

Sr. No	Date of order/ proceeding	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	15.11.2019	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b>  <b>Service Appeal No. 314/2019</b></p> <p style="text-align: center;">Date of Institution ..... 28.02.2019  Date of Decision ..... 15.11.2019</p> <p>Uzair Khan son of Jan Muhammad resident of Village Shewa, Mohallah Yousaf Khel, Tehsil &amp; District Swabi.  <span style="float: right;"><b>Appellant</b></span></p> <p style="text-align: center;"><b>Versus</b></p> <p>1. Government of Khyber Pakhtunkhwa through Secretary Higher Education Peshawar.  2. Directorate of Higher Education Government of Khyber Pakhtunkhwa Peshawar.  3. Principal Government Post Graduate College District Swabi.  4. Principal Government Girls Degree College Shewa, District Swabi.  5. Principal Government Degree College Shewa, District Swabi.  <span style="float: right;"><b>Respondents</b></span></p> <p><b>Mr. Muhammad Hamid Mughal</b>-----<b>Member(J)</b>  <b>Mr. Hussain Shah</b> -----<b>Member(E)</b></p> <p style="text-align: center;"><b><u>JUDGMENT</u></b>  <b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney present.</p> <p>2. The appellant, Sweeper, (Ex-Class-IV) has filed the present service appeal on the ground that though he was reinstated in</p>

15.11.2019

service vide order dated 14.04.2017 but without back benefits.

3. Learned counsel for the appellant argued that the appellant was appointed as Sweeper vide order dated 03.01.2015; that the appointment order of the appellant alongwith another Class-IV colleague Waqar Ahmad was cancelled vide order dated 03.04.2015; that Waqar Ahmad filed Service Appeal No.877/2015 against the cancellation of his appointment order which service appeal was accepted vide judgment dated 18.10.2016 and resultantly Waqar Ahmad was reinstated in service with back benefits. Further argued that the appellant was also reinstated in service but without back benefits and as such he was met with discriminatory treatment.

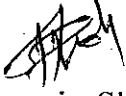
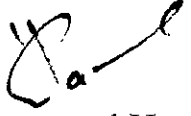
4. As against that learned District Attorney argued that the appellant did not challenge the order of his cancellation of appointment; that the appellant is not entitled to back benefits under the principle of No work, No pay.

5. Arguments heard. File perused.

6. The appellant has filed department appeal for the grant of back benefits but the same was not decided by the appellate authority (respondent No.2).

7. In view of the circumstances of the case, the departmental appeal filed by the appellant is remitted to the appellate authority (respondent No.2) to decide the same through speaking order within 30 days of the receipt of this judgment/order. Copy of departmental appeal be also sent to the appellate authority (respondent No.2) alongwith copy of this judgment/order. Parties are left to bear their

15.11.2019

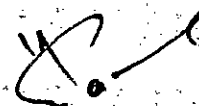
		<p>own costs. File be consigned to the record room.</p> <p> (Hussain Shah) Member</p> <p><u>Announced</u> 15.11.2019</p>	<p> (Muhammad Hamid Mughal) Member</p>
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15.11.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Vide separate judgment of today of this Tribunal, placed on file, the departmental appeal filed by the appellant is remitted to the appellate authority (respondent No.2) to decide the same through speaking order within 30 days of the receipt of this judgment/order. Copy of departmental appeal be also sent to the authority (respondent No.2) alongwith copy of this judgment/order. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

ANNOUNCED.

15.11.2019

28.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG ~~along with~~ for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments before S.B.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

23.08.2019

Junior to counsel for the appellant and Addl. AG alongwith Muhammad Israr, Junior Clerk for the respondents present.

Written reply on behalf of respondents submitted which <sup>is</sup> ~~are~~ placed on record. The appeal is assigned to D.B for arguments on 15.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.



Chairman

13.05.2019

Appellant absent. Learned counsel for the appellant absent. Security and process fee not deposited. Notice be issued to the appellant to deposit the same. Thereafter, notices be issued to the respondents for written reply/comments. Adjourned to 28.06.2019 before S.B.

~~Appellant Deposited  
Security & Process Fee~~

  
Member


25.03.2019

Learned counsel for the appellant present. Preliminary arguments heard.

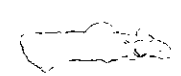
The appellant (Sweeper) has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 for the grant of back benefits.

Learned counsel for the appellant argued inter-alia that the appellant was appointed as Sweeper vide order dated 03.01.2015; that the appointment order of the appellant was declared cancelled vide order dated 03.04.2015; that the appellant was reinstated in service vide order dated 14.04.2017 but respondents are reluctant to grant back benefits; that similarly placed person Mr. Waqar Ahmad challenged the cancellation of his appointment order before this Tribunal in Service Appeal No.877/2015 and upon the acceptance of the ~~Said~~ service appeal Mr. Waqar Ahmad was reinstated in service with all back benefits; that the appellant is also entitled to similar treatment.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B

  
Member

~~Learned counsel for the appellant present. Preliminary arguments heard.~~  
~~The appellant (Sweeper) has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 for the grant of back benefits.~~  
~~Learned counsel for the appellant argued inter-alia that the appellant was appointed as Sweeper vide order dated 03.01.2015; that the appointment order of the appellant was declared cancelled vide order dated 03.04.2015; that the appellant was reinstated in service vide order dated 14.04.2017 but respondents are reluctant to grant back benefits; that similarly placed person Mr. Waqar Ahmad challenged the cancellation of his appointment order before this Tribunal in Service Appeal No.877/2015 and upon the acceptance of the ~~Said~~ service appeal Mr. Waqar Ahmad was reinstated in service with all back benefits; that the appellant is also entitled to similar treatment.~~  
~~Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B~~

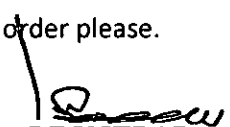



Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 314/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/2/2019	<p>The appeal of Mr. Uzair Khan presented today by Mr. Mohsin Khan Mohmand 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 28/2/19</p>
2-	11/03/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/03/19.</u></p> <p style="text-align: right;"> CHAIRMAN</p>



**BEFORE THE SERVICE TRIBUNAL K.P.K AT**  
**PESHAWAR**

Service Appeal 314 /2019

Uzair Khan .....Appellant

**V E R S U S**

Government of Khyber Pakhtunkhwa, & others.....Respondents

**I N D E X**

S. No.	Description of documents	Annexs	Pages
1.	Memo of appeal with affidavit		1-4
2.	Application with affidavit		
3.	Copy of list	A/A <sup>3</sup>	5-7
4.	Copy of order	B	8
5.	Copy of payment list report	C	9
6.	Copy of the appointment order	D	10
7.	Copy of the judgment	E	11-14
8.	Copy of order	F	15
9.	Copy of the reinstatement order	G	16
10.	copy of the impugned letter	H/H <sup>11</sup>	17-18
11.	Wakalatnama		

Appellant

Through

*Mohsin Khan*

**Mohsin Khan Mohmand**

Mudasir Ahmed

And

Usman Ali *[Signature]*  
Advocate Peshawar

(1)

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

**Khyber Pakhtunkhwa  
Service Tribunal**

Service Appeal No. 314 /2019

Diary No. 292

Dated 28/2/2019

Uzair Khan S/o Jan Muhammad R/o Village Shewa, Mohallah  
Yousaf Khel, Tehsil and District Swabi

.....Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Secretary Higher Education Department Civil Secretariat Peshawar.
2. Directorate of Higher Education Government of Khyber Pakhtunkhwa Peshawar, Khyber Road Peshawar Cantt.
3. Principal Government Post Graduate College District Swabi.
4. Principal Government Girls Degree College Shewa, District Swabi.
5. Principal Government Degree College Shewa, District Swabi.....Respondents

**SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL ACT, 1974 AGAINST RESPONDENTS**  
**FOR NOT EXTENDING BACK BENEFITS TO THE**  
**APPELLANT INSTEAD OF CLEAR DIRECTIONS VIDE**  
**LETTER DATED 12.06.2017 NO.15958 WHICH IS**  
**ILLEGAL, AGAINST LAW AND FACTS.**

**PRAYER IN APPEAL:-**

**ON ACCEPTANCE OF THIS APPEAL, RESPONDENTS MAY**  
**PLEASE BE DIRECTED TO TREAT THE APPELLANT**  
**SIMILARLY WITHOUT ANY DISCRIMINATION AND**  
**EXTEND BACK BENEFITS IN THE LIGHT OF THE**  
**JUDGMENT OF THIS HON'BLE TRIBUNAL IN SERVICE**  
**APPEAL NO.877/2015 DECIDED ON 18.10.2016.**

**ANY OTHER RELIEF WHICH THE HON'BLE TRIBUNAL**  
**DEEMS FIT MAY ALSO BE GRANTED.**

**Respectfully Sheweth:-**

Filed to-day  
Registrar  
28/2/19

**The brief facts necessitating this appeal are submitted as under:-**

1. That, the respondent No. 5 invited names of the eligible and interested persons for appointment as Class-IV, from the office of Manger Employment Exchange, Swabi.
2. That, name of appellant alongiwth others was forwarded to respondents No.5 **list is annexed "A"**.
3. That Departmental Selection Committee was constituted and call letters were issued for interview.
4. That in consequence of recommendation of DSC appellant was appointed vide order dated 3.1.2015. **Copy of order is annexed "B"**.
5. That appellant was medically examined and found fit thereafter, service book was prepared..
6. That appellant performed duty for three months to the entire satisfaction of respondents and salary for these months are also given to appellant. **Copy of payment list report is annexed "C"**.
7. That appointment order of appellant and one other colleague/Class-IV were declared cancelled on the directions of respondent No. 2 without any reasons. **Copy of the appointment order annexed "D")**
8. That after cancellation of appointment order my another colleague Mr. Waqar Ahmed ( Class-IV) who were appointed challenged the cancellation in this Hon`ble Tribunal vide Service Appeal No. 877/2015 titled Waqar Ahmed, which was accepted on 18.10.2016 with the direction to re-instate him in service **with all back benefits**. **Copy of the judgment is annex "E"**

9. That judgment of this Hon'ble Tribunal was implemented by respondents and Mr. Waqar Ahmad was reinstated in service with all back benefits. **(Copy of order is Annex "F")**.
10. That thereafter, the appellant requested the respondent to extend the benefits of the judgment to the appellant as per the prevailing rules and in the light of reported judgment of Hon'ble Supreme Court of Pakistan SCMR-1185 of 1996.
11. That respondent No.2 on the requested the appellant directed respondent No.3 to treat the appellant in same manner Mr. Waqar Ahmad has been treated.
12. That in response of the letter, respondent No.3 reinstated the appellant in Government Girls Degree College, Yar Hussain, District Swabi vide letter No.2005 dated 14.04.2017. The appellant has been reinstated into service, but are reluctant to grant back benefits. **(Copy of the reinstatement order is Annex "G")**.
13. That the appellant thereafter moved an application for back benefits to the principal concerned and in the light of the said letter the Directorate of Higher Education issued directions to the principal that you being competent authority, settle the issue of the appellant as per rules. Which has not been resolved yet. **(Copies are Annex "H" & "H-I")**.
14. That the respondents are bound to treat the appellant without any discrimination and to grant all back benefits without any further delay.
15. That the Respondent Department also commit discrimination which is clear cut violation of Article 25-A Constitution of Islamic Republic of Pakistan.
16. That depriving the appellant from of all back benefits is illegal against law and facts, on the following grounds.

**GROUND:-**

- A. That the impugned letter is based on discrimination which is against the law and norms of principle of natural justice.

4  
B. That appointments were made after observing all codal formalities and after recommendation of DSC.

C. That the same relief of back benefits had already been granted to my another colleague by the respondents.

**It is, therefore, humbly prayed** that the respondents may please be directed to treated and the appellant similarly without any discrimination and extend back benefits as already granted in the light of the judgment of this Hon`ble Tribunal in service Appeal No. 877/2015 decided on 18.10.2016.

عزیز خان

Appellant

Through

Mohsin Khan

**Mohsin Khan Mohmand**

Mudasir Ahmed

And

Usman Ali ~~Usman Ali~~  
Advocate Peshawar

**AFFIDAVIT**

I Uzair Khan S/o Jan Muhammad R/o Village Shewa, Mohallah Yousaf Khel, Tehsil and District Swabi, do hereby solemnly affirm and declare on Oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon`ble Court.

Identified by

Mohsin Khan

**Mohsin Khan Mohmand**  
Advocate



DEPONENT

16204-0351908-3

**BEFORE THE SERVICE TRIBUNAL K.P.K AT**  
**PESHAWAR**

Service Appeal \_\_\_\_/2019

Uzair Khan .....Appellant

**V E R S U S**

Government of Khyber Pakhtunkhwa, & others.....Respondents

**C E R T I F I C A T E:**

Certified that no such like SERVICE APPEAL has earlier been filed on the subject matter before this Hon`ble Court.

**L A W B O O K S:**

Service law  
any Law Book as per need

  
Appellant

Through

  
**Mohsin Khan Mohmand**

  
Mudasir Ahmed  
And

Usman Ali   
Advocate Peshawar

(5) 21

Annex- A(4)

MANAGER EMPLOYMENT EXCHANGE SWABI

No. E.E/Swabi/81

Dated 15/12/2014.

To,


The Principal  
G.D.C Shewa  
Swabi.

Subject: LIST OF EMPLOYMENT

Reference your letter No: 988 Dated: 13-12-2014 on the subject noted above.

Please find enclosed herewith the registration list of candidates applied for the registration in this office.

  
Manager  
Employment Exchange  
Swabi  
**MANAGER**  
Employment Exchange  
Swabi

  
Attested

Annex-A/1 (6) (8)

**MANAGER EMPLOYMENT EXCHANGE-SWABI**

**LIST OF CLASS-IV**

S.No	Registration No & Date	Occupation Code	Name	F/Name	Qualification	D.O.B	Address
01	5114/NT/14	91410	Rahman Sher ✓	Usman Shah	NIL	4-02-1983	Moh: Alanad Khel Shewa Tehsil Razar & Distr. Swabi.
02	5585/NT/14	91625	Abdul Haq ✓	Sher Zada	Metric	9-04-1969	Moh: Mansoor Khel Panjpur Tehsil & Distr. Swabi
03	5586/NT/14	91410	Wasim Ahmad ✓	Ghani Ur Rehman	Midd	5-09-1991	Moh: Ibrahim Khel Shewa Tehsil Razar & Distr. Swabi
04	5628/NT/14	9-69-55	Qamar Zaman ✓	Habib Ur Rehman	Metric	13-01-1981	Moh: Ghrib Abad P.O Gohati Tehsil & Distr. Swabi
05	5629/NT/14	91625	Arif Zaman ✓	Qamar Zaman	Metric	23-02-1986	Moh: Gar Aka Khel Gar Munara Tehsil & Distr. Swabi.
06	5630/NT/14	91410	Muhammad Usman ✓	Shah Khan	Midd	10-06-1971	Moh: Ghali Khel Tehsil & Distr. Swabi.
07	5631/NT/14	91410	Aurang Zeb Khan ✓	Zahir Shah	B.A	20-09-1978	Moh: Mangian Jehangira Tehsil Lahor & Distr. Swabi.
08	5632/NT/14	3-99-11	Kashif Jamaf ✓	Muhammad Jamal	D.A.E	27-02-1995	Gohati Moh: Luqman Dheri Tehsil & Distr. Swabi
09	5633/NT/14	0-71-20	Muhammad Ibrahim ✓	Satar Muhammad	Metric	12-04-1995	Moh: Batar Khel Zaida P.O Khas Tehsil & Distr. Swabi.
10	5634/NT/14	0-71-20	Abdul Muqtadir ✓	Abdul Muntazir	D.H.M.S	29-03-1981	Moh: Taus Khani Zaida Tehsil & Distr. Swabi
11	5635/NT/14	01625	Riaz Khan ✓	Muhammad Khan	Metric	12-01-1995	Moh: Shangrai P.O Qabai Tehsil Topi & Distr. Swabi.
12	5636/NT/14	91625	Haris ✓	Miroz Khan	Metic	17-02-1992	Moh: Gar Banda Maneri Bala Tehsil & Distr. Swabi.
13	5648/NT/14	91410	Uzair ✓	Jan Muhammad	NIL	01-1-1992	Moh: Yusuf Khel Shewa P.O Tehsil Razar & Distr. Swabi
14	5654/NT/14	91625	Abdus Samad ✓	Nazar Muhammad	F.A	18-02-1988	Moh: Ahmad Khel Sheikh Jana Tehsil & Distr. Swabi.

*M. R. Khan*  
Attested

*[Signature]*  
Manager,  
Employment Exchange  
Swabi  
**MANAGER**  
Employment Exchange  
Swabi

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5



OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE SHEWA SWABI.

S.No	Name	Father Name	Domicile	Signature
01	Rahman Sher	Usman Shah		
02	Abdul Haq	Sher Zada	Shewa	<i>[Signature]</i>
03	Waqar Ahmad	Ghani Ur Rahman		
04	Qamar Zaman	Habib Ur Rahman	Shewa	<i>[Signature]</i>
05	Arif Zaman	Qamar Zaman		
06	Muhammad Usman	Shah Khan		
07	Aurang Zeb Khan	Zahir Shah		
08	Kashif Jamal	Muhammad Jamal		
09	Muhammad Ibrahim	Satar Muhammad		
10	Abdul Muqtadir	Abdul Muntazir	Faizda	<i>[Signature]</i>
11	Riaz Khan	Muhammad Khan	Faizda	<i>[Signature]</i>
12	Haris	Miroz Khan		
13	Uzair	Jan Muhammad	Manerka	<i>[Signature]</i>
14	Abdus Samad	Nazar Muhammad	Shewa	<i>[Signature]</i>
15	Irfan Ullah	Abdul Raheem	Sheikh Jena Shewa	<i>[Signature]</i>

- 01. Section Officer Collegés (Training) K.P.K. *[Signature]*
- 02. Principal Chairman *[Signature]*
- 03. Member *[Signature]*
- 04. Member *[Signature]*

*[Signature]*  
Principal  
Govt: Degree Shewa  
(Swabi)  
*[Signature]*  
Attested

OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE SHEWA (SWABI).ORDER.

Consequent upon the recommendation of the Departmental selection committee the Competent authority is pleased to appoint Mr. Uzair S/o Jan Muhammad village Shewa Mahallah Yousaf khail Tehsil Razar Distt: Swabi against the vacant post of Sweeper in BPS-01 (4800-150-9300) plus other usual allowances as admissible under the Rules from the date of his taking over charge on the terms and conditions mentioned below:-

TERMS AND CONDITION:-

01. He shall produce health in age from the Medical superintendent / civil surgeon.
02. He will have all the right/ privileges contained in Khyber Pukhtoon Khwa civil servant Act, 1973 with all amendments made there in including Khyber Pukhtoon Khwa civil servant Act, 2005 and Rules made there under.
03. In case of resignation, the official will have to give one month prior notice. In absence of such notice their once months pay shall be forfeited to Government.
04. The Appointed must join his post within 30 days of the issue of this order.
05. In case of Disciplinary matters Khyber Pukhtoon Khwa civil servant Act, 1973 and E & D rules 2011 shall be applicable.
06. He will get pay in BPS-01 including usual allowances as admissible under the rules, he will be entitled to annual increment like other civil servant.

(Prof: Imtiaz Ahmad)  
PRINCIPAL

Govt: Degree College Shewa  
(Swabi)

Endst:-No 4-6 / Dated 3/1 2015

Copy of the above is forwarded to the:

01. Director Higher Education Khyber PUKHTOON KHWA Peshawar
02. District Account Officer Swabi
03. Official Concerned

*Prof: Imtiaz Ahmad*  
PRINCIPAL  
Govt: Degree College Shewa  
(Swabi)

PRINCIPAL  
Govt: Degree College  
Shewa (Swabi)

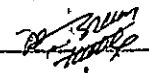
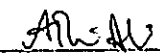
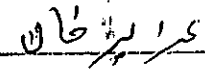

*M. Khattak*  
Attested

Accounts Office Sindh  
PAYMENT LIST BY POST  
For the month of March 2015

Page : 1  
Date : 26.03.2015

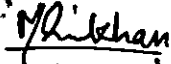
Section: 003 - DDU : SU4032 - PRINCEDEGREECOLLEGE SHEWA SWARI

Cash Center:

Per. No.	Old Per. No.	Name	Roll No.	Designation	Net Salary	Employee's Signature
00506584		JAVEZ KHAN		ASSISTANT	30,000.00	
00513564		ANWAR ALI		Teaching Assistant	30,000.00	
00734101		UZAIR		SHEEPER	12,523.00	
00735947		ABDUL SALAM		LECTURER	88,137.00	

Cash Center:

No. of employees in Cash Center 4 Total for cash center 160,660.00

  
Attested

Annex - D Important

10

(Signature)

OFFICE OF THE PRINCIPAL  
G.D.C. SHEWA (SWABI)  
NO: \_\_\_\_\_ DTD: 3/4/2015

To,

The Director,  
Higher Education Khyber Pakhtoon Khwa  
Peshawar.

Subject: - CANCELLATION OF INTERVIEW / APPOINTMENT

Sir,

In response to your letter No: 7925 dated 26/3/2015, the interview conducted on 31/12/2014 by the selection committee stand cancelled, due to which the appointment orders, with the following Endst: No, dated, Names & post should be considered as cancelled.

01. Endst: No: 01-3 dtd 3/1/2015 Mr. Waqar Ahmad S/O Ghani Rahman (N/Qasid)
02. Endst: No: 4-6 dtd 3/1/2015 Mr. Uzair S/O Jan Muhammad (Sweeper)

Note: You are directed to refund the pay from 3/1/2015 to 31/3/2015.

*(Signature)*  
Principal,  
Govt: Degree College,  
Shewa (Swabi).  
Principal  
Govt: Degree College  
Shewa (Swabi)

Endst: No 1009-02

Copy to the:

01. Waqar Ahmad N/Qasid
02. Uzair Sweeper
03. District Account Officer Swabi.

*(Signature)*  
Attested

*(Signature)*  
Principal,  
Govt: Degree College,  
Shewa (Swabi).  
Principal  
Govt: Degree College  
Shewa (Swabi)

11

Annex - E  
①

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 877 /2015



W.F. Province  
Service Tribunal  
Diary No. 937  
Dated 05-8-2015

Waqar Ahmad S/o Ghani Rehman  
R/o Village Shewa, Mohallah Ibrahim Khel,  
Tehsil and District, Swabi..... Appellant

V E R S U S

1. Govt of KPK,  
Through Secretary Higher Education,  
College Directorate, Peshawar
2. Director of Education (Higher Education),  
Civil Secretariat, Peshawar
3. Principal,  
Govt Degree College, Shewa,  
District Swabi
4. Manager Employment Exchange,  
District Swabi..... Respondents

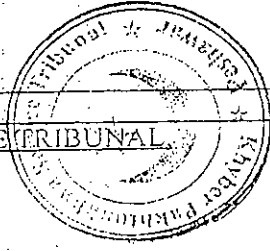
~~5/8/15~~  
5/8/15

Appeal u/s 4 of the KPK Service Tribunal Act, 1974 against the cancellation order dt.03.04.2015 of respondent No.3 and order dt.26.03.2015 of respondent No.2, which is illegal, against law and facts.

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal

No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	18.10.2016	<p style="text-align: center;"><b>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b> <b>PESHAWAR.</b></p> <p style="text-align: center;"><b>APPEAL NO. 877/2015</b> (Waqar Ahamd-vs- Govt. of Khyber Pakhtunkhwa through Secretary Higher Education, College Directorate, and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Mr. Anjad Ali, Advocate) and Mr. Usman Ghani, Sr. GP for respondents present.</p> <p>2. Appointed as Naib Qasid(BPS-01) in the Govt. Degree College Shewa(Swabi) vide order dated 03.01.2015, The said order was cancelled vide impugned order dated 03.04.2015, hence the appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. Learned counsel for the appellant in the light of materials available on file submitted that the appellant being duly recommended by the Departmental Selection Committee for appointment as Naib Qasid, the appellant was accordingly appointed. He also submitted arrival report so much so that his salary also started. He further argued that the impugned order is quite unlawful for the reason that no any notice or charge sheet was issued to the appellant and that no reason whatsoever has been given</p>



**ATTESTED**

*[Signature]*

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

in the impugned order for cancellation of the appointment order. He submitted that the impugned order is arbitrary, whimsical and based on malafide in order to create post for the blue eyed. He submitted that the appellant may be reinstated into service with all back benefits.

5. Learned Senior Government Pleader resisted the appeal by stating that the present appeal is not competent for the reason that departmental appeal dated 16.04.2015 of the appellant was rejected on 29.04.2015 which order has not been challenged in this appeal. He further submitted that as no minutes of Departmental Selection Committee were submitted to the high ups therefore, the appellant cannot be stated to have been recommended by the Departmental Selection Committee. He submitted that the appeal may be dismissed.

6. After a careful perusal of the record and hearing pro & contra arguments, we noted that the appellant was duly recommended for selection by Departmental Selection Committee per appointment letter so much so that the appellant in Para-4 of his appeal he has given names of Members of the Departmental Selection Committee. It was not shown that the appellant lacked in criteria for the post in question. We are of the considered view that the principle of locus-poenitentiae is fully applicable in this case. The respondents could not show that when departmental appeal of appellant was rejected so the same was communicated to the appellant. Copy of the said order dated 29.04.2015 is also available on file which shows that the reason given in the same is the same lack of recommendation of the Departmental Selection Committee as in the original order, therefore, this service appeal is not incompetent on the ground that the appellant did not challenge order dated 29.04.2015 on his departmental appeal. Upshot of the foregoing is that the original impugned

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

(14)

02

order dated 03.04.2015 as well as appellate order dated 29.04.2015 both are not standing on legal firm grounds. The same are liable to be set aside. The same are set aside and the appellant is reinstated into service with all back benefits. The appeal is accepted in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

*Sh. Pir Bakhtish Shah, Member*  
*Sh. Abdul Latif Member*

Certified to be true copy

ANN  
18.10

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation: 18-10-16  
Number of Words: 1600  
Copying Fee: 10/-  
Urgent: -  
Total: 10/-  
Name of Copyist: R.M.O.  
Date of Completion: 25-10-16  
Date of Delivery: 26-10-16



15

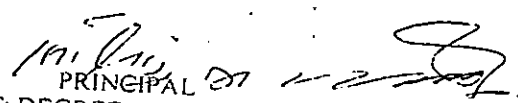
Annex - ~~100~~

HS

OFFICE OF THE PRINCIPAL GOVT: DEGREE COLLEGE SHEWA SWABI.  
OFFICE ORDER

NO: \_\_\_\_\_ DATED \_\_\_\_\_ P-188

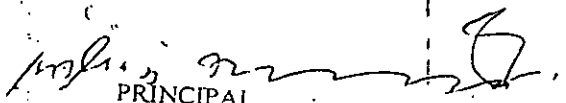
Mr. Waqar Ahmad S/O Ghani Rahman appointed as Naib Qasid via office order No 01-3  
Dated 3-1-2015 and then terminated via Directorate office letter No 100-02 dated 3-4-2015  
and then re-instated by the honorable court (service tribunal Peshawar), endorsed by the Director  
Higher Education via letter No 31560 dated 23-11-2016 is hereby re-instated with all back benefits.  
He is directed to resume his duties immediately.

  
PRINCIPAL  
GOVT: DEGREE COLLEGE SHEWA  
SWABI.  
PRINCIPAL  
Govt Degree College  
Shewa (Swabi)

Endst No 549-51 dated 24-11-2016

Copy forwarded to the:

- 01. Director Higher Education Khyber Pakhtoonkhwa Peshawar.
- 02. Account office swabi.
- 03. MR. Waqar Ahmad.

  
PRINCIPAL  
GOVT: DEGREE COLLEGE SHEWA  
SWABI.

M. Ishaq  
Attested



PRINCIPAL  
GOVT: POST GRADUATE COLLEGE  
SWABI

Phone and Fax # 0938-530215

E. mail: [gpgcswabi@yahoo.com](mailto:gpgcswabi@yahoo.com)

Date: 14/4/2017

Ref # 2001-5

To

The Director  
Higher Education Department  
Peshawar Khyber Pakhtunkhwa

Subject:

**RE-INSTATEMENT OF MR. UZAIR KHAN CLASS-IV AND  
ADJUSTMENT IN GOVT GIRLS DEGREE COLLEGE YARHUSSAIN**

Memo:

Reference to letter No. 9293DHE/AD (litigation) dated April 4<sup>th</sup> 2017, as per Directives from your office Mr. Uzair Khan Class-IV is hereby Re-instated and adjusted at Govt Girls Degree College Yarhussain (Swabi) against the vacant post of class-IV.

*Sld*  
Coordinator  
Joint Management Council

PRINCIPAL  
Govt: Post Graduate College  
Swabi

Endst No 2001-5 dated 14/04/2017

Copy of the above is forwarded to the:

1. Section Officer (litigation) Higher Education Department Khyber Pakhtunkhwa Peshawar
2. Principal Govt Girls Degree College Yarhussain (Swabi)
3. Principal Govt Degree College Shewa (Swabi)
4. District Account Officer Swabi
5. Office record

*Mubashir*  
Attested

~~PRINCIPAL  
Govt: Post Graduate  
College Swabi~~

PRINCIPAL  
Govt: Post Graduate College  
Swabi

To,

The Director,  
Higher Education Khyber Pakhtunkhwa  
Peshawar.

Subjects:- A request for back benefits

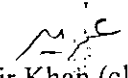
Respected Sir,

It is submitted for your kind information that I was appointed as Class IV (Sweeper) vide Office Order No.4-6 dated 3.1.2015, then terminated vide office order No.100-2 Dated 3.4.2015. I was later on re-instated vide office order no.2001-5 dated 14.4.2017 without mentioning back benefits.

It is hereby requested that I may please be provided all back benefits similar to the case i. r. o. Mr. Waqar Ahmad appointed as Class IV vide order No.1-3 dated 3.1.2015, terminated and re-instated later on.

Thanks

Attested  
M. Khan

  
Uzair Khan (class-IV)  
GGDC, Yar Hussain (Swabi)  
Dated: 04-05-2017

**DIRECTORATE OF HIGHER EDUCATION**

**KHYBER PUKHTUNKHWA, KHYBER ROAD PESHAWAR**

Telephone No.091-9211025-9210217-9210242 Fax-921021

DHE/AD (Litigation)/

Dated 12<sup>th</sup> June 2017



To:

The Principal,  
Government Girls Degree College, Yar Hussain,  
Swabi.

Subject: - A REQUEST OF BACK BENEFITS:

Memo:

I am directed to refer to the self explanatory application received Mr. Uzair Khan, Sweeper and to state that official concerned be directed to avoid direct correspondence with this office.

Moreover, you being, competent authority, settle the issue of the appellant as per rules.

Yours sincerely,

12/6/2017  
(Irfan Ullah Khan)




Assistant Director (Litigation)

Endst No. \_\_\_\_\_

Copy of the above is forwarded to PA to Director Higher Education Khyber Pakhtunkhwa, Peshawar.

Attested

Assistant Director (Litigation)

قیمت 50	1922	  
ایڈوکیٹ:		
بار کونسل ایسوسی ایشن نمبر:		
رابطہ نمبر:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ

Before the Khyber Pakhtunkhwa Service Tribunal. بعدالت جناب

مخانب: عزیز خان	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
<b>باعت تحریر آگہ</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ مقام آن مقام اختیار کیلئے احمد علی خان مومند، صدر شہ احمد اور پیش گو دیکل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز دیکل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلاف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق و رزیں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو دیکل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: احمد علی خان مومند

13-2-2019

DESHAWAR BAR ASSOCIATION  
KHYBER PAKHTUNKHWA

ناکمل

باعت تحریر

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ مقام آن مقام اختیار کیلئے احمد علی خان مومند، صدر شہ احمد اور پیش گو دیکل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز دیکل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلاف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق و رزیں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو دیکل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

مقام پشاور کے لیے منظور ہے۔

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

S.A # 314/2019

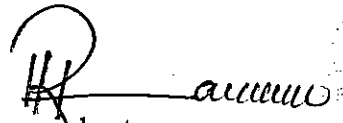
Uzair Khan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & Others..... Respondents

**INDEX**

<b>S.No</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Page No.</b>
1.	Para Wise Comments		1-2
2.	Affidavit		3

  
Respondent

(1) 4/21

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

S.A # 314/2019

Uzair Khan.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & Others..... Respondents

**SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2.**

**Respectfully Sheweth: -**

**Preliminary Objections:-**

1. That the appellant has got no cause of action/locus standi to file the instant Service appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands and is trying to conceal material facts.
3. That the instant service appeal is hit by doctrine of laches.
4. That the appellant is estopped by his own conduct to file the instant service appeal.

**Facts: -**

- 1) Correct.
- 2) Correct.
- 3) Correct.
- 4) Correct.
- 5) Correct.
- 6) Correct.
- 7) Correct to the extent that the appointment orders of the appellant and one other Class-IV were declared cancelled on the directions of the Respondent No. 2.
- 8) Correct.
- 9) Correct.
- 10) Correct to the extent that the appellant requested the respondent to extend the benefits of the judgment to the appellant as per the prevailing rules and reported judgment of the Supreme Court of Pakistan.
- 11) Incorrect. The respondent department directed the Respondent No. 3 to resolve/settle the issue of the appellant as per rules, being competent authority in the matter.
- 12) Correct to the extent that Respondent No. 3 in response to the directions of the respondent department reinstated the service of the appellant. But as far as back benefits are concerned, it has not been granted to the appellant in the light of reported judgment of Supreme Court of Pakistan judgment "No work No Pay". According to this judgment the appellant is not entitled to get back benefits because the appellant did not perform his duties during the termination period.
- 13) Incorrect as already explained in the preceding paras.

14) Needs no comments.

15) Incorrect. The appellant has been treated according to law and the judgment of Supreme Court of Pakistan i.e. "No Work No Pay".


16) Needs no comments.


**Grounds: -**

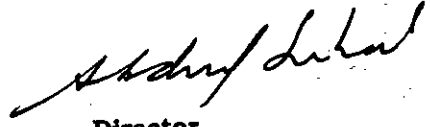
- A. Incorrect as already explained in the preceding paras of facts.
- B. Correct.
- C. Correct to the extent that back benefits has been granted to another Class-IV in compliance with the judgment of this Hon'able Service Tribunal.

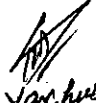
**Prayers: -**

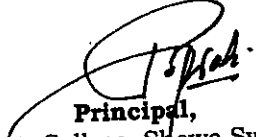
It is, therefore, humbly prayed that the instant appeal is devoid of merit; hence, may graciously be dismissed with appropriate costs.

  
**Secretary,**  
Higher Education Department  
Respondent No. 01

  
**Principal,**  
Govt: Postgraduate College, Swabi  
Respondent No. 03

  
**Director,**  
Directorate of Higher Education  
Respondent No. 02

  
**Principal,** *Yar Hussain*  
Govt: Girls College, ~~Shewa~~ Swabi  
Respondent No. 04

  
**Principal,**  
Govt: College, Shewa Swabi  
Respondent No. 05



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

S.A # 314/2019

Uzair Khan.....Appellant

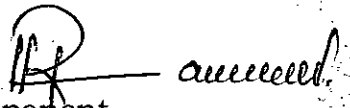
**Versus**

Govt. of Khyber Pakhtunkhwa & Others..... Respondents

**AFFIDAVIT**

I, Irfan Ullah Assistant Director, (Litigation) Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Identified by:

  
Deponent  
11101-6409112-3



**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA,  
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 9210215

No. 1041 /CA-VII/Estt: Branch/A-167/ Dated Peshawar the 13/02/2017

To

The Principal,  
GDC, Shewa(Swabi).

Subject: - RE-INSTATEMENT OF MR. UZAIR, CLASS-IV.

Memo:-

I am directed to enclose herewith a copy of letter No. SO(Lit)HED/SA/877/2015/Waqar Ahmad/1959 dated 25.01.2017., received from Provincial Government alongwith other relevant documents with the remarks to re-instate the services of above named official.

*[Signature]*  
10/2/17  
DY: DIRECTOR (ESTABLISHMENT)

Endst.No \_\_\_\_\_ /

Copy of the above is forwarded to the:-

1. Section Officer(Litigation) w/r to his above quoted No. & date.
2. PS to Secretary, Higher Education Achieves & Libraries Department, Khyber Pakhtunkhwa.
3. Assistant Director(Litigation), Local Directorate.

*[Signature]*  
DY: DIRECTOR (ESTABLISHMENT)

Court Case



**GOVERNMENT OF KHYBERPAKHTUNKHWA**

**HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

NO. SO (Lit) HED/SA# 877/2015 Waqar Ahmad

Dated the Peshawar January 25<sup>th</sup>, 2017

18

1955

P-17

To

The Director,  
Higher Education Khyber Pakhtunkhwa,  
Peshawar

Subject: Opinion on the reinstatement of Mr. Uzair against the post of Class-IV

Dear Sir,

I am directed to refer to your letter No. 1586/DHE/AD (Litigation) dated 18-01-2017 on the subject noted above and to say that in this regard SCMR-1185 of 1996 is quite clear. Relevant part is reproduced below:-

“Art.212---Appeal to Service Tribunal, on the case of civil servant who litigated, but also of other civil servants, who may have taken any legal proceedings, in such a case the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.”

2. I am therefore, of the view that instant case may be dealt with in light of above quoted judgment please.

Yours faithfully,

*(Khushi Muhammad Khan)*

Section Officer (Litigation)

PH # 091-92132501 FAX # 091-9210368

Endst: No. & date even.

Copy forwarded to the

1. PS to Secretary Higher Education, Archives & Libraries Deptt: Khyber Pakhtunkhwa
2. Master File

Section Officer (Litigation)

Director HED docx. شام 2:04 2017/01/25

ADL (Lit)  
For m/a pl.  
RECEIVED  
26/1/2017  
423 87  
3

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 2099 /ST

Dated 29 / 11 / 2019

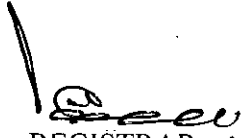
To

The Director Higher Education Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 314/2019, MR. UZAIR KHAN.

I am directed to forward herewith a certified copy of Judgement dated 15.11.2019 alongwith departmental appeal passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.