

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 906/2019

Date of Institution ... 08.07.2019

Date of Decision ... 23.08.2019

Noor Zada son of Hisnaghir Khan R/O Village and Post Office Khas Mohallah Adam
Khel, Nowshera. ... (Appellant).

VERSUS

Executive Engineer, Public Health Engineer Division, Peshawar and one other.
... (Respondents)

Present.

Mr. Mehboob Ali Khan Dagai,
Advocate.

... For appellant

MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appeal in hand is with the prayer for reinstatement of appellant in service with all back benefits.
2. It is stated in the memorandum of appeal that the appellant was appointed as Valveman on 03.08.1993 and was performing his duty in District Nowshera. That, in FIR No. 283 dated 13.07.2002 recorded for offences under Section 302/324/34 PPC, the appellant was falsely charged. He was acquitted/discharged from the offence on 15.01.2019 by a court of competent jurisdiction. Thereafter, the appellant visited the office of respondent No. 2 with a request for permission to resume his duty but was verbally informed that he was dismissed from service.

On 08.04.2019, the appellant submitted departmental appeal which was not responded to till the filing of appeal in hand.

3. Learned counsel for the appellant heard and available record gone through:

4. The appointment of appellant on 03.08.1993 was purely temporary and on contract basis. There is no document evidencing the fact that his service was ever regularized. In the said manner the appellant did not attain the status of a civil servant which puts a question mark on competence of instant appeal.

5. It is also a matter of record that on the date of discharge of appellant by learned Addl. Sessions Judge-III Nowshera he was on bail, however, did not prefer to submit a departmental appeal till 08.04.2019. It is also a fact that in the departmental appeal the appellant has admitted to have remained a fugitive from the law and an absconder.

The brief is also bereft of any order passed in detriment to the service of appellant which could be appealed against.

6. In view of the above the appeal in hand is not competent and is accordingly dismissed in limine. File be consigned to the record room.

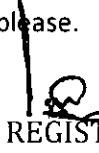


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
23.08.2019

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. - 906/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/07/2019	<p style="text-align: center;">The appeal of Mr. Noor Zada resubmitted today by Mr. Mehboob Ali Khan Dagai 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 <i>10/7/19</i></p>
2-	<i>11/07/19</i>	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/08/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>


*P-5
entrust*

The appeal of Mr. Noor Zada son of Ashnaghir Khan r/o village and post office Khas Mohallah Adam Khel Nowshera received today i.e. on 08.07.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of dismissal order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1185 /S.T,

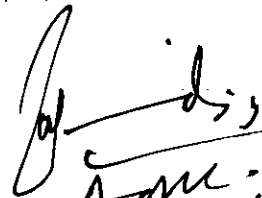
Dt. 9-7- /2019.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Mehboob Ali Khan Dargai Adv. Pesh.

R/Sir,

- Nothing was handed over to the appellant therefore it was instituted with the affidavit.
- Resubmitted for fixing before the bench


A.M.
10/7/2019.

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No 906 /2019

Noor Zada.....(Appellant)

V E R S U S


Executive Engineer and another.....(Respondents)

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Grounds of Appeal alongwith Affidavit	-	1-4
2.	Copy of the appointment order	'A'	5
3.	Copy of the FIR	'B'	6
4.	Copy of the acquittal order	'C'	7
5.	Copy of the letter affidavit	'D'	8
6.	Copy of the grounds of appeal	'E'	9
7.	Wakalat Nama (in original)		

Appellant

Through:



(MEHBOOB ALI KHAN DAGAI)

Advocate,

High Court, Peshawar

Cell # 0311-9416118

Dated: -08-07-2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No 906 /2019

Diary No. 931

Date 08/7/2019

Noor Zada S/O ~~Farhan~~ Farhan Khan R/O village and P.O Khas Mohallah
Adam Khel, Nowshera.....(Appellant)

VERSUS

1. Executive Engineer, Public Health Engineering Division,
Peshawar
2. Sub-Divisional Officer, Public Health Engineering Sub-
Division Nowshera.....(Respondents)

Appeal under Section 4 of the Service Tribunal Act

Respectfully Sheweth:-

The Appellant humbly submits as under:-

1. That the Appellant was appointed on 03-08-1993 as Valoman on WSS Lakari Khasari District Nowshera. (Copy of the order of appointment is attached as Annex 'A').
2. That on 13-07-2002 vide FIR No 283 dated 13-07-2002 under Section 302/324/34 PPC, the Appellant was innocently charged. (Copy of the FIR is attached as Annex 'B').
3. That on 15-01-2019 vide order dated 15-01-2019 passed by the learned Additional Sessions Judge-III, Nowshera as per

Filed to-day
[Signature]
Registrar
8/7/19

Re-submitted to -day
and filed.

[Signature]
Registrar
10/7/19

application of the prosecution, the Appellant was discharged from the charges. (Copy of the order is attached as Annex 'C').

- 4. That thereafter the Appellant visited office of the Respondent No 2 with a request to allow him on duty but he was verbally informed that his services were dismissed.
- 5. That till-date no order despite of repeated requests in written is conveyed or received to the Appellant. To this effect ~~a letter/application of the Appellant and~~ affidavit ~~is~~ attached as Annex 'D').
- 6. That on 08-04-2019, the Appellant filed an appeal before the concerned authority, but till-date no response is received. (Copy of the grounds of appeal is attached as Annex 'E').
- 7. That on expiry of statutory period, the Appellant prefers the instant appeal inter-alia on the following grounds amongst others:-

GROUND:-

- A. That neither the Appellant was associated with any proceeding or any sort of notice was received by the Appellant and that the proceedings, if any, initiated against the Appellant are null and void under the law.
- B. That absence of the Appellant was not deliberate or intentional, but due to the reason mentioned above.
- C. That the Appellant was constrained to become absent from duty, due to his illegal charge in a criminal case referred to

above from which he was discharged at the requested of prosecution.

- D. That inaction of the Respondent to reinstate the service of the Appellant is perverse, arbitrary, illegal and without any justification.
- E. That since his dismissal from service, the Appellant is jobless and has no source of income to feed and cloths his dependants.
- F. That the act of Respondents is against guaranteed constitutional rights of the Appellant, which are also against the norms and dictates of Islam.
- G. That the impugned act of the Respondents is in hasty manner, which did not fulfill the codal requirement.
- H. That the other points, when graciously allowed shall be submitted and argued at the time of arguments at this august Tribunal.

It is, therefore, very humbly prayed that on acceptance of this appeal, the order of the Respondents may kindly be declare null and void, ab-initio, unlawful and the Appellant be reinstated in service with all back benefits.

Any other relief not specifically asked for may also be granted in favour of the Appellant.

Through:

Appellant

(MEHBOOB ALI KHAN DAGAI)
Advocate
High Court, Peshawar

Dated:-08-07-2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Noor Zada.....(Appellant)

V E R S U S

Executive Engineer and another.....(Respondents)

AFFIDAVIT

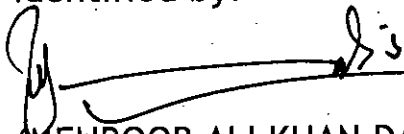
I, Noor Zada S/O Hisnaghir Khan R/O village and P.O Khas Mohallah Adam Khel, Nowshera, do hereby solemnly affirm and declare on oath that all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.

نور زاده

DEPONENT

CNIC # 17201-20959223-5

Identified by:-



(MEHBOOB ALI KHAN DAGAI)
Advocate
High Court, Peshawar

Attested



OFFICE ORDER NO. 170 /DATED PESHAWAR THE 03/18/1993.

To,

Mr. Noorzada S/o Hisnaghir Khan,
Vill: & P.O. Khari, Moh: Adam Khel,
Teh: & Distt: Nowshera.

Annex-A

Subject:- ESTABLISHMENT OPERATIONAL STAFF.

Reference:- Finance Deptt: NWFP, Pesh: letter No. BI/2-1/92-93/FB
dated 4.11.1992.
Chief Engineer PHED NWFP, Peshawar letter No. 300372-Ab/8,
dated 24.12.1992.

As selected by selection committee you are hereby appointed as Valveman on WSS: Lakari Khasari (Distt: Nowshera) with effect from the actual date of arrival in PHE: Division Peshawar @Rs. 1200/- Per month fixed.

- 1) The post is purely temporary.
- 2) Your services can be terminated at any time without assigning any reasons.
- 3) You will be liable to serve any where in PHE: Divn: Peshr.
- 4) You will have to furnish a declaration in writing that you have not previously been dismissed from Govt: Service or any autonomous body or agency.
- 5) You will have to appear before the Civil Surgeon and produce Medical fitness certificate from him.
- 6) The post is purely temporary on contract basis and will be renewable on yearly basis.

If you accept the appointment on the terms and condition specified above you should report for the duty to the Sub Divisional officer, Public Health Engineering Sub Division Nowshera, within (14) days of the issue of the order failing which the order shall stand cancelled automatically.

[Signature]
Executive Engineer
Public Health Engineering
Division, Peshawar.

Endst: No. E-5-A / 17 / Dated Peshawar the 03/18/1993.

Copy forwarded to:-

- 1) The Superintending Engineer, PHE: Circle, Peshawar.
- 2) The Accountant General NWFP, Peshawar.
- 3) The Chairman DDAC Nowshera.
- 4) The Sub Divisional Officer PHE: Sub Division, Nowshera.
- 5) The actual date of arrival required vide item No. 6 above.
- 5) The Divisional Accountant (Local).

For information please.

[Signature]
Executive Engineer
Public Health Engineering
Division, Peshawar.

(W.A. ANJUM)*

[Signature]
[Signature]

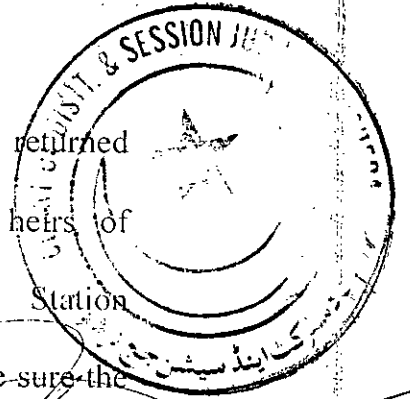
Order-11.
21.12.2018.

Handwritten notes at the top of the page, including "GAS-III No. 2/18 (P. 38) 6/18" and a circled number "7".

Present: Mr. Atiq-ur-Rahman Dy.PP for prosecution and

accused Noor Zada on bail.

Legal heirs of deceased not present. Process returned unserved. Fresh NBWA be issued against legal heirs of deceased/complainant through SHO of Police Station concerned for 15/1/19 DFC is directed to make sure the process.



Dost Muhammad Khan
ASJ-III, Nowshera

Handwritten signature "Ammer-e" written over the official name.

Order-12
15.01.2019

Accused Noor Zada is present on bail. Dy.PP Fazal-e-Hadi is present for prosecution. On behalf of complainant, Qadeer Khattak son of deceased Asghar Khan (CNIC No.17201-1314013-3) is present.

Accused Noor Zada is facing trial in a criminal case vide FIR No.283 dated 13.07.2002 Police Station Azakhel.

Perusal of record reveals that in this case the prosecution side had already filed an application seeking discharge of accused Noor Zada. In this background, I have asked from the son of deceased as to whether the legal heirs of the deceased are interested in prosecution of the accused Noor Zada. He has stated at the bar that legal heirs of deceased are not interested in prosecution of the accused.

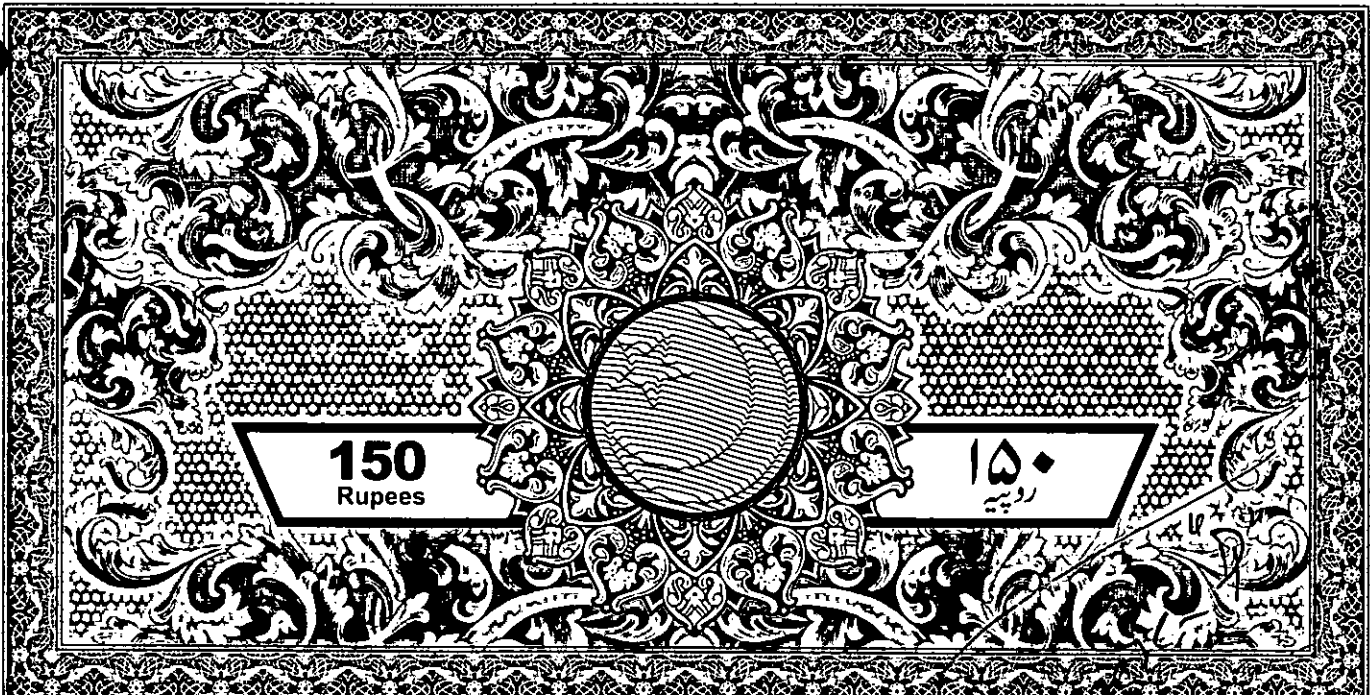
In the light of above, I accept the application of prosecutor and thus discharge accused Noor Zada. His sureties are relieved from the liability of bail bonds. File be consigned to record room after necessary completion and compilation.

Announced:
15.01.2019

Handwritten signature of Dost Muhammad Khan.

(Dost Muhammad Khan)
Additional Sessions Judge-III,
Nowshera

ATTESTED
Examiner Copying Agency
Branch. D.S.J. Nowshera
02 MAY 2019



150
Rupees

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روپیہ

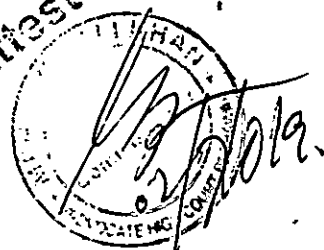
APPIDAVIT

H.M. ALI

I Noorzada s/o Ashnagar Khan r/o village
 and P.O. Khas Mahallah Adam Bheel,
 Nowshera, do hereby solemnly affirm
 and declare that after my separation
 from a matrimonial case, I was
 informed that my services were terminated
 dismissed and despite of repeated requests
 till date no order is issued over to
 me by the concerned authorities etc.

That the aforesaid declaration is correct to
 the best of my knowledge and belief and
 nothing has been concealed therefrom.

Attested



نورزادہ
Department

محفوظ جانک اینٹرنیشنل سٹوڈنٹس سوسائٹی، پبلٹیٹی، ضلع نوشہرہ!

درخواست نمبر: منظور اعلیٰ ملازمت بطور وال میں کنگری / منسٹر
ڈائری سٹیٹس

جناب اعلیٰ!
گذشتہ پندرہ سالوں میں صدر صدرالہ میں بطور وال میں اعلیٰ
وائس منسٹر سال 1993 سے اعلیٰ م کے تحت تھا۔ میں صدر میں
سال کے خلاف زلمہ دندہ 302 چھوٹی لٹرم درج کیا گیا۔ جس پر
سال سے وزارت کی طرف سے رازت م چھوڑا گیا۔ اس سیشن کو اس
نوشہرہ سے سال میں چھوڑا گیا۔ اور پھر گارڈ

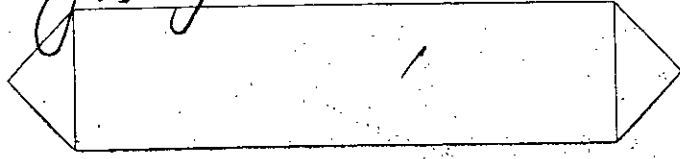
سال منسٹر کے کہ سال مذکورہ کو منسٹر رکھ کر ہرگز نہ ہو
موسم دوبارہ حال کیا جائے۔ اس بارے میں درخواست کی جا رہی ہے

خوارزہ ولد انصاف کنگری
2018/4/8

خوارزہ 03018833589

ATTESTED
Sis
Advo.

بعدالت حیات سروسز ٹریڈنگ کمپنی



2019ء منجانب ذرا دارہ
Executive Engineer

Services Appeal

موضوع
مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام شاہو کیلئے صحیحہ علی بن ذرا دارہ کے لئے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20

الرقوم 8/2/19ء ماہ

واہ العیوہ
کے لئے منظور ہے۔

Accepted
A. A. A.

5/1/19