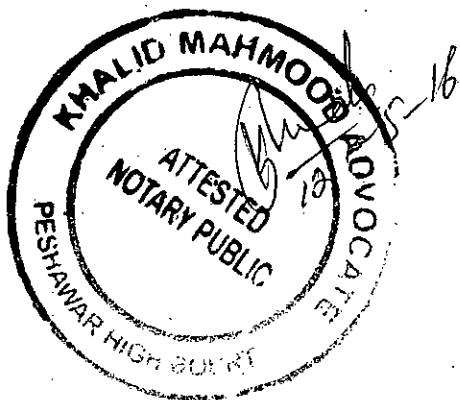
Kifayat Hussain Ex-Head Constable.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. and
others.....(Respondents)

AFFIDAVIT

I, Kifayat Hussain Ex-Head Constable R/o Ghazi Abad,
Village Dak Ismael KHel, Tehsil Pabbi, District Nowshera, do
hereby solemnly affirm and declare on oath that the contents
of the **Service Appeal** are true and correct to the best of my
knowledge and belief and nothing has been concealed from
this Hon'ble Court.



ADVOCATE

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2016

Kifayat Hussain Ex-Head Constable.....(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. and
others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Kifayat Hussain Ex-Head Constable
R/o Ghazi Abad, Village Dak Ismael KHel, Tehsil Pabbi,
District Nowshera.

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer, Nowshera.
4. Deputy Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar.

Appellant

Through



Zahanat Ullah

Dated: 12/05/2016

Moamar Jalal

Advocates High Court,
Peshawar.

&

Muhammad Adeel Ilyas
Advocate, Peshawar.

A

ORDER

The Standing Medical Board held on 30.01.2014 in the office of Medical Superintendent Police & Services Hospital Peshawar that Head constable Kifayat Hussain No.311/SB of this Establishment is suffers from depressive disorder and has been treated by different physician and psychiatrist and declared unfit for Govt. job. He is permanently incapacitated.

He is therefore invalided from service on Medical grounds with effect from 30.01.2014.

SSP/Admn:
Special Branch Khyber Pakhtunkhwa
Peshawar

No. 101-07/EB Dated 17.02/2014
Copy to the:-

- 1. SP/Security/SB
- 2. DSP/HQ/SB
- 3. Acctt./SB
- 4. LO/SB
- 5. I/C Security CM Sectt.
- 6. EA/SB
- 7. IT Section.

Arrested
[Signature]

Accepted
R.P.P.

Signature of M.O.

[Handwritten signature]

Signature of Patient

[Handwritten signature]

[Handwritten notes]
21.6.50
P. P. P.

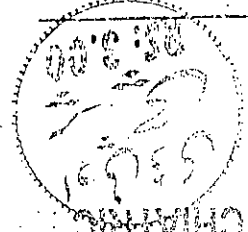
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UNIT NO. 26715

DISEASE

DATE 03-10-50



GOVERNMENT HOSPITAL FOR PSYCHIATRIC DISEASE PESHAWAR

B

①

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Form fields: Name, Date, Disease, Year No. with handwritten entries

GOVERNMENT HOSPITAL FOR PSYCHIATRIC DISEASE PESHAWAR

13

GOVERNMENT HOSPITAL FOR PSYCHIATRIC DISEASE PESHAWAR.



گورنمنٹ ہسپتال برائے ذہنی امراض پشاور

Name لیاقت حسین

Disease 7 7 Date 15-12-16

Unit No. Psychiatry Year No. 38913

① Codeprip 6
/ 25

① Sedonit 1.5

لیتھ 10 x 10
لیتھ 10 x 10

ڈاکٹر کے مشورے کے بغیر دوائی بند نہ کریں۔

آئندہ معائنے کی تاریخ 15/12

Signature of M.O.

Accepted
Rajul

Arrested
J.P.

REGISTERED IN M.O.

15/12
1914

15-12-14
D. P. ...
S. ...

15-12-14
D. ...

UNIT NO. _____
YEAR NO. 38913
DATE 15-12-14

GOVERNMENT HOSPITAL FOR PSYCHIATRIC
DISEASE PESHAWAR.
PSYCHIATRIC HOSPITAL
PESHAWAR

(15)

GOVERNMENT HOSPITAL FOR PSYCHIATRIC DISEASE PESHAWAR.

گورنمنٹ ہسپتال برائے ذہنی امراض پشاور

(1)

Name

لفا زین

Disease

Date 15-03-75

Unit No.

Year No. 7707

Improve up unit

13

Fit to resume duty

Plus Prothiaza

75

Plus Sulhex 2

6

Handwritten notes and stamps in Urdu, including a signature and official seal.

Signature of M.O.

Arrested
Rajul

(17) E

5

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No 225 /2015

C.No. 3975 /SU
W.P.

Kifayat Hussain S/o Sher Zaman R/o Gazi Abad, Dagg Ismail
Khail, Tehsil and District Nowshera.....(Petitioner)

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa, T.G.P
Office, Peshawar.
2. D.I.G Special Branch, Peshawar.
3. CCPO, Peshawar, Police Lines, Peshawar.
4. D.I.G Special Branch, Airport Road, Peshawar Cantt.
5. S.S.P (Admin) Special Branch, Airport Road, Peshawar
Cantt.
6. SP Headquarter, Police Lines, Peshawar.
7. Budget Officer, C.P.O. Peshawar.
8. Government of K.P.K, through Secretary Finance, Civil
Secretariat, Peshawar.....(Respondents)



**WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973.**

Prayer in Writ Petition:

- a. On acceptance of this Writ Petition the
respondents may kindly be directed to re
constitute a Medical Board in order to re-examine

ATTESTED
EXAMINER
Peshawar High Court
17 FEB 2016

FILED TODAY
Deputy Registrar
07 AUG 2015

the mental and physical condition of the petitioner as to given their opinion that whether the petitioner is medically fit to rejoin the police force or not.

- b. That in case the medical board give positive report with regard to the mental and physical status of the petitioner the respondents may kindly be directed to re-instate the petitioner on his job with full back benefits.

Respectfully Sheweth:

- 1. That the petitioner joined the Police Force on 11/12/1994 and lastly served as Head Constable.
- 2. That the petitioners perform his duties with zeal and responsibilities to the satisfaction of the high-up's.
- 3. That no objection has been ever raised against the petitioner nor any complaint has been ever made by any one against the petitioner in discharge of his duties.

ATTESTED

EXAMINER
Peshawar High Court

17 FEB 2016

FILED TODAY

Deputy Registrar

07 AUG 2015

3.

- 4. That the petitioner performed his duties on different hard stations at the time of crises and has never escape his duties.
- 5. That due to extreme stress of duties and illness of his sisters the petitioner got high level of depression and became patient of stress and depression.
- 6. That due to the same situation the Police Department constituted a medical board to examine the petitioner mental and physical health.
- 7. That on the advice of the medical board the petitioner was compulsory retired from job. (Copy of the order of SSP (Admin) Special Branch dated 17/02/2014 is annexed as annexure "A").
- 8. That the petitioner started medication from different physician and has successfully regain his health and spend normal life. (Copy of medical prescriptions are attached as annexure "B").
- 9. That the petitioner being fully satisfied from his physical and mental health moved an application to

ATTESTED
 EXAMINER
 Peshawar High Court
 17 FEB 2016

FILED TODAY
 Deputy Registrar
 07 AUG 2015

the respondent No. 2 for re-instating the petitioner on his service but the same was never considered nor replied by respondent. (Copy of application is annexure "C").

10. That feeling aggrieved of the same the petitioner had no other choice but this Writ Petition.

GROUND:

- A. That the petitioner has served the Police departmental with due responsibility and best performance and has no complaint against him.
- B. That the only fact upon which the petitioners was compulsory retired from his services has been successfully over come and do not exist any more and the petitioner is in best mental and physical health and the depressive disorder was temporary and that has been over come through medication.
- C. That the petitioner is ready to surround all the benefits that has been awarded to petitioner on his compulsory retirement.

ATTESTED
EXAMINER
Peshawar High Court
17 FEB 2015

FILED TODAY
Deputy Registrar
07 AUG 2015

9

D. That petitioner will take other ground with permission of this Hon'ble Court at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition, the respondents may kindly be directed to re-constitute a medical board to re-examine the physical and mental health of the petitioner and upon the recommendation the respondents may further be directed to reinstated the petitioner on his job with all back benefits.

Any other remedy may be deem fit properly may be awarded to the petitioner.

[Handwritten Signature]

Petitioner

Through

Dated: 07/08/2015

Akbar Yousaf Khalil
Advocate High Court,
Peshawar

[Handwritten Signature]

[Large Handwritten Signature]

CERTIFIED TO BE TRUE COPY
Examiner
High Court, Peshawar
Registered Under Article 87 of
the Constitution of Pakistan Order 1981

17 FEB 2016

FILED TODAY
Deputy Registrar
07 AUG 2015

SECRET

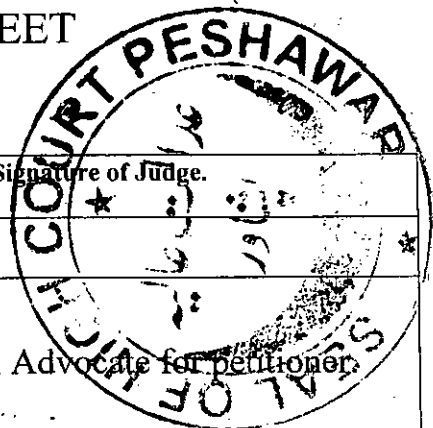
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DATE 10/12/01 BY 60322 UCBAW/STP

EXEMPTED TO BE OPEN CUBA



PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
20.10.2015	<p><u>W.P.No. 2805-P/2015</u></p> <p>Present: Mr. Akbar Yousaf Khalil, Advocate for petitioner.</p> <p><u>NISAR HUSSAIN KHAN, J:-</u> Petitioner has filed the instant Constitutional petition for issuance of an appropriate writ with the following prayer:-</p> <p>That on acceptance of this writ petition, the respondents may kindly be directed to re-constitute a medical board to re-examine the physical and mental health of the petitioner and upon the recommendation the respondents may further be directed to reinstate the petitioner on his job with all back benefits.</p> <p>During the course of hearing, learned counsel for petitioner pointed out that petitioner has filed representation before the competent authority for re-constitution of medical board but the same has not been decided as yet. We instead of passing any order, direct the competent authority to decide the representation of petitioner within a period of one month through a speaking order. If, petitioner feels incensed by the said order, he may approach the proper forum for redressal of his grievance.</p> <p>This writ petition is disposed of in the above terms.</p> <p><i>(Signature)</i> <i>(Signature)</i></p> <p>CERTIFIED TO BE TRUE COPY</p> <p>Examiner Peshawar High Court, Peshawar Authorized Under Article 87 of the Constitution of Pakistan Order 1954</p> <p>17 FEB 2016</p>

office
2/11/15



RECEIVED BY
DATE GIVEN FOR DELIVERY
NAME OF PROPRIETOR OF COPY
TOTAL
URGENT FEE
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NO OF PAGES
NAME OF PRESENTATION OF APPLICATION

Received by: *[Signature]*
Date given for delivery: *11/2/16*
Name of proprietor of copy: *[Signature]*
Total: *11/2/16*
Urgent fee: *1.00*
Copying fee: _____
No of pages: _____
Name of presentation of application: *16243*



1 23 F

Copy of Order No. 123/Legal dated 21.01.2016 from Inspector General of Police KPK Peshawar to Addl: Inspector General of Police Special Branch Khyber Pakhtunkhwa Peshawar.

ORDER

This order is passed in compliance with Honorable High Court Peshawar order dated 20.10.2015 passed in Writ Petition No. 2805/2015 wherein the departmental authorities were directed to dispose of departmental representation filed by petitioner.

Kifayat Hussain Head Constable was granted invalidated pension vide order dated 17.02.2014 of SSP Admn: Special Branch as the Standing Medical Board declared him unfit for future service in the following terms:-

“He may be boarded out of service on psychiatric grounds. He is permanently incapacitated for any government job in future”.

Kifayat Hussain filed the above referred petition for his re-employment by constituting a Medical Board for re-examination of his physical and mental fitness. The petition was disposed of by the Honorable Court vide above referred order in the following terms:-

“During the course of hearing, learned counsel for petitioner pointed out that petitioner has filed representation before the competent authority for re-constitution of medical board but the same has not been decided as yet. We instead of passing any order, direct the competent authority to decide the representation of petitioner within a period of one month through a speaking order. If, petitioner feels incensed by the said order, he may approach the proper forum for redressal of his grievance”.

SSP/Admn: Special Branch referred the matter to CPO vide his office order No. 244-45/Legal dated 26.11.2015, and requested CPO to constitute medical board for the examination of Kifayat Hussain HC.

Medical Superintendent Police Service Hospital Peshawar was approached vide this office memo No. 7173/Legal dated 09.12.2015 for opinion whether in view of the earlier decision of the Standing Medical Board the petitioner could be re-declared fit for future service of sensitive duties of Police department.

The Chairman Standing Medical Board has forwarded the decision of Standing Medical Board vide his office memo No. 246-47/MS/SMB/2015-16 dated 15.01.2016.

Accepted
[Signature]

(24)

The Standing Medical Board has furnished written opinion duly signed by all members of the board that the board has no authority and power to review his own decision. Kifayat Hussain HC was declared permanently incapacitated for Government job in future by the Standing Medical Board and he failed to produce fitness certificate therefore, his departmental representation for re-employment being without force and substance is rejected.


Sd
DIG/HQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

OFFICE OF THE ADDL: INSPECTOR GENERAL OF POLICE SPECIAL BRANCH KHYBER
PAKHTUNKHWA PESHAWAR

No. 547-119/EB dated, the Peshawar 29 / 01 /2016.

Copy of the above is forwarded to the:-

1. Head Constable Kifayat Hussain 311/SB for information that the competent authority has examined representation submitted by him and filed on the basis he not provided fitness certificate.
2. Inspector legal/SB
3. EA/SB


Superintendent of Police Admn:
For Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar

(P)

Aucted
Raj

inspectors legal / SB

بخدمت جناب ڈپٹی انسپکٹر جنرل آف پولیس

درخواست بمراد بحالی سروس

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

- 1- یہ کہ بحوالہ چٹھی انگریزی نمبر EB/07-1101 مورخہ 17/02/2014 مجاز پر جناب SSP/Admn صاحب سپیشل برانچ خیبر پختونخواہ، پشاور سائل کی اپنی خواہش پر بحوالہ سٹینڈنگ میڈیکل بورڈ پولیس ہسپتال پشاور میڈیکل بورڈ کے ذریعے سروس سے ریٹائر ہو چکا ہوں، اس وقت میں جسمانی طور پر سخت ڈپریشن کا شکار ہو چکا تھا اور ڈیوٹی کی ادائیگی سے قاصر تھا، ریٹائرمنٹ کے بعد میں نے اپنا علاج معالجہ جاری رکھا جس کے بعد الحمد للہ اب میں صحت یاب ہو چکا ہوں۔
 - 2- یہ کہ سائل ایک رٹ پٹیشن نمبر W.P. No. 2805-P/2015 بعدالت عالیہ پشاور ہائی کورٹ پشاور دائر کی جس میں عدالت عالیہ نے مجاز محکمہ کو احکامات جاری کئے کہ وہ سائل کی درخواست سنے اور اس پر ایک ماہ میں احکامات جاری کرے بدیں وجہ درخواست ہذا کی ضرورت لاحق ہوئی۔
- لہذا استدعا ہے کہ سائل کو دوبارہ سروس پر بحال کئے جانے کے احکامات صادر فرمائے جائیں۔

مورخہ: 11/02/2016

العارض

Rhina
آپکا تابعدار

سابقہ ہیڈ کنسٹیبل

کفایت حسین نمبر 311/SB

متعینہ سپیشل برانچ، پشاور۔

کاپی برائے اطلاع:

- 1- چیف سیکرٹری، خیبر پختونخواہ، پشاور۔
- 2- پرو نشل پولیس آفیسر، پشاور
- 3- ڈسٹرکٹ پولیس آفیسر، نوشہرہ۔

Accepted
No. MM/2016
Advocate

Accepted
&
Muted
By
Advocate

18/05/2016
پشاور
پشاور بار ایسوسی ایشن

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

محکمہ عدالت پشاور، پشاور

18-5-2016

الرقم:

پشاور بار ایسوسی ایشن کی طرف سے جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

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پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

کن پتہ صہبن ساکن کڑاکی پتہ پشاور
کھیل پٹی، ضلع نوشہرہ

پشاور بار ایسوسی ایشن	
نام: رقم: مرقبہ: صلت: پتہ: ڈیڑی:	نمبر: نام:

پشاور بار ایسوسی ایشن کے ذریعہ جاری کی جانے والی ہے۔

پشاور بار ایسوسی ایشن پشاور	پشاور بار ایسوسی ایشن پشاور
44103	0333-9554519 87-14-50000 پشاور بار ایسوسی ایشن پشاور

the Honorable Khayr Pakhtoon Khwa Service Tribunal
Kifayat Hussain VS Govt of KPK ETC
Peshawar

Subject :- Application for correction of the address of
Respondent No 4

Respectfully Sheweth :-

① That the above mention case is fixed today i.e 11/5/2017
before the Honorable Court for hearing.

② That the Address of Respondent No 4 is incorrect and
require correction. The correct address of Respondent No 4
may kindly be read/correct as :-

Additional Inspector General of Police, Special Branch,
Khayr Pakhtoon Khwa Peshawar

③ That it is humbly requested that the correct designation
and address of the respondent No 4 may kindly be
corrected as above.

Date: 11/5/2017

Pakhtoon/Appellant
through
M. Akmal Jagan
Advocate

Relayat Juman VS 19 KPR etc

The Services Tribunal Petitioner

Subject's receipt of money the penalty amount from the respondents

Respondent stated that the case titled above is pending adjudication

before this honorable Tribunal in which today 11/5/17 was given for adjudication

that is non compliance of the order of this honorable Tribunal, the Tribunal to be inferre Rs 1000 as penalty amount to be paid to Petitioner.

Though this receipt is stated that the amount has been paid to the Petitioner by respondents.

Dated: 11/5/2017.

M.P. J.P.

Petitioner through M. Akbar Dey

11/5/2017

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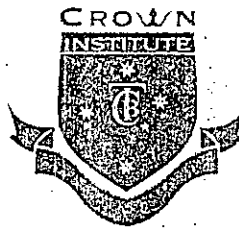
Kifayatullah

DEA

11.05.2017

Appellant alongwith his counsel present. Mr. Muhammad Fayaz, Head Constable alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Written reply by respondents No. 2 & 3 submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from learned counsel for the appellant. Learned counsel for the appellant also submitted application for correction of address of respondent No. 4. The office is directed to make correction in the panel of respondents. Learned counsel for appellant is also directed to submit spare copy of the instant appeal there-after notice be issued to respondent No. 4 for submission of written reply. To come up for written reply/comments on behalf of respondents No. 1 and 4 on 07.06.2017 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER



CROWN INSTITUTE OF BUSINESS AND TECHNOLOGY

This is to certify that

Abdus Sattar

has fulfilled the requirements for

**BSB51107
DIPLOMA of MANAGEMENT**

Awarded in Sydney, Australia

on:

28/04/2010

VET Director of Studies

Chief Executive Officer

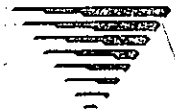
The qualification certified herein is recognised within the Australian Qualifications Framework and is issued under the authority of the NSW Vocational Education and Training Act 2005. Employability skills obtained from completing this qualification can be downloaded from employabilityskills.training.com.au

Crown Institute of Business and Technology is the trading name of Crown Institute of Business and Technology Pty. Ltd.
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NSW Vocational
Education & Training
Accreditation Board

Certificate Number : 10-MGT-051



NATIONALLY RECOGNISED
TRAINING

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 517/2016

Kifayat Hussain,
Ex- Head Constable No. 311/SB,
R/O Ghazi Abad, Village Dak Ismail Khel,
Tehsil Pabbi, District Nowshera.

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Inspector General of Police, Khyber Pakhtunwa, Peshawar.
3. District Police Officer, Nowshera.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS No. 2&3

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is badly time-barred.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.

On Facts

1. Para not related, as the same pertains to enlistment of appellant in Police Department.
2. Para to the extent of promotion as LHC and HC pertains to record, hence, no comments, while rest of the para is incorrect. Because every Police Officer/official is under obligation to perform his duties with utmost dedication, devotion and commitment. Hence, stance of the appellant is not plausible.
3. Every Police Officer/Official is duty bound to obey the legal/lawful orders of his high-ups. Therefore, the same is not an extraordinary performance.
4. Correct to the extent that the appellant became patient of depression because as per report of Standing Medical Board, the appellant suffered from depressive disorder and had been treated

by different physicians and psychiatrists, hence, was declared permanently incapacitated for any Govt: job even in future. (Report of Standing Medical Board is annexed).

5. Correct to the extent that the Standing Medical Board declared the appellant permanently incapacitated for any Government job even in future for the reasons that he was suffering from depressive disorder.
6. Incorrect. As per report of the Standing Medical Board, the appellant was declared permanently incapacitated for any Government job. Therefore, the appellant may have regained his health alleged by him but even then he is not fit for job as discussed by the said board.
7. It is worthwhile that the decision of Standing Medical Board cannot be overridden by the opinion of a single doctor through a simple prescription which itself is vague in nature.
8. Para already explained.
9. Correct to the extent of filing writ petition before the Peshawar High Court, Peshawar directions therefore, the appellant was again referred to Standing Medical Board for seeking opinion. However, the Chairman of the said board had furnished written opinion duly signed by all members of the board that the said board has no authority and powers to review its own decision. (Relevant papers attached).
10. Para already explained, hence, no comments.
11. Para not related.
12. Para already explained in preceding paras, hence, no comments.

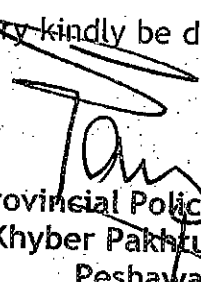
GROUNDS

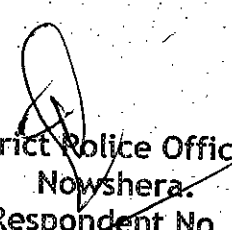
- A. Incorrect. The appellant has been treated in accordance with law and his secured rights have not been violated because respondents have no grudges against the appellant.
- B. Incorrect. The competent authority has passed a speaking order because as discussed earlier, the appellant has been declared completely incapacitated and unfit for job in future. Hence, plea of the appellant is not tenable.
- C. Incorrect. The order passed by the competent authority is legal and lawful hence, tenable in the eye of law.
- D. Para already explained, needs no comments.
- E. Long length of service does not exonerate a Police officer/official to remain in service if he is not even fit for job. Moreover, the

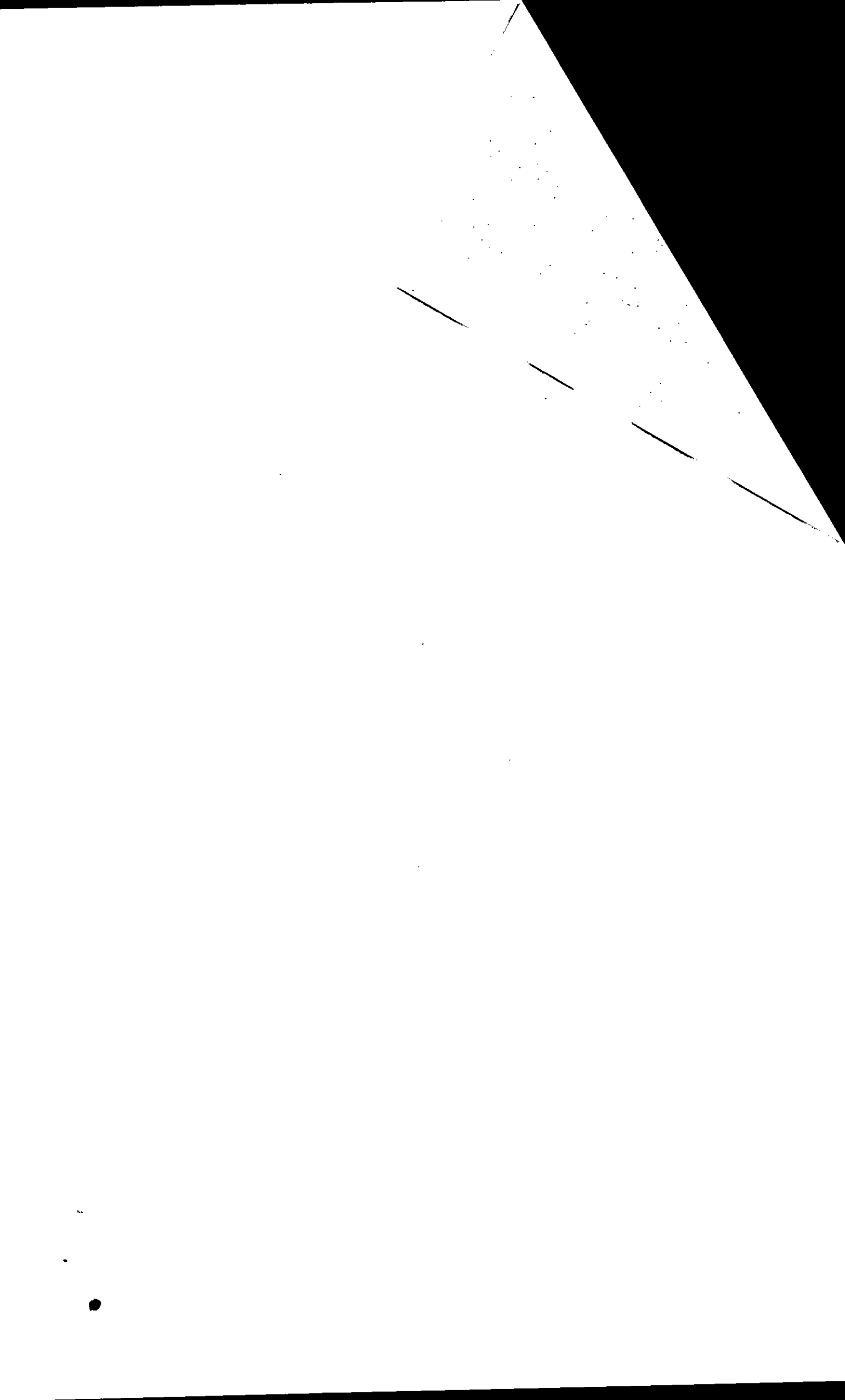
appellant has not been penalized rather he has been treated leniently because he was not in a condition of performing his duties.

- F. Para not related, hence, no comments.
- G. That the respondents also seek permission of this Honourable tribunal to raise additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of above submissions the appeal of the appellant may very kindly be dismissed with cost.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.2


District Police Officer,
Nowshera.
Respondent No. 3



**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 517/2016

Kifayat Hussain,
Ex- Head Constable No. 311/SB,
R/O Ghazi Abad, Village Dak Ismail Khel,
Tehsil Pabbi, District Nowshera.

.....Appellant

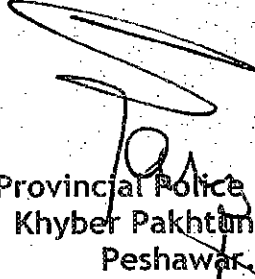
V E R S U S

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Inspector General of Police, Khyber Pakhtunwa, Peshawar.
3. District Police Officer, Nowshera.

.....Respondents

AFFIDAVIT

We the respondents No. 2,&3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.2


District Police Officer,
Nowshera.
Respondent No. 3

763-8/2014

245
11-02-2014
of the Inspector General of Police



OFFICE OF THE
MEDICAL SUPERINTENDANT
SERVICES HOSPITAL, PESHAWAR

Phone: (Off) 091 9210509 (Exch) 091 9223472 Fax: 091 921054

No. 506-07 /MS/SMB/2013-14

Dated 04/02/2014

SP Administration
Addl: Inspector General of Police
Special Branch Khyber Pakhtunkhwa
Peshawar.



Subject: - STANDING MEDICAL BOARD

Memo: -

~~Constable~~ Head Constable Kifayat Hussain No. 311/SB was examined by the Standing Medical Board held in this office on 30-01-2014. The proceedings of the Standing Medical Board are sent herewith for further necessary action.

Chairman
Standing Medical Board
Medical Superintendent
Police/Service Hospital
Peshawar

Cc,

- 1. Director General Health Services, Khyber Pakhtunkhwa Peshawar for information.

SP/Admn:

For EA
n. action

Addl: IGP-SP

CR

27

The Standing Medical Board has furnished written opinion duly signed by all members of the board that the board has no authority and power to review his own decision. Kifayat Hussain HC was declared permanently incapacitated for Government job in future by the Standing Medical Board and he failed to produce fitness certificate therefore, his departmental representation for re-employment being without force and substance is rejected.

Sd
DIG/IQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

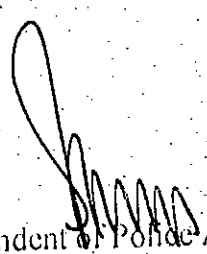
OFFICE OF THE ADDL: INSPECTOR GENERAL OF POLICE SPECIAL BRANCH KHYBER
PAKHTUNKHWA PESHAWAR

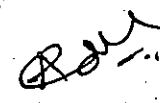
No. 547-119/EB dated, the Peshawar

29 / 07 / 2016.

Copy of the above is forwarded to the:-

1. Head Constable Kifayat Hussain 311/SB for information that the competent authority has examined representation submitted by him and filed on the basis he not provided fitness certificate.
2. Inspector legal/SB
3. EA/SB


Superintendent of Police Admn:
For Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar

Accepted


ORDER

This order is passed in compliance with the judgment dated 20.10.2015 of Peshawar High Court Peshawar passed in Writ Petition No. 2805-P/2015.


Kifayat Hussain Ex-Head Constable was granted invalided pension with effect from 17.02.2014 when he was found unfit by the Standing Medical Board vide unanimous opinion dated 30.01.2014.


Kifayat Hussain Ex-Head Constable had voluntarily submitted an application for grant of invalided pension.

The record was checked and no representation for re-employment on behalf of Ex-Head Constable Kifayat Hussain was traced. Anyhow in compliance with the Hon'ble High Court Order, the matter was considered.

The record reveals that the petitioner was found unfit for further service by the Standing Medical Board constituted on 30.01.2014 with the board's opinion "**He may be boarded out of service on Psychiatric grounds. He is permanently incapacitated for any government job in future**". He voluntarily accepted the decision of the medical board and did not challenge it at any forum.

However the Hon'ble High Court has directed, therefore CPO is requested for reconstitution of medical board to examine Kifayat Hussain Ex-Head Constable.



SSP/Admn

 For Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar

No. 244-45 /Legal, dated Peshawar the : 26 / 11 /2015.
Copy for information to:

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar vide his Ends: No. 6867/Legal, Peshawar dated 17.11.2015.
2. The Additional Registrar Judicial, Peshawar High Court with reference to his letter No. 2016/Judl: dated Peshawar 28.10.2015.


SSP/Admn

 For Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar

From: - The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
To: - The Medical Superintendent, Police & Services Hospital Peshawar.

No. _____ /Legal Dated Peshawar the, _____ /2015.

Subject: - REPRESENTATION OF KIAFYAT HUSSAIN HC (Retired)

Memo:-

Kiafyat Hussain HC was granted invalidated pension vide order dated 17.02.2014 of SSP Admn: Special Branch as the Standing Medical Board declared him unfit for future service in the following terms:-

"He may be boarded out of service on psychiatric grounds. He is permanently incapable for any government job in future."

Kiafyat Hussain filed Writ Petition No. 2805/2015 for his re-employment by constituting a Medical Board for re-examination of his physical and mental fitness.

The petition was disposed of by the Honorable High Court vide order dated 20.10.2015 and the department was directed to dispose of the representation of appellant submitted for re-employment.

SSP/Admn: Special Branch has passed order No. 244-45/Legal dated 26.11.2015, and requested CPO to constitute medical board for the examination of Kiafyat Hussain HC.

In order to dispose of the representation of Kiafyat Hussain HC, your office opinion is required that once the applicant was declared permanently incapable for future service by the Standing Medical Board on psychiatric grounds whether he could be re-declared fit for future service of sensitive duties of I office department by the Standing Medical Board.

For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 7174 /Legal Dated Peshawar the, 09/12/2015.

Copy of the above is forwarded to SSP/Admn: Special Branch with reference to his office order No. 244-45/Legal dated 26.11.2015 with the request to inform the applicant accordingly.

Arif/ Legal/CC
gmm/ Legal/br.

For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

SSP/Admn

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Pof
Down
20-7-2017

Service Appeal No. 517/2016.

Kifayat Hussain No. 311/SB r/o Ghazi Abad, village Dak Ismail Khel,
Tehsil Pabbi, District Nowshera (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Additional Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT No. 4.

Preliminary Objections

1. That the appellant has got no cause of action.
2. That the appeal is badly time barred.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Hon'ble Tribunal with clean hands.

Facts

1. Needs no comment as it pertains to enlistment of appellant in Police Department.
2. The first portion of the Para relates to promotion of the appellant as LHC and HC pertains to record which needs no comments. Rest of the Para is incorrect as every Police officer/official is bound to perform his duties with utmost dedication, devotion and commitment hence stance of the appellant is not reasonable.
3. Every Police officer is duty bound to obey the legal/lawful orders of his high-ups hence it does not come under the definition of. Extraordinary performance.
4. Correct to the extent that the appellant got depression and as per report of Standing Medical Board he suffered from depressive disorder and treated by various physicians and psychiatrists. Resultantly, he was declared permanent unfit for any Govt: job even in future. (Report of Standing Medical Board is annexed).
5. Correct to the extent that the Standing Medical Board declared the appellant permanent incapacitate for any Government job even in future for the reasons that he was suffering from depressive disorder.
6. Incorrect as per report of the Standing Medical Board, the appellant was declared permanent incapacitate for any future Government job.
7. Incorrect the decision of Standing Medical Board cannot be overruled by the opinion of a single doctor through a simple prescription which itself is probably ambiguous in nature.
8. This para is already replied in previous Paras.
9. Correct to the extent of filing writ petition by the appellant before the Peshawar High Court, Peshawar and on the direction thereof, he was again

referred to Standing Medical Board wherein the Chairman of the said board had furnished written opinion duly signed by all members of the board that it they have no authority and power to review its own decision. (Relevant papers attached).

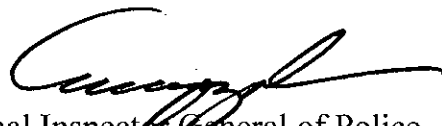
10. Needs no comments as the Para is already explained.
11. Needs no comments as the same is not related.
12. Needs no comments as the Para is already explained.

Grounds

- A. Incorrect the appellant has been treated in accordance with law and his secured rights have not been violated as respondents have no grudges against the appellant.
- B. Incorrect the competent authority has passed a speaking order because as discussed earlier, the appellant has been declared complete incapacitate and unfit for job in future. Hence, plea of the appellant is not tenable.
- C. Incorrect the order passed by the competent authority is legal and lawful hence tenable in the eye of law.
- D. Needs no comments this Para is already explained.
- E. Long length of service does not exonerate a Police officer to remain in service if he is not even fit for job. Moreover, the appellant has not been penalized rather he has been treated leniently as he was not in a condition of performing his duties.
- F. Needs no comments as not related.
- G. That the respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

Prayer

It is therefore most humbly prayed that on acceptance of above submissions the appeal of the appellant may very kindly be dismissed with cost.



Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 517/2016.

Kifayat Hussain No. 311/SB r/o Ghazi Abad, village Dak Ismail Khel,
Tehsil Pabbi, District Nowshera *Appellant*

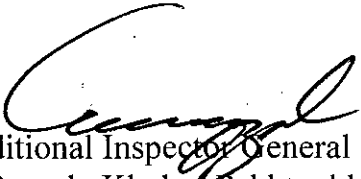
Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Additional Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar(Respondents)

AFFIDAVIT

I the deponent do hereby declare that the contents of the written reply is true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

Deponent


Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 517/2016.

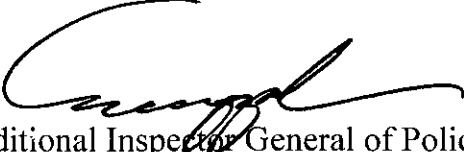
Kifayat Hussain No. 311/SB r/o Ghazi Abad, village Dak Ismail Khel,
Tehsil Pabbi, District Nowshera *(Appellant)*

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Additional Inspector General of Police Special Branch, Khyber Pakhtunkhwa, Peshawar(Respondents)

AUTHORITY LETTER

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondent No. 4 before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc. pertaining to the appeal through the Government Pleader.


Additional Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 4)

**BEFORE THE HONOURABLE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Kifayat Hussain

Versus

Govt of Khyber Pakhtunkhwa, etc

REJOINDER OF COMMENTS FILED BY RESPONDENT NO. 2 & 3

Reply on preliminary objection

Respectfully Sheweth,

- 1. Para no.1 of the preliminary objection in comments is incorrect, hence denied as the appellant has a cause of action.*
- 2. Para No.2 is also incorrect as appeal of the appellant is well in time.*
- 3. Para no.3 is also incorrect, hence denied.*
- 4. Para no.4 is also incorrect, hence denied.*
- 5. Para no.5 is also incorrect, hence denied.*

REPLY ON FACTS:

- 1. Para no.1 of the acts needs no reply.*
- 2. Para no.2 of the facts needs no reply, however there is no complaint against the appellant in his entire period of service.*

3. Para no.3 needs no reply.

4. Para no.4 of the facts is correct to the extent that the appellant was declared incapacitate for government job while rest of the para is incorrect a as in the opinion of the medical board, It has not been mentioned that the appellant will not be eligible in future for any government job. More so the appellant has now been declared fit by authentic doctors for job, so there is no legal bar if the appellant is again referred to a standing medical board regarding his fitness.

5. Para No.5 is also incorrect and the reply of the same has been explained in the earlier para.

6. Para no.6 is also incorrect to the extent that the appellant is permanently incapacitated for the government job, moreover in the said para the respondents themselves admitted that the appellant has regained his health. Moreover in the order of the medical board dated 17/02/2014, it has never been mentioned that if in case the appellant regained his health he will be eligible for any government job.

7. Para no.7 is also incorrect as the appellant has been declared fit by the doctors of the police and services hospital and other authentic doctors and furthermore there is no legal bar for referring the appellant to a standing medical board.

8. *Para no.8 needs no reply.*

9. *Para no.9 is correct to the extent that the appellant approached the office of respondents in the light of the judgment of Peshawar High Court for decision on his application but respondent failed to pass any speaking order.*

10. *Para no.10 needs no comments.*

11. *Para no.11 needs no comments.*

12. *Para no.12 needs no comments.*

GROUNDS:

A. *Para No. A of the grounds is incorrect as the appellant has not been treated according to law.*

B. *Para No. B of the grounds is incorrect as it has never been mentioned that the appellant is unfit for any future job.*

C. *Para No. C is also incorrect as the order passed by the respondents regarding non constituting the medical board for re-examining the appellant is illegal and is in violation of the order of Peshawar High Court.*

D. *Para No. D needs no reply.*

E. Para E is incorrect, hence denied. Moreover long service of the appellant means that the appellant means that he has rendered valuable services to the respondents department without any complaint and even now again ready to serve the respondents being a health and fit person.

F. Para F needs no reply.

G. Para G needs no reply.

It is, therefore, humbly prayed that the appeal of the appellant may kindly be allowed and the respondents may kindly be directed to constitute medical board for re-examining the appellant being a healthy and fit person.


Appellant

Through


ZAHANAT ULLAH,

&


MUHAMMAD ADEEL ILYAS

&

MOHAMMAD JALAL,

Advocates, High Court Peshawar

Dated: 04/12/2017

**BEFORE THE HONOURABLE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Kifayat Hussain

Versus

Govt of Khyber Pakhtunkhwa, etc

REJOINDER OF COMMENTS FILED BY RESPONDENT NO. 4

Reply on preliminary objection

Respectfully Sheweth,

- 1. Para no.1 of the preliminary objection in comments is incorrect, hence denied as the appellant has a cause of action.*
- 2. Para No.2 is also incorrect as appeal of the appellant is well in time.*
- 3. Para no.3 is also incorrect, hence denied.*
- 4. Para no.4 is also incorrect, hence denied.*
- 5. Para no.5 is also incorrect, hence denied.*

REPLY ON FACTS:

- 1. Para no.1 of the acts needs no reply.*
- 2. Para no.2 of the facts needs no reply, however there is no complaint against the appellant in his entire period of service.*

3. Para no.3 needs no reply.
4. Para no.4 of the facts is correct to the extent that the appellant was declared incapacitate for government job while rest of the para is incorrect a as in the opinion of the medical board, It has not been mentioned that the appellant will not be eligible in future for any government job. More so the appellant has now been declared fit by authentic doctors for job, so there is no legal bar if the appellant is again referred to a standing medical board regarding his fitness.
5. Para No.5 is also incorrect and the reply of the same has been explained in the earlier para.
6. Para no.6 is also incorrect to the extent that the appellant is permanently incapacitated for the government job, moreover in the said para the respondents themselves admitted that the appellant has regained his health. Moreover in the order of the medical board dated 17/02/2014, it has never been mentioned that if in case the appellant regained his health he will be eligible for any government job.
7. Para no.7 is also incorrect as the appellant has been declared fit by the doctors of the police and ser hospital and other authentic doctors and further there is no legal bar for referring the appellant to a standing medical board.

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8. *Para no.8 needs no reply.*

9. *Para no.9 is correct to the extent that the appellant approached the office of respondents in the light of the judgment of Peshawar High Court for decision on his application but respondent failed to pass any speaking order.*

10. *Para no.10 needs no comments.*

11. *Para no.11 needs no comments.*

12. *Para no.12 needs no comments.*

GROUNDS:

A. *Para No. A of the grounds is incorrect as the appellant has not been treated according to law.*

B. *Para No. B of the grounds is incorrect as it has never been mentioned that the appellant is unfit for any future job.*

C. *Para No. C is also incorrect as the order passed by the respondents regarding non constituting the medical board for re-examining the appellant is illegal and is in violation of the order of Peshawar High Court.*

D. *Para No. D needs no reply.*

E. Para E is incorrect, hence denied. Moreover long service of the appellant means that the appellant means that he has rendered valuable services to the respondents department without any complaint and even now again ready to serve the respondents being a health and fit person.

F. Para F needs no reply.

G. Para G needs no reply.

It is, therefore, humbly prayed that the appeal of the appellant may kindly be allowed and the respondents may kindly be directed to constitute medical board for re-examining the appellant being a healthy and fit person.


Appellant

Through


ZAHANAT ULLAH,

&


MUHAMMAD ADEEL ILYAS

&

MOHAMMAD JALAL,

Advocates, High Court Peshawar

Dated: 04/12/2017

**BEFORE THE HONOURABLE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Kifayat Hussain

Versus

Govt of Khyber Pakhtunkhwa, etc

REJOINDER OF COMMENTS FILED BY RESPONDENT NO. 4

Reply on preliminary objection

Respectfully Sheweth,

- 1. Para no.1 of the preliminary objection in comments is incorrect, hence denied as the appellant has a cause of action.*
- 2. Para No.2 is also incorrect as appeal of the appellant is well in time.*
- 3. Para no.3 is also incorrect, hence denied.*
- 4. Para no.4 is also incorrect, hence denied.*
- 5. Para no.5 is also incorrect, hence denied.*

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- 1. Para no.1 of the acts needs no reply.*
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5. Para No.5 is also incorrect and the reply of the same has been explained in the earlier para.

6. Para no.6 is also incorrect to the extent that the appellant is permanently incapacitated for the government job, moreover in the said para the respondents themselves admitted that the appellant has regained his health. Moreover in the order of the medical board dated 17/02/2014, it has never been mentioned that if in case the appellant regained his health he will be eligible for any government job.

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10. Para no.10 needs no comments.

11. Para no.11 needs no comments.

12. Para no.12 needs no comments.

GROUNDS:

A. Para No. A of the grounds is incorrect as the appellant has not been treated according to law.

B. Para No. B of the grounds is incorrect as it has never been mentioned that the appellant is unfit for any future job.

C. Para No. C is also incorrect as the order passed by the respondents regarding non constituting the medical board for re-examining the appellant is illegal and is in violation of the order of Peshawar High Court.

D. Para No. D needs no reply.

E. Para E is incorrect, hence denied. Moreover long service of the appellant means that the appellant means that he has rendered valuable services to the respondents department without any complaint and even now again ready to serve the respondents being a health and fit person.

F. Para F needs no reply.

G. Para G needs no reply.

It is, therefore, humbly prayed that the appeal of the appellant may kindly be allowed and the respondents may kindly be directed to constitute medical board for re-examining the appellant being a healthy and fit person.

Appellant

Through

ZAHANAT ULLAH,

&

MUHAMMAD ADEEL ILYAS

&

MOHAMMAD JALAL,

Advocates, High Court Peshawar

Dated: 04/12/2017.