

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Service Appeal No. 1179/2015

Date of Institution... 19.10.2015

Date of decision... 11.01.2018

Ajmal Khan son of Said Mir Shah Ex-Ward Orderly Civil Dispensary, Shamshah
Din Banda, District Hangu. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health, Khyber
Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

MR. Muhammad Ilyas Orakzai, ... For appellant.
Advocate.

MR. Ziaullah, ... For respondents.
Deputy District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN,
MR. GUL ZEB KHAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 06.02.2013 due to his absence from duty. Against this order, he filed departmental appeal on 17.08.2015 which was rejected on 14.10.2015 and thereafter he filed the present service appeal on 19.10.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that though the departmental appeal was filed after two and half years of passing of the impugned order yet an application for condonation of delay was filed by the appellant in the present case

on a subsequent date of filing of memorandum of appeal. That the reason mentioned in the application for condonation of delay was the threat from the militants group to the appellant for working as a polio worker. That in the said application it was further added that no regular enquiry was conducted against the appellant and no charge sheet etc. were issued to the appellant, therefore, the whole proceedings were void and no limitation would run alternatively. The learned counsel for the appellant further argued that in a judgment of the august Supreme Court of Pakistan reported as 2002-PLC(C.S)268 more than 10 years delay was condoned. That yet in another judgment of the Federal Service Tribunal, Islamabad (Karachi Bench) reported as PLJ 2011 Tr.C.(Services)21 it was held that in case of major penalty holding regular enquiry was must. He pressed into service two judgments of this Tribunal entitled "*Gul Rauf Vs. Government of Khyber Pakhtunkhwa through Secretary, Health, Peshawar and others*" in service appeal No. 1027/2015 decided on 12.4.2017 and "*Attaur Rahman-Vs-Additional IGP/Commandant, FRP, Peshawar and others*) decided on 02.05.2016 regarding condonation of delay and non-holding of regular enquiry.

4. On the other hand the learned Deputy District Attorney argued that the present appeal was hopelessly time barred because the departmental appeal was time barred. He pressed into service a judgment reported as 2009-SCMR-1435 in which it was laid down that the appellant was to explain the delay of each and every day. That this Tribunal also held in many judgments that in case of time barred appeal, the merits could not be discussed.


CONCLUSION

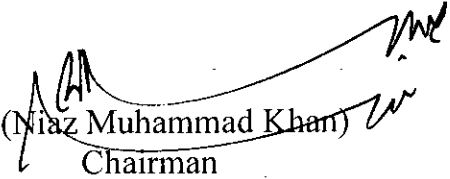
5. This Tribunal is first to see whether the present appeal is within time and if not whether the application for condonation of delay has any merit to be allowed. Admittedly, the departmental appeal was preferred after about two and half years.

There is an application for condonation of delay which is a proof of the fact that the departmental appeal was time barred.

6. This Tribunal is now to see whether the reasons given in the application for condonation of delay are sufficient for condonation and also to see whether alternatively the order passed is a void order and no limitation would run against that order. In application for condonation of delay, the reason for delay put forth is the militancy in the area. There was no proof of confinement of the appellant nor any specific threat to the appellant. In such situation, by general assertion no condonation can be granted as the appellant was to explain the delay of each and every day. The judgments referred to by the learned counsel for the appellant in *Attaur Rahman's* case is distinguishable because in that case the appellant was put in illegal confinement. The reported case of 2002-PLC(C.S) 268 is also distinguishable because in that case condonation was granted due to similarity of similar appeal decided on merits. The judgment of this Tribunal in *Gul Rauf's* case is also distinguishable for the reason that in that very judgment the formalities mentioned in Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 were not observed. The judgment reported as PLJ 2011 Tr.C.(Services) 21 is also distinguishable because in that very case the proceedings were undertaken under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. There was no *pari materia* Rule 9 in that Ordinance mentioned above. In the present appeal, the appellant was proceeded under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011. This rule allow the proceedings notwithstanding anything contained in any other law or rules through publication in newspaper. The authority has duly complied with the provision of Rule 9 of the said rules and it cannot be said that by non-holding of enquiry etc. the principles of natural justice have been violated and it can also be not held that the impugned order is a void order for the purpose of limitation.

7. As a sequel to the above discussion, the application for condonation of delay is rejected and the present appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member.


(Niaz Muhammad Khan)
Chairman

ANNOUNCED
11.1.2018

11.08.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment. Adjourned. To come up for arguments on 09.11.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member (J)



(Muhammad Hamid Mughal)
Member (J)

09.11.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Inquiry record is not available on the record. Respondents are directed to produce complete inquiry record on the next date of hearing. Adjourned. To come up for record and arguments on 11.01.2018 before D.B.



(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member

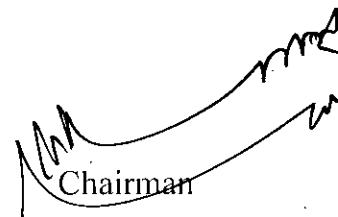
11.1.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Muhammad Shabir Junior Clerk for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



Member



Chairman

ANNOUNCED
11.01.2018

22.08.2016

Agent to counsel for the appellant and Addl. AG for respondents present. Agent to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on

28-12-16


Member


Member

28.12.2016


Counsel for the appellant and Mr. Muhammad Jan, GP respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 05.05.2017 for arguments before D.B.


Chairman

05.05.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Counsel for the requested for adjournment. To come up for rejoinder and final hearing for 11.08.2017 before D.B.


Member


Chairman

28.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Ward Orderly in Civil Dispensary, Shamsha Din Banda, District Hangu when subjected to inquiry on the allegations of wilful absence and removed from service vide order dated 6.2.2013 regarding which he preferred departmental appeal on 17.8.2015 which was rejected on 14.10.2015 and hence the instant service appeal on 19.10.2015.

That the inquiry was not conducted in the prescribed manners and due to law and order situation in the area, the absence of the appellant was not wilful.

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 24.02.2016 before S.B.

Appellant Deposited
Security & Process Fee




Chairman

24.02.2016

Counsel for the appellant, M/S Muhammad Arshed, SO and Yar Gul, Senior Clerk alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 28.4.2016 before S.B.


Member

28.4.2016



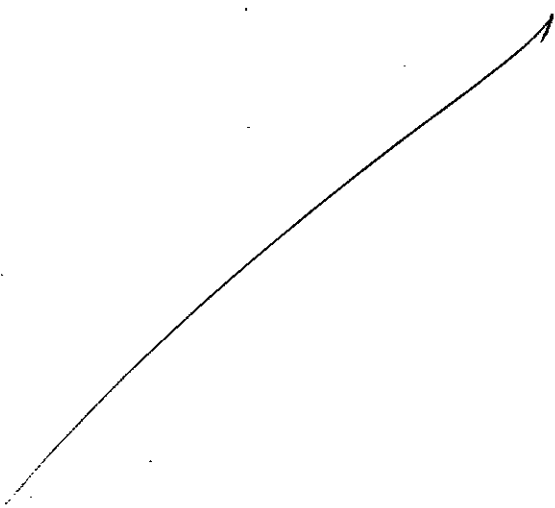
Appellant in person and Mr. Muhammad Arshad, SO alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.08.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.10.2015	<p>The appeal of Mr. Ajmal Khan resubmitted today by Mr. Muhammad Ilyas Orakzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-10-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Ajmal Khan son of Said Mir Shah Ex Ward Orderly received to-day i.e. on 19/10/2015 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellants.
- 2- 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.
- 3- Annexures of the appeal may be attested.

No. 1626 /S.T,

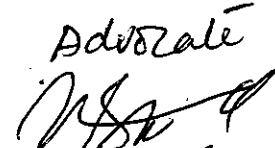
Dt. 21/10 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Ilyas Orakzai Adv. Pesh.

Reply: Memorandum of appeal got signed
copies of charge sheet, statement of allegations,
show cause notice enquiry report were not
served/received to the appellants that's why not
attached and annexures are also got
signed and attested.

Re submitted on . 21.10.2015

Advocate


BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Services Appeal No. _____/2015

Ajmal Khan

VERSUS

Government of Khyber Pakhtunkhwa etc


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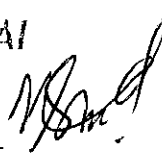
Dated: 19/10/2015

Through

Appellant


MUHAMMAD ILYAS ORAKZAI

&

MUHAMMAD SHABIR KHALIL 

&

JAWAD ALI 

Advocate, High Court Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Services Appeal No. 1179 /2015

K.P. Province
Service Tribunal
Diary No. 1273
Dated. 19-10-2015

Ajmal Khan son of Said Mir Shah Ex-Ward Orderly Civil
Dispensary, Shamsha Din Banda, District Hangu.

... APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa, at Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Assistant Director (P-II), Directorate General Health Services, KPK, Peshawar.
4. Executive District Officer Health Hangu, at Hangu.

... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT 1947
R/W KHYBER PAKHTUNKHWA EFFICIENCY AND
DISCIPLINE RULES 2011 AGAINST IMPUGNED
ORDER NO. 292-94/PF, DATED 06/02/2013
AND IMPUGNED APPELLATE ORDER NO. 10607-
08, DATED 14/10/2015, WHEREBY THE
APPELLANT HAS BEEN REMOVED FROM HIS
SERVICE

Re-submitted to-day
and filed.

Registrar,

21/10/15

PRAYER:

ON ACCEPTANCE OF THIS SERVICE APPEAL
THE IMPUGNED ORDER AS WELL AS IMPUGNED
APPELLATE ORDER MAY PLEASE BE SET ASIDE
AND APPELLANT BE REINSTATED IN SERVICE
WITH ALL BACK WAGES AND BENEFITS WITH
SUCH OTHER RELIEF AS MAY DEEM FIT IN THE
CIRCUMSTANCES OF THE CASE MAY ALSO BE
GRANTED

RESPECTFULLY SHEWETH,

Short facts giving rise to present service appeal are as under: -

1. That the appellant was serving in health Department as Ward Orderly from 2010 till 2013.
2. That during that period the appellant was efficient and performed his duties devotedly and honestly.
3. That the appellant has been removed of his Service by respondent no.4 vide office order No. 292-94/PF, dated 06/02/2013 without following legal formalities i.e. Show cause notice, inquiry and personal hearing. (Copy of office order is annexed as annexure A).
4. That against the impugned office order appellant submitted his departmental appeal / representation with

all his agonies about his absence to respondent no.2. (Copy of departmental appeal is annexed as annexure B). the said appeal may be treated as integral part of my appeal as well.

5. That vide order no. 10607-08, dated 14/10/2015 the competent authority i.e. respondent no.2 regretted the appeal of the appellant, hence this service appeal on the following amongst other grounds: - (Copy of the impugned rejection order dated 14/10/2015 is attached as annexure C).

GROUND; -

- A. That the impugned removal from service order as well as impugned appellate order are illegal, unlawful, void, and ineffective upon the rights of the appellant.
- B. That same impugned removal from service as well as impugned appellate order are against the principle of natural justice also.
- C. That no show cause notice, no charge sheet or statement of allegations was serviced upon the appellant, nor any inquiry (Formal or regular) has been conducted by respondents in order to separate chiefs from grain.

(4)

- D. That prior to issuance of impugned order, impugned appellate order no meaningful / purposeful chance of personal hearing was granted to the appellant.
- E. That the appellant explained his agonies about his absence which was not willful but due to the facts and circumstances mentioned in his departmental appeal, but no value was given to his true fact, which is injustice on part of respondents and hence both the impugned orders are not tenable.
- F. That the impugned appellate order is in violation of section 24-A of General Clauses Act as the competent authority has failed to cite any reason or justification in the said order.
- G. That it is well established principle of natural justice, enshrined in the precedent of superior courts as well. That where the competent authority is going to impose the penalty of removal / termination etc the regular inquiry to that effect is necessary / must.
- H. That all the proceedings initiated absent the appellant were malafide and malicious and purportedly were initiated in order to displace the appellant from his post and appoint any other blue eyed.
- I. That the punishment as imposed is too harsh and is a major one.

(5)

J. That no one shall be condemned unheard.

K. That the appellants belongs to a poor family who has got married and is having small kids, whose dependence is upon the appellant and such removal from service, the whole family are passing through extreme financial crisis, on this very ground the appellant may kindly be re-instated in his services.

It is, therefore, requested that the subject appeal be accepted as prayed for in the heading of the appeal.

Dated: 19/10/2015

محمد ابراهيم

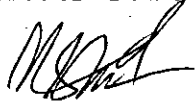
Through

Appellant



MUHAMMAD ILYAS ORAKZAI

&



MUHAMMAD SHABIR KHALIL

&

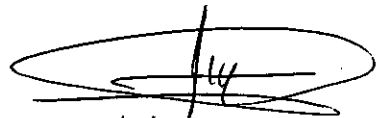


JAWAD ALI

Advocates, High Court Peshawar

Certificate:

Certified that as per instructions of my client no such like services appeal has earlier been filed.



Advocate

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Services Appeal No. _____/2015

Ajmal Khan

VERSUS

Government of Khyber Pakhtunkhwa etc

AFFIDAVIT

I, Ajmal Khan son of Said Mir Shah Ex-Ward Orderly Civil Dispensary, Shamsha Din Banda, District Hangu do hereby solemnly affirm and declare on oath that the contents of the instant services appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Forum.

(Signature)

DEPONENT

Identified by:

(Signature)

MUHAMMAD ILYAS ORAKZAI

Advocate, High Court Peshawar

ATTESTED



OFFICE OF THE DISTRICT HEALTH OFFICER, HANGU.

OFFICE ORDER

WHEREAS you Mr. Ajmal Khan s/o Mr. Saïd Mir Shah ward orderly cum sweeper SRO Fogh Serai is wilfully absent from your duty without any prior sanction of leave from the competent authority w.e.f 5.9.2011 till date.

AND WHEREAS you were directed vide this office letter No.4627/PF dated 8.9.2011, letter No.4827/PF dated 1.10.2011 & No. 4935/PF dated 13.10.2011 to explain your position and resume your duty within three days positively but you did not pay heed towards this.

AND WHEREAS you were charge sheeted vide this office order No.18667/PF dated 21.1.2012 wherein you were directed to appear before the enquiry committee within 14 days positively but this time too you failed to do so.

AND WHEREAS your absence was published in Dailies Aaj & Sarhad dated 4.1.2013 wherein you were vividly directed to resume your duty and put your comments in your defence within 15 days positively failing which ex-parte action will be taken against you but this time too you badly failed to do so and as such you are wilfully & unauthorizedly absent from your duty w.e.f 5.9.2011 till date.

AND WHEREAS after fulfilment of all the required codal formalities, the undersigned being the competent authority, impose major penalty i.e Removal from service upon you under the Efficiency & Disciplinary Rules 1973 from the exact date of your absence and as such your name has been struck off from the strength of Health Deptt; District Hangu with immediate effect.

ATTESTED
[Signature]

Sd/
District Health Officer
Hangu.

NO 292-94 /PF Dated Hangu the 6 /2/2013.

Copy forwarded to the;

- 1. District Account Officer Hangu.
- 2. Official concerned for strict compliance.
- 3. Account section Local for n/action.

[Signature]
District Health Officer
Hangu.

محکمہ اعلیٰ تعلیم و کونسل برائے سندھ حکومت سندھ تحصیل خواجہ شہزادہ

B

ڈیپارٹمنٹ آف ایجوکیشن سندھ

صاف علی گاہ

سورنامہ گزراقتی جائی ہے کہ مسائل حکمہ صحت میں بطور وارڈن اور

سول ڈیپارٹمنٹ سندھ میں 10.5.2010 کو تعینات ہوئے۔

(نقل تعیناتی سائل نمبر 1) مسائل ایسی تعیناتی سے تقریباً ایک سال تک ڈیپارٹمنٹ آف ایجوکیشن سندھ میں

کے کام و ایسٹابلیشمنٹ میں بطور وارڈن اور ایجوکیشن آفیسر کے طور پر کام کیا گیا۔

روز سرکاری ملازمت میں بطور وارڈن اور ایجوکیشن آفیسر کے طور پر کام کیا گیا۔

صورت میں جان سے مارنے کی دھمکیاں دینے لگے جو ٹھیکہ من مسائل

کو پولیس اور ایسٹابلیشمنٹ کے ذریعے لگے جو ٹھیکہ من مسائل

میں لگی پولیس اور ایسٹابلیشمنٹ کے ذریعے لگے جو ٹھیکہ من مسائل

کام و ایسٹابلیشمنٹ میں جان سے مارنے کی دھمکیاں دینے لگے جو ٹھیکہ من مسائل

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صورت میں جان سے مارنے کی دھمکیاں دینے لگے جو ٹھیکہ من مسائل

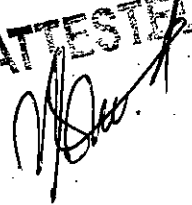
کام و ایسٹابلیشمنٹ میں جان سے مارنے کی دھمکیاں دینے لگے جو ٹھیکہ من مسائل

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ATTESTED

من سائل D.H.O. آفسا جیلنگو سے اپنی ملازمت کے بارے میں دریافت کیا تو انہوں نے یہ کہا کہ تو تواری سے پرکاشت ہوئے ہیں۔ من سائل کو کوئی علم نہ تھا، اس وقت انکو لکری و کثیرہ نہیں ہوا ہے۔ نہ میں کوئی نوٹس جاری ہوا ہے۔ من سائل کی غیر عافری عقدہ الجملہ نہ تھی بلکہ وہ مالا تھا۔ (فصل پرکاشت سائل کو ہے)۔ من سائل ایک رہنمائی سہریہ گوان سے تعلق رکھتا ہے اور شاہی شہہ ہے۔ اور چھوٹے چھوٹے بچے ہیں۔ یہ سب وہم آپ ہنا۔ سے گزارش کرتا ہوں کہ وہ کو راہ یا را او اعات اور عادت کو مدنظر رکھتے ہوئے من سائل کو رخصت ملازمت پر دوبارہ بحال کرنا کے اہکافات عادر فرما سیں۔

ATTESTED


صفحہ 17/08/2015

آپ اسان من
 (دہن خان)

اجل خان ملا سید صہر شاہ

ساتھ وارڈار کی سول ڈسپنٹری شہسارین بانڈہ جیلنگو

D.D. No. 24089
 Dated: 17-8-2015

10



DIRECTORATE GENERAL HEALTH
SERVICES, KHYBER PAKHTUNKHWA
PESHAWAR
NO 10607-08 /Personnel
Dated 14 /10/2015

To,

Mr. Ajmal Khan S/o Said Mir Shah
Ex: Ward orderly
Shamsha Din Banda District Hangu.

Subject: APPEAL
Memo:

ATTESTED
[Signature]

Reference to your appeal dated 17.08.2015.

Your request for re-instatement into Govt: service can not it is regretted be acceded to,
as all the codal farmilities have been completed by the DHO Hangu, before awarding punishment.

[Signature] 12/10/15

ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

[Signature] 12/10/2015

C.C

DHO Hangu for information and necessary action.

<p>ایڈویکیٹ / استخفافہ</p>		<p>18364</p>	
<p>بار کونسل اہلکار ایسوسی ایشن، خیبر پختونخواہ 1469 رابطہ نمبر: 0333-9191892</p>		<p>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</p>	

بعدالت جناب: مسز سمنہ نیر سید / موضوع: ضمیمہ درخواست فواد

<p>منجانب: اربلا نسیم</p>	<p>دعوی: سرو کس پارک سول</p>
<p>اجل خانہ: محمد سعید مسٹر / گواہ: محمد سعید مسٹر</p>	<p>محل وقوع: مورخہ: جرم: تھانہ:</p>

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر کاٹ و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق و تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز ضرورت ہوتی ہو تو کسی بھی طور پر یا اہل کارروائی کی برآمدگی اور ضرورتیں
 دائر کرنے اہل کارروائی و نظریاتی و پیروی کرنے کا اختیار ہوگا اور ضرورت ہوتی ہو تو مقدمہ مذکورہ کے کل پیروی
 کارروائی کے واسطے اور وکیل یا اختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ماتحتہ ہر داخلہ منظور و قبول ہوگا اور ان مقدمہ
 میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف کو قبول کرنے کا اختیار ہوگا کوئی تاریخ پیشی متعلقہ
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کر لیں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 19-10-2015

بد _____ واہ شد _____ بد _____

مقام _____ کے لئے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. 1179/2014

Mr. Ajmal Khan s/o Eid Marshah..... Appellant

Versus

- | | | |
|--|---|--------------------|
| <ol style="list-style-type: none">1. Secretary Health Govt: of Khyber Pakhtunkhwa Peshawar2. Director General Health Services, Pakhtunkhwa Peshawar3. Assistant Director (P-II) DGHS KPK Peshawar4. District Health Officer Hangu | } | Respondents |
|--|---|--------------------|

Written Comments on behalf of 1,2 and 3 & 4

PRELIMINARY OBJECTIONS

1. That the appellant has neither cause of action nor locus stand
2. That the appeal is not maintainable in the present form
3. That the appellant has not come to the court with clean hands
4. That the appeal is bad due to mis joinder and non-joinder of necessary party
5. That the appeal is time barred.

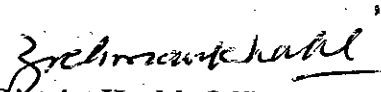
FACTS


1. Correct to the extent that the appellant was the regular employee of health department District Hangu.
2. Incorrect, the appellant was remained absent from his govt: duties with effect from 05/09/2011 to 06/02/2013.
3. Correct that the appellant was removed from govt: service consequent upon fulfillment of all codal formalities in view of existing rules and regulations.
4. The departmental appeal filed by the appellant was thoroughly examined and regretted having no force.
5. As replied above.


GROUND

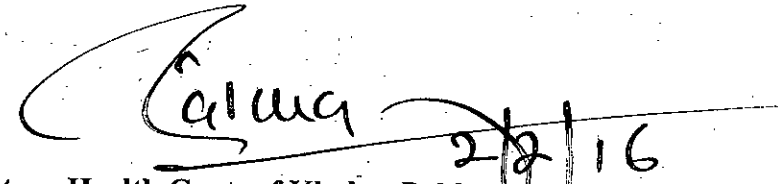
- A. Incorrect, the appellant was removed/terminated from govt: service in light of the existing rules.
- B. Incorrect. The impugned order as well as appellate order are according to the natural justice.
- C. Incorrect, the Appellant was terminated from his service on account of his willful and long absence from govt: duties w.e.f 05/09/2011 to 06/02/2013, after fulfillment of all codal formalities, in this regards, entire documents i.e. Advertisement of his absence, enquiry recommendations, charge sheet, show cause notice, personnel hearing are enclosed for ready reference

- D. Incorrect, personnel hearing was granted to the appellant, wherein, he stated that he hired another private person to perform his duties in his place, whereas, he also stated that he can't perform his duties and he intends to hire/engage another private person in future to perform his duties in his place, which is against the law and regulations.
- E. Incorrect, his departmental appeal was examined and regretted.
- F. Incorrect, the appellate order, as according to law.
- G. Incorrect, all codal formalities (enquiry, show cause, charge sheet and personnel hearing) have been fulfilled for the appellant.
- H. Incorrect, the appellant was removed on account of his long absence w.e.f 05/09/2011 to 06/02/2013, whereas, new appointments were carried out after proper advertisement in news paper and fulfilled entire codal formalities.
- I. Incorrect, The punishment as imposed is according to the guilt of the appellate
- J. Incorrect, all codal formalities were fulfilled
- K. The appellant is not entitled for reinstatement into service. It is requested that the appeal may be dismissed with cost.


District Health Officer
Hangu
(Respondent no.4)


Assistant Director (P-II)
Khyber Pakhtunkhwa Peshawar
(Respondent no.3)


Director General Health Services
Khyber Pakhtunkhwa
Peshawar
(Respondent no.2)


Secretary Health Govt: of Khyber Pakhtunkhwa
Peshawar
(Respondent no.1)

نوٹس غیر حاضری

آپ مسی اجمل خان ولد سید میر شاہ دارڈ اردلی کم سو پتہ BHU توغ سرانے ضلع ہنگو سے بغیر کسی پیشگی اجازت یا اطلاع کے مورخہ 5-9-2011 سے تاحال مسلسل اپنی ڈیوٹی سے غیر حاضر ہیں۔ آپ کو ای ڈی اور ہیلتھ ہنگو کے دفتر آرڈر نمبر 4627/PF مورخہ 8-9-2011، دفتر لیٹر نمبر 4827/PF مورخہ 1-10-2011 اور دفتر لیٹر نمبر 4985/PF مورخہ 13-10-2011 کے مطابق ہدایت کی گئی کہ عرصہ تین یوم کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور اپنے حق میں وضاحت پیش کریں مگر آپ نہ تو ڈیوٹی پر حاضر ہوئے اور نہ اپنے حق میں وضاحت پیش کی۔ آپ کو ای ڈی اور ہیلتھ ہنگو کے دفتر آرڈر نمبر 166-67/PF مورخہ 21-1-2012 کے مطابق چارج شیٹ کیا گیا جس میں آپ کو واضح ہدایت کی گئی کہ چودہ (14) یوم کے اندر اندر انکوآری کمیٹی کے روبرو پیش ہو جائیں اور اپنے حق میں وضاحت کریں مگر مذکورہ مدت کے اندر اندر آپ انکوآری کمیٹی کے سامنے پیش نہ ہو سکے۔ اور لگاتار تاحال اپنی ڈیوٹی سے غیر حاضر ہیں۔ اس لئے آپ کو بذریعہ اخباری اشاعت سخت تنبیہ کی جاتی ہے کہ اس اشاعت کے پندرہ (15) یوم کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور اپنے حق میں مکمل معافی پیش کریں بصورت دیگر آپ کے خلاف یکطرفہ کارروائی عمل میں لائی جائے گی جو کہ آپ کی برطرفی پر منتج ہوگی۔

المشتر:- ڈاکٹر محمد اسحاق بنگش

ایگزیکٹو ڈسٹرکٹ آفیسر ہیلتھ ہنگو

INF(KT)01/2013

ماہ جنوری 2013
اعزٹا صدر سرگرمی شاہ

۱۴۷
سر جان راجی سرانے

مغربی
کردیا
نائب صدر
کے حوالے
ہوئے کہا
ماہیں اور
ملق بخوبی
رٹوایوں
بی قیاس
کے بعد
دینے
بارے
امریکی
کہا کہ
بڑے
ماہیں
ساتھ
ل پر

OFFICE OF THE ENQUIRY COMMITTEE EDO HEALTH OFFICE,
HANGU.

TO,

The Executive Distt; Officer,
Health Hangu.

Subject ENQUIRY REPORT.

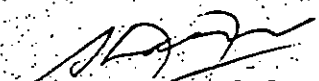
Sir,


Please refer to your office letter
No. 166-67/PP dated 21.1.2012 regarding
Charge Sheet of Mr. Ajmal Khan Behta Oam
Sweeper BHU Togh Seraf Distt; Hangu.

We the following Enquiry Committee have
the honour to state that Mr. Ajmal Khan Behta
Oam Sweeper BHU Togh Seraf has not still appeared
before the undersigned till date with the additional
remarks that the official concerned was also directed
vide the Enquiry Committee office letter No. 168/PP
dated 21.1.2012 but to no avail.

By the reasons of above the undersigned
recommend him for imposing Major Penaltie i.e Removal
from Service.

Report is submitted for your kind
information and further necessary action, please.


Dr. Shakoor Rehman,
Coordinator EPI
Member


Dr. Gul Rehman,
Senior Coordinator
Chairman

Dated _____/2/2012.

Report of the above mentioned Mr. Ajmal
about involvement in polio-day
at Shamskoti Banda

Executive District Officer
Health Hangu.

OFFICE OF THE EXECUTIVE DISTT: OFFICER HEALTH HANGU.

CHARGE SHEET.

I, Dr. Muhammad Ishaq Khan Bangash ADO Health Hangu in the capacity of competent authority charge you Mr. Ajmal Khan Masati Cum Sweeper BHU Togh Seraf with the following.

1. That you are wilfully absent from your duty w, e, f 5.9.2011 till date without any prior sanction of leave from the competent authority,
2. That in this regard you were directed vide this office letter No. 4627/PF dated 8.9.2011 & No. 4827/PF dated 1.10.2011 & No. 4985/PF dated 13.10.2011 to resume your duty & explain your position within three days but you failed to do so in the stipulated period and as such you are still absent from your duty.
3. That you have also stated to the Enquiry Officer that you are unable to do your duty by yourself and that you would not continue your duty.

By reasons of above you appear to be guilty of misconduct under the relevant Rules and regulations rendered your services liable for all or any of the penalties mentioned therein. You are also directed to explain your position & appear before the Enquiry Committee as mentioned below within 14 days of the receipt of this letter otherwise it will be presumed that you have no comments to put in your defence and as such ex-parte action will be taken against you under the prescribed Rules (Removal from service). Also state as to whether you wish to be heard in person or otherwise.

STATEMENT OF ALLEGATIONS

1. Wilful absence
2. Misconduct
3. Unwilling worker

Sd/
Executive Distt; Officer,
Health Hangu.

NO 166-67 / PF
Copy forwarded to the;

Date 21 / 11 / 2012.

1. Dr. Gul Rehman S/Coordinator Public Health and Dr. Shaker Rehman API Coordinator with the directives to conduct a fact finding enquiry & submit their enquiry report alongwith specific recommendations & comments to this office positively within the stipulated period.
2. Official concerned for information and strict compliance.

[Handwritten Signature]
23/11/2012

[Handwritten Signature]
Executive Distt; Officer,
Health Hangu.

OFFICE OF THE DISTRICT HEALTH OFFICER HANGU.

OFFICE ORDER

WHEREAS you Mr. Ajmal Khan s/o Mr. Said Mir Shah ward orderly cum sweeper 3HU Togh Serai is wilfully absent from your duty without any prior sanction of leave from the competent authority w, e, f 5.9.2011 till date.

AND WHEREAS you were directed vide this office letter No. 4627/PF dated 8.9.2011, letter No. 4327/PF dated 1.10.2011 & No. 4985/PF dated 13.10.2011 to explain your position and resume your duty within three days positively but you did not pay heed towards this.

AND WHEREAS you were charge sheeted vide this office order No. 166-67/PF dated 21.1.2012 wherein you were directed to appear before the enquiry committee within 14 days positively but this time too you failed to do so.

AND WHEREAS your absence was published in Dailies Aaj & Sarhad dated 4.1.2013 wherein you were vividly directed to resume your duty and put your comments in your defence within 15 days positively failing which ex-parte action will be taken against you but this time too you badly failed to do so and as such you are wilfully & unauthorizedly absent from your duty w, e, f 5.9.2011 till date.

AND WHEREAS after fulfilment of all the required codal formalities, the undersigned being the competent authority, impose major penalty i.e Removal from service upon you under the Efficiency & Disciplinary Rules 1973 from the exact date of your absence and as such your name has been struck off from the strength of Health Deptt; District Hangu with immediate effect.

sd/
District Health Officer
Hangu.

No 292-91/PF Dated Hangu the 6 /12/2013.

Copy forwarded to the;

1. District Account Officer Hangu.
2. Official concerned for strict compliance.
3. Account Section Local for n/action.

[Signature]
District Health Officer
Hangu.

سوال نمبر 1 تم لکھی اصل خان ولد سید معین شاہ کتب سے کئی کتب جمع

حصوں میں ایسی ڈیڑھی سرکاری دستاویزوں

تقریباً تین سال سے Exact copy
Not known

سوال نمبر 2 کیا آج کو تو جمع کرائے ہیں کتب سے ڈیڑھی ڈیڑھی

Exact copy
Not known

جواب 8-9 حصوں سے ڈیڑھی کرا رہا ہیں

سوال نمبر 3 کیا یہ بات ٹھیک ہے کہ یہ ہے۔ اپنی کتب ڈیڑھی

دو کتب - بنز - کو شہزادہ شہزادت سے منقر کیا ہے

جواب 4-یاں - میں بنا رہا ہیں، اپنی کتب حاضر حجاز آگیا
کو Joseph روپے نمونہ سے ڈیڑھی من لگایا تھا

سوال نمبر 4 کیا یہ بات ٹھیک ہے کہ اپنی کتب 2011 سے اپنی ڈیڑھی
سے غیر حاضر ہے

جواب 5-یاں - میں نے ایک حصہ خود ڈیڑھی اور اس سے کتب منقر
کے حاضر حجاز ڈیڑھی کرا رہا تھا

موت کیا آپ کیسے افسوس ایشیوں سے کوئی ذیل کا تھا

جو کہ آپ نے یہ ایڈیو ایچ توخ سے اس کو بتایا ہے
اگر یہ تو کس سے ہے تو کی ہے

جو کہ آپ نے نہیں میں صرف ڈاکٹر و یہ بتا ماقا۔ نہ وہ ہیں
تک یہ آدمی میری جگہ پر ڈاکٹر کے گا۔

جواب: میرا گھر تھو دور ہے اور میں بیمار بھی ہوں۔ لہذا مجبوراً میں آئندہ ہی کس نہیں
کو حقیر کرو گا

نام: اچمل خان ولد سید پیر شاہ سکندہ شہدادین مانڈا ماہی صند
14101-2527575-1

گوان شاہ خان
نام: گلشن خان ولد فازی خان سکندہ سرملو کندو۔ صند
14101-0791106-1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1179/2015

Ajmal Khan

VERSUS

Government of KP through Secretary Health and others

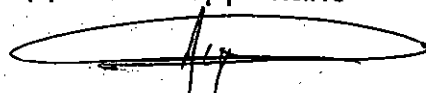
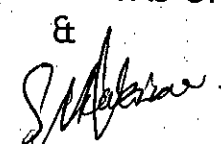
APPLICATION FOR CONDONATION OF DELAY, IF ANY

Respectfully Sheweth:-

- 1) That the Applicant/Appellant filed the instant appeal No 1179 of 2015, in which next of hearing is 11-08-2017.
- 2) That the Applicant/Appellant filed the instant appeal inadvertently without the condonation of delay application.
- 3) That the Applicant/Appellant was not willfully absent from his duty but due to serious threats from the militants in account of working as a polio worker. Moreover, the Applicant/Appellant was appointed as Ward Orderly, but the Respondents assigned polio duty to the appellant, due to which more serious threats had been arisen, for that reason the Applicant/Appellant submitted an application to Respondents for grant of one month leave, which was refused by the Respondents. Lastly due to high militancy in the appellant's area i.e. District Hangu. The appellant alongwith his family members shifted from District Hangu to Fateh Jhang Attock (Punjab), so the absence of the Appellant/Applicant was not intentionally and willfully but due to the above reasons.

- 4) That moreover, the impugned removal order of the service of the Applicant/Appellant were passed without served show cause notice, charge sheet upon the appellant/applicant, hence the same was void, ab-initio and the superior Courts held that when the order is void against that order, no limitation would run.
- 5) That the delay of any in filing of the instant appeal would be because of the above reason was not intentionally and willfully.
- 6) That the law favours at cases should be decided on merits not on technicalities.

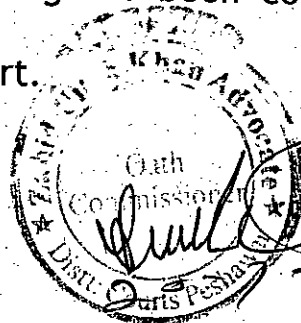
It is therefore, most humbly prayed that on acceptance of this Application, the delay in filing of appeal may kindly be condoned in the best interest of justice.

Applicant/Appellant
Through: 
(MUHAMMAD ILYAS ORAKZAI)
&

(MUHAMMAD SHABIR KHALIL)
Advocates,
High Court, Peshawar

Dated: -20-07-2017

AFFIDAVIT:-

It is, solemnly affirm on Oath that all the contents of this Application are correct and true to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.




DEPONENT

17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1179/2015

Ajmal Khan

V E R S U S

Government of KP through Secretary Health and others

RE-JOINDER ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTIONS:-

- A) That all the preliminary objections from para No 1 to 5 are illegal, misconceived, misleading and against the law, facts, based upon mala-fide and false.

REPLY ON FACTS:-

- 1) Reply to para No 1 is admitted and correct.
- 2) Reply to para No 2 is incorrect to the extent of willful absent, the appellant was not willfully absent but due to the serious threats from the militants in account of working as Polio Worker. Moreover, the Appellant was appointed as Ward Orderly not a Polio Vaccinator, but the Respondents assigned additional polio duty, due to serious threats to the appellant once again the appellant submitted an application to the Respondents for grant of one month leave, which was refused by the Respondents. Lastly due to serious threats the appellant alongwith his family members shifted to District Hangu to Fateh Jhang (Attock) Punjab.
- 3) Reply to para No 3 is incorrect, because there was no show cause notice and charge sheet had been served upon the

Appellant, no chance of personal hearing had been given to the appellant, the impugned dismissal order passed in whimsical manner, no codel formalities had been fulfilled by the Respondents.

- 4) Reply to para No 4 is also incorrect, against impugned office order, the appellant submitted his departmental appeal (Annex 'B') with all his agonies about his absence but no relief was granted.
- 5) Reply to para No 5 needs no reply.


REPLY ON GROUNDS:-

- A) The reply to Grounds No A to K is wrong, misleading and ill-conceived.

It is, therefore, respectfully prayed that on acceptance of this rejoinder, the above titled appeal may kindly be accepted in favour of the Appellant and against the Respondents and reply of the Respondents may kindly be ignored.

Appellant
Through:


(MUHAMMAD ILYAS ORAKZAI)

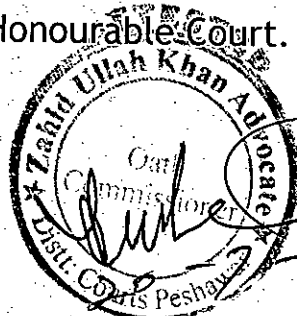
&

(MUHAMMAD SHABIR KHALIL)

Advocates,
High Court, Peshawar

Dated: -20-07-2017

AFFIDAVIT:-

It is, solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.




DEPONENT