

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 565/2013

Date of institution ... 11.03.2013

Date of judgment ... 01.06.2016

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)
S/o Haji Umar Shah.
R/o Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary C & W
Department Peshawar.
2. Chief Engineer Central Design Office, C & W Department Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER DATED 18.08.2010 OF
THE RESPONDENTS VIDE WHICH THE SERVICES OF THE APPELLANT
WERE TERMINATED FROM THE POST OF LABORATORY EQUIPMENT
MECHANIC (BPS-5) IN THE ABSENCE OF ANY SHOW-CAUSE NOTICE,
CHARGE SHEET, SUMMARY OF ALLEGATIONS OR ANY INQUIRY AND THE
DEPARTMENT APPEAL BEFORE RESPONDENT NO. 2 OF THE APPELLANT
WAS ACCEDED TO ON 28.11.2012 AND RECOMMENDED TO RESPONDENT
NO. 1 FOR APPELLANT REINSTATEMENT BUT OF NO AVAIL AS YET
DESPITE LAPSE OF MORE THAN 90 DAYS.

Mr. Naqibullah Khan Khattak, Advocate.
Mr. Muhammad Jan, Government Pleader

.. For appellant.
.. For respondents.

MR. ABDUL LATIF
MR. PIR BAKHSI SHAH

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeals are that
the appellant was inducted as Laboratory Equipment Mechanic in BPS-5 by the
respondents after meeting all the codal formalities on 20.07.2010. That on 18.08.2010 the
services of the appellant were terminated by the respondents without any rhyme and

reason, absence of any show-cause notice, charge sheet, summary of allegations or any inquiry. That the unlawful order of the respondents was challenged by nine of colleague in the Service Tribunal, Peshawar which services appeals were accepted on 12.06.2012 but the respondents challenged the said judgments in the Supreme Court of Pakistan but the apex court dismissed the C.P.L.A No. 409-P/2012 on 19.09.2012 and maintained the judgment of this Hon'ble Tribunal. That another of appellant's colleague challenged the impugned order before this Hon'ble Tribunal in Service Appeal No. 438/2011 on 14.03.2011 which service appeal too was accepted on 15.02.2013. That the appellant relying on plethora of judgments of Supreme Court of Pakistan preferred departmental appeal before respondent No. 2 who was kind enough to recommend his appeal alongwith other affectees/aggrieved ex-employees to respondent No. 1 on 28.11.2012, which is as yet unactioned. That being aggrieved against the impugned order dated 18.08.2010 appellant filed the instant service appeal with a prayer that on acceptance of this appeal the impugned office order dated 18.08.2010 of the respondents may graciously be set-aside and the appellant reinstated in service as Laboratory Equipment Mechanic (BPS-5) in accordance with the judgment of Supreme Court of Pakistan dated 19.09.2012 and this Hon'ble Tribunal order/judgment dated 15.02.2013 with all back benefits of pay and services by setting-aside the office order dated 18.08.2010 of the respondents.

2. The learned counsel for the appellant argued that that the impugned order dated 18.08.2010 terminating the service of the appellant was against the law and facts, hence not tenable in the eyes of law. He further argued that no charge sheet or statement of allegations were served upon the appellant nor was any inquiry conducted before termination of the services of the appellant and added further that vested right accrued to the appellant with his appointment and doctrine of locus poenitentiae was applicable in the appellant case. He further argued that judgment of the Service Tribunal dated 12.06.2012 in service appeal No. 3125/2010 which was upheld by the Supreme court of Pakistan vide judgment dated 19.09.2012 in identical cases was brought into the notice of the respondents with a prayer to follow the well settled principles of law as a question of law was already decided by the Superior Court vide above judgment as appellant was as similarly placed

person but of no avail. He prayed that on acceptance of this appeal impugned order dated 18.08.2010 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Government Pleader while resisting the appeal argued that the appeal was time barred as the impugned order was passed on 18.08.2010 and the departmental appeal against the same was filed on 20.11.2012, final order in the case was made on 24.12.2012 but instant service appeal was filed on 11.03.2013 and no application for condonation of delay was made. He prayed that the appeal being time barred may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that other civil servants affected by the impugned order dated 18.08.2010 agitated the case before this Service Tribunal in service appeal No. 3125/2010 and other connected appeals which was decided on 12.06.2012 where the said service appeals were accepted by setting-aside the impugned order. The said judgment was further challenged in the Supreme Court of Pakistan in C.P No. 401 to 409-P/2012 and the august Supreme Court upheld the above cited judgment of the Tribunal. Since the case in hand is identical and reliefs has already been granted by this Service Tribunal duly upheld by the Supreme Court of Pakistan, relief as prayed for by the appellant should have been allowed by the respondent-department. Keeping in view the principles of natural justice and the principles of good governance as enunciated by the Supreme Court of Pakistan in various verdicts the case merits interference by this Tribunal. In the circumstances, we fully agree with the arguments advanced by the learned counsel for the appellant and as such accept the instant appeal by setting-aside the impugned order and reinstating the appellant into his service from the date of his termination. Parties are, however, left to bear their own costs. File be consigned to the record room

ANNOUNCED
01.06.2016



(PIR BAKHISH SHAH)
Member



(ABDUL LATIF)
Member

11.01.2016

Counsel for the appellant, M/S Mubarak Ali Shah, A.O and Muhammad Tariq, SDO alongwith Addl: A.G for respondents present. The learned Member (Executive) is on official tour to Swat therefore, Bench is incomplete. To come up for arguments on 1-6-2016.


MEMBER

01.06.2016

Appellant with counsel, M/S Mubarak Ali, Shah, A.O and Muhammad Tariq, SDO alongwith Mr. Muhammad Jan, Government Pleader for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today place on file. In the circumstances, we fully agree with the arguments advanced by the learned counsel for the appellant and as such accept the instant appeal by setting-aside the impugned order and reinstating the appellant into his service from the date of his termination. Parties are, however, left to bear their own costs. File be consigned to the record room

ANNOUNCED
01.06.2016


MEMBER


MEMBER

565/13

13.08.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Rahatullah, Supdt. For the respondents present. The learned executive Member is on ex-Pakistan leave, therefore, case to come up for arguments on 13.1.2015


MEMBER

13.1.2015

None is present on behalf of the appellant and Mr. Muhammad Jan, GP with Muhammad Tariq, Supdt. for the respondents present. Notice be issued to appellant and his counsel for arguments on 28.5.2015.


MEMBER


MEMBER

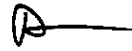
1.4.2015


Appellant with counsel, and Mr. Muhammad Jan, GP with Mubarak Ali Shah, AO for the respondents present. The learned Member (Judicial) is on official tour to D.I.Khan, therefore, case is adjourned to 2.09.2015 for arguments.


MEMBER

02.09.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 11-1-2016.


Member


Member

DFA

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 565/2013

Date of institution ... 11.03.2013

Date of judgment ... 01.06.2016

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)
S/o Haji Umar Shah.
R/o Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary C & W
Department Peshawar.
2. Chief Engineer, Central Design Office, C & W Department Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE
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MECHANIC (BPS-5) IN THE ABSENCE OF ANY SHOW-CAUSE NOTICE,
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WAS ACCEDED TO ON 28.11.2012 AND RECOMMENDED TO RESPONDENT
NO. 1 FOR APPELLANT REINSTATEMENT BUT OF NO AVAIL AS YET
DESPITE LAPSE OF MORE THAN 90 DAYS.

Mr. Naqibullah Khan Khattak, Advocate.

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHISH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:- Facts giving rise to the instant appeals are that the appellant was inducted as Laboratory Equipment Mechanic in BPS-5 by the respondents after meeting all the codal formalities on 20.07.2010. That on 18.08.2010 the services of the appellant were terminated by the respondents without any rhyme and

6. That the Chief Justice Iftikhar Muhammad Chaudhry left the post leaving anarchy behind him and he used to shout as politicians and the appellant is suffering because of his misdeeds.

7. That the suo-moto jobs taken upon themselves by the flee/run away Chief Justice could only be clean by providing more member to the Tribunal.

8. That the maternal uncle of the appellant and the counsel for the appellant has no choice but to fight with each other.

9. That the given date is too long and it shall be in the interest of justice to accelerate the date in the above mentioned service appeal by fixing it for a short date.

It is therefore respectfully prayed that on acceptance of this Application, the above mentioned appeal may kindly be fixed on an early date for arguments in the interest of justice.

The notice of the date fixed may also be sent to the appellant as he has lost all the hopes of getting justice under Iftikhar Muhammad Chaudhry and Co. including his Core Commanders i.e., Provincial Chief Justices.

Nasir Ahmad
Appellant

Through

Mian Muhibullah Kakakhel
Senior Advocate
Supreme Court of Pakistan

Muhammad Farooq Afridi
Advocate High Court
Peshawar

Dated: 30.12.2013

reason, absence of any show-cause notice, charge sheet, summary of allegations or any inquiry. That the unlawful order of the respondents was challenged by nine of colleague in the Service Tribunal, Peshawar which services appeals were accepted on 12.06.2012 but the respondents challenged the said judgments in the Supreme Court of Pakistan but the apex court dismissed the C.P.L.A No. 409-P/2012 on 19.09.2012 and maintained the judgment of this Hon'ble Tribunal. That another of appellant's colleague challenged the impugned order before this Hon'ble Tribunal in Service Appeal No. 438/2011 on 14.03.2011 which service appeal too was accepted on 15.02.2013. That the appellant relying on plethora of judgments of Supreme Court of Pakistan preferred departmental appeal before respondent No. 2 who was kind enough to recommend his appeal alongwith other affectees/aggrieved ex-employees to respondent No. 1 on 28.11.2012, which is as yet unactioned. That being aggrieved against the impugned order dated 18.08.2010 appellant filed the instant service appeal with a prayer that on acceptance of this appeal the impugned office order dated 18.08.2010 of the respondents may graciously be set-aside and the appellant reinstated in service as Laboratory Equipment Mechanic (BPS-5) in accordance with the judgment of Supreme Court of Pakistan dated 19.09.2012 and this Hon'ble Tribunal order/judgment dated 15.02.2013 with all back benefits of pay and services by setting-aside the office order dated 18.08.2010 of the respondents.

2. The learned counsel for the appellant argued that that the impugned order dated 18.08.2010 terminating the service of the appellant was against the law and facts, hence not tenable in the eyes of law. He further argued that no charge sheet or statement of allegations were served upon the appellant nor was any inquiry conducted before termination of the services of the appellant and added further that vested right accrued to the appellant with his appointment and doctrine of locus poenitentiae was applicable in the appellant case. He further argued that judgment of the Service Tribunal dated 12.06.2012 in service appeal No. 3125/2010 which was upheld by the Supreme court of Pakistan vide judgment dated 19.09.2012 in identical cases was brought into the notice of the respondents with a prayer to follow the well settled principles of law as a question of law was already decided by the Superior Court vide above judgment as appellant was as similarly placed

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

CM No. _____/2013

In Re:

Appeal No. 336/2013

Dr. Naseer AhmadAppellant

Versus

Govt. of KPK through Secretary Health etc.Respondents

AFFIDAVIT

I, Dr. Naseer Ahmad S/o Hazrat Biland R/o House No. 37. Street no. 4
Danishabad near University of Peshawar, do hereby solemnly affirm and
declare that the contents of the accompanying Application are true and correct to
the best of my knowledge and belief and nothing has been concealed from this
Hon'able Court.

Naseer Ahmad
DEPONENT

person but of no avail. He prayed that on acceptance of this appeal impugned ^{order dated} 18.08.2010 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Government Pleader while resisting the appeal argued that the appeal was time barred as the impugned order was passed on 18.08.2010 and the departmental appeal against the same was filed on 20.11.2012, final order in the case was made on 24.12.2012 but instant service appeal was filed on 11.03.2013 and no application for condonation of delay was made. He prayed that the appeal being time barred may be dismissed. X

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that other civil servants affected by the impugned order dated 18.08.2010 agitated the case before this Service Tribunal in service appeal No. 3125/2010 and other connected appeals which was decided on 12.06.2012 where the said service appeals were accepted by setting-aside the impugned order. The said judgment was further challenged in the Supreme Court of Pakistan in C.P No. 401 to 409-P/2012 and the august ^{em} ~~not~~ Court upheld the above cited judgment of the Tribunal. Since the case in hand is identical and reliefs ^{has} ~~have~~ already been granted by this Service Tribunal duly upheld by the Supreme Court of Pakistan, relief as prayed for by the appellant should have been allowed by the respondent-department. Keeping in view the principles of natural justice and the principles of good governance as ^{enunciated} ~~announced~~ by the Supreme Court of Pakistan in various verdicts ^{the case merits interference by this Tribunal.} In the circumstances, we fully agree with the arguments advanced by the learned counsel for the appellant and as such accept the instant appeal by setting-aside the impugned order and reinstating the appellant into his service. X

Parties are, however, left to bear their own costs. File be consigned to the record room. ^{from the date of his termination}

ANNOUNCED
01.06.2016

(ABDUL LATIF)
Member

(PIR BAKHSH SHAH)
Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 356/2013.

Dr. Naseer Ahmed v/s Government.

REGISTRAR ON BEHALF OF THE APPELLANT.

RESPECTFULLY SHEWETH :-

The Parawise are misreading and incorrect.
The corresponding paragraphs of the Service Appeal
are proper facts for the decision of the Appeal.

It is therefore, respectfully prayed
that the Appeal may be accepted.

AFFIDAVIT.

I Dr. Naseer Ahmad, son of Hazrat Biland, resident of
House No. 37 Street No. 4 Damishmand, Akbar Town, Near
Peshawar, do hereby solemnly affirm and declare that
the contents of the accompanying Service Appeal are
true and to the best of my knowledge and belief and
nothing has been concealed from this Honourable Court.

Naseer Ahmad
Deponent

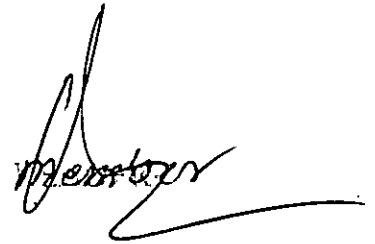
Dated :- 26/12/2013.

N.I.C. No.

15.1.2014

Appellant with counsel and Mr. Muhammad Jan, GP present. Fresh notices be issued to the respondents for submission of written reply positively on 19.2.2014.

MEMBER



19.2.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Rahatullah, Supdt. for the respondents. On special request of the learned AAG another chance is given to the respondents for submission of written reply on 13.3.2014. In case the respondents failed to file written reply, no other chance will be given to them and they will be placed ex-parte.

MEMBER



MEMBER



13.3.2014

Appellant with counsel and Mr. Usman Ghani, Sr.GP with Rahatullah, Supdt. for the respondents present and reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 22.4.2014.

MEMBER



22.4.2014.

Appellant in person and Mr. Muhammad Jan, GP with Rahatullah, Supdt. for the respondents present. Rejoinder received and copy handed over to the learned GP. To come up for arguments on 13.8.2014.

MEMBER



MEMBER



Appeal No. 575/2013.
Mr. Waqar Ali Shah.

23.10.2013

Counsel for the appellant present and requested for

adjournment. To come up for preliminary hearing on 11.11.2013.

Member

11.11.2013

No one is present on behalf of the appellant. Preliminary arguments could not be heard due to general strike of the Bar. To come up for preliminary hearing on 11.11.2014.

Member

19.11.2013

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The learned GP stated that prima-facie the instant appeal is time barred. Points raised at the Bar need consideration. The appeal is admitted to full hearing, subject to all legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for submission of written reply on 15.01.2014. Counsel for the appellant also filed an application for condonation of delay. Notice of application should also be issued to the respondents for reply/arguments on the date fixed.

Member

19.11.2013

This case be put up before the Final Bench for further proceedings.

Chairman

8.

9.

10.

Appellant deposited
Process fee & Security
of Rs. 1692/- Bank Receipt
attached with file

11.


5.
05.07.2013

Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 16.08.2013.


Reader

6.
16.08.2013

Appellant with counsel present and requested for adjournment. Pre-admission notice be issued to the Sr.GP/GP to assist the court on the point of maintainability of the case. To come up for preliminary hearing on 09.09.2013.


Member

7.
09.09.2013

Counsel for the appellant (Mr.Nishan Khattak, Advocate) present and requested for adjournment. Case is adjourned. To come up for preliminary hearing on 23.10.2013


Member

3.
20.5.2013

Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance, 2013 (Khyber Pakhtunkhwa Order No. II of 2013), the case is adjourned on note Reader for proceeding as before on 3.6.2013.


Reader.

4.
3.6.2013



Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note reader for proceedings as before on 5.7.2013.

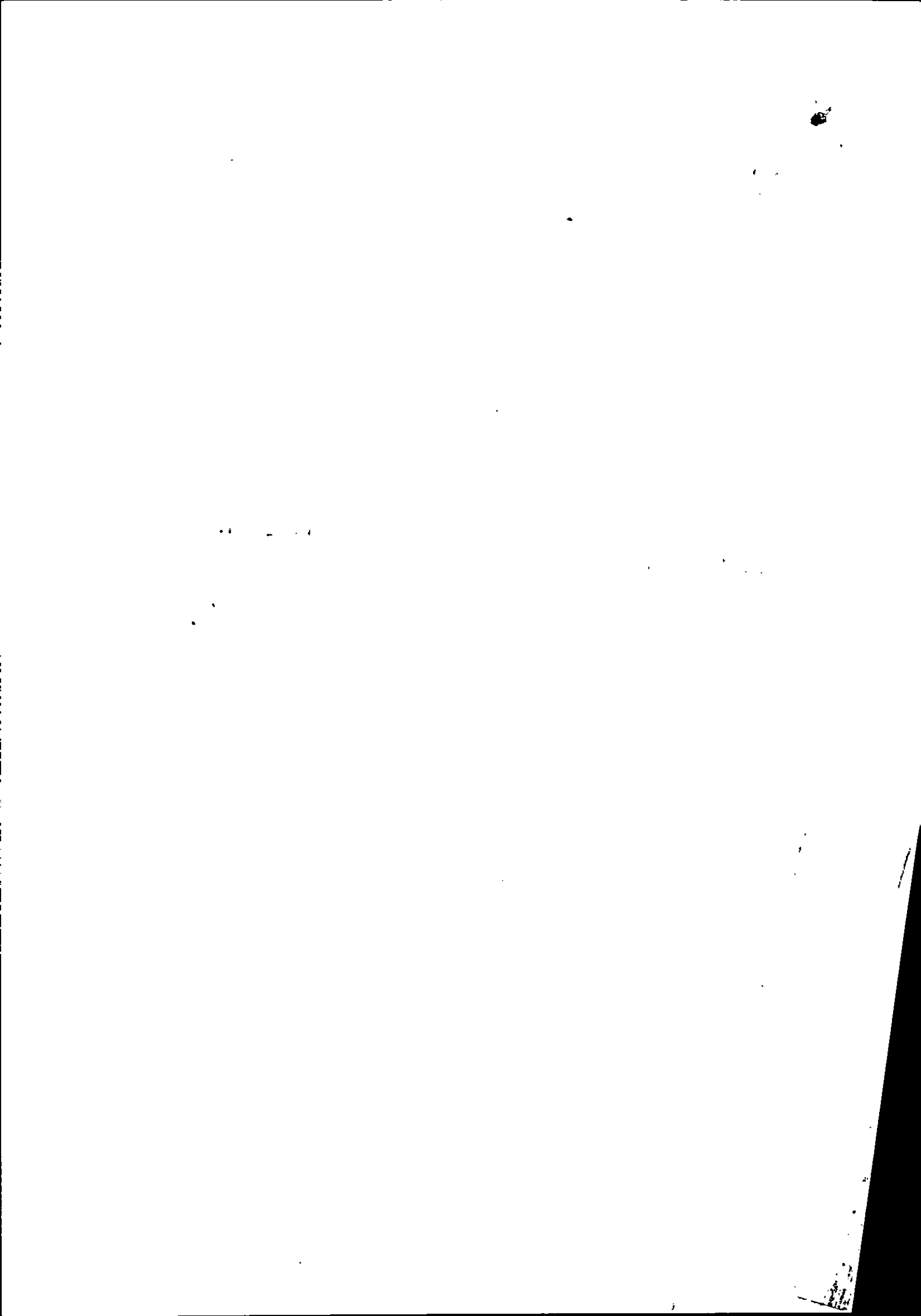

Reader

Form- A

FORM OF ORDER SHEET

Court of _____
Case No. 565 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/03/2013	<p>The appeal of Mr. Waqar Ali Shah resubmitted today by Mr. Naqibullah Khan Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-5-2013.</u></p> <p style="text-align: right;"> CHAIRMAN</p>



The joint appeal of Mr. Waqar Ali Shah Ex-Laboratory Equipment Mechanic received today i.e. on 11/03/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of Judgment of Supreme Court of Pakistan and Service Tribunal Khyber Pakhtunkhwa mentioned in the memo of appeal (Annexure-D) are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal dated 28.11.2012 mentioned in para-11 of the appeal is not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.

No. 412 /S.T.

Dt. 12/3 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. NAQIBULLAH KHATTAK ADV. PESH.

Needful done. Resubmitted please

25/3/13
Naqibullah
Advocate Peshawar
2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 565 /2013

Waqar Ali Shah..... Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary C&W Department, Peshawar & another..... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Service Appeal with affidavit	-	1 to 5
2.	Addresses of Parties.		6
3	Photo of appointment order of appellant dated 29.07.2010.	A	7
4	Photo copy of termination order of appellant alongwith other 20 officials dated 18.8.2010 issued by respondent No.2.	B	8
5	Photo copy of Respondent No.2 Office order dated 13.8.2010 terminating ten other employees	C	9
6	Photo Copy of Supreme Court Judgment dated 19.09.2012 dismissing the respondent leave to appeal against the order/Judgment dated 12.06.2012 of this Hon'able Tribunal. (<i>both enclosed</i>)	D	10 to 14
7	Photo Copy of respondent No.2 letter dated 28.11.2012 recommending therein to respondent No.1 the reinstatement of appellant alongwith 9 others basing the Judgments of Supreme Court of Pakistan.	E	15
8.	Photo copy of departmental appeal dated 24.12.2012 to respondent No.1 for reinstatement of appellant on the recommendation of respondent No.2 <i>as well as departmental appeal date 20-11-2012</i>	F	16, 17
9	<i>Photo copy of</i> order dated 15.2.2013 in service appeal No. 438 of 2011 titled Waheed Ahmad VS Govt of KPK. <i>by this Hon'able Tribunal</i>	G	18 to 19
10	Wakalatnama in original File.	-	20

Appellant

Through

Naqibullah Khan Khattak
(Naqibullah Khan Khattak)
Advocate High Court Peshawar
Office No.303-D Janbaz Hotel,
Khyber Bazar Peshawar City
Mobile No.0300-5861466

Dated 11 /03/2013

0343-9122233

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①
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Service Appeal No. 565 /2013

K.W.P. Peshawar
541
11-3-13

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)

Son of Haji Umar Shah

R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,

Saddar Peshawar.....Appellant

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary C&W
Department, Peshawar.
- 2) Chief Engineer Central Design Office, C&W Department, Peshawar
..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS OF OFFICE ORDER DATED 18.08.2010 OF THE RESPONDENTS VIDE WHICH THE SERVICES OF THE APPELLANT WERE TERMINATED FROM THE POST OF LABORATORY EQUIPMENT MECHANIC (BPS-5) IN THE ABSENCE OF ANY SHOW CAUSE NOTICE, CHARGE SHEET, SUMMARY OF ALLEGATIONS OR ANY INQUIRY AND THE DEPARTMENTAL APPEAL BEFORE RESPONDENT NO.2 OF THE APPELLANT WAS ACCEDED TO ON 28.11.2012 AND RECOMMENDED TO RESPONDENT NO.1 FOR APPELLANT REINSTATEMENT BUT OF NO AVAIL AS YET DESPITE LAPSE OF MORE THAN 90 DAYS.

11/3/13

is submitted to
and filed.
26/3/13
Registrar

Prayer:

On acceptance of this appeal the impugned office order dated 18.08.2010 of the respondents may graciously be set aside and the appellant reinstated in service as Laboratory Equipment Mechanic (BPS-5) in accordance with the judgment of Supreme Court of Pakistan dated 19.09.2012 and this hon'ble Tribunal order/ judgment dated 15.02.2013 with all back benefits of pay and services by setting aside the office order dated 18.08.2010 of the respondents.

Respectfully Sheweth:

Facts in brief followed by grounds giving rise to the instant appeal are submitted hereunder:-

- 1) That the applicant was inducted as Laboratory Equipment Mechanic in BPS-5 by the respondents after meeting all the codal formalities on 29.07.2010, Photocopy of which is Annexure "A".
- 2) That the appellant joined his assignment accordingly efficiently discharging his duty when all of sudden his services were terminated by the respondents on 18.08.2010 without any rhyme and reason, absence of any show cause notice, charge sheet, summary of allegations or any enquiry. (Photocopy enclosed as Annexure "B").
- 3) That the unlawful order of the respondents was challenged by nine (9) of our colleagues in the Service Tribunal, Peshawar which service appeals were accepted on 12.06.2012 but the respondents challenged the said judgments in the Supreme Court of Pakistan but the apex court dismissed the C.P.L.A.No.401 to 409-P/2012 on 19.09.2012 and maintained the judgment of this hon'ble Tribunal. (Photocopy enclosed as Annexure "C").

- 4) That another of appellant's colleague challenged the impugned order before this hon'ble Tribunal in service appeal No.438/2011 on 14.03.2011 which service appeal too was accepted on 15.02.2013. (Photocopy enclosed).
- 5) That the appellant relying on plethora of judgments of Supreme Court of Pakistan preferred departmental appeal before respondent No.2 who was kind enough to recommend his appeal along with other affectees/ aggrieved ex-employees to respondent No.1 on 28.11.2012, which is as yet unactioned. (Photocopy enclosed as Annexure "D").
- 6) That being aggrieved from the non-action on the recommendations of respondent No.2, the impugned order dated 18.08.2010 of respondents assails on the following grounds inter alia before this Hon'ble Tribunal.

GROUND:

- A) That the impugned office order dated 18.08.2010 terminating the services of the appellant is against law and facts, hence not tenable in the eye of law.
- B) That no rhyme/ reason was shown by the respondents, no charge sheet, no summary of allegations was served nor any enquiry was conducted in the termination of the services of the appellant.
- C) That vested right accrued to the appellant with his appointment and doctrine of locus poenitentiae was applicable in appellant's case.
- D) That the well settled principle of law as laid down by the Supreme Court is being violated by the respondents which apex court has held in various judgments that when service tribunal or Supreme Court of Pakistan decides question of law relating to terms and conditions of civil service who litigated would be applicable to those civil servants too who could not litigate but similarly placed. These judgments were brought into the kind notices of the respondents but of no avail as yet.

E) That other legal grounds would be raised before this Hon'ble Tribunal at the time of full hearing of the instant service appeal with the prior approval of this hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of the instant Service Appeal the impugned office order dated 18.08.2010 of the respondents may graciously be set aside and the appellant be reinstated in service with all back benefits of pay and service as the appellant has never been engaged in any business/ service during the period of his termination of service.

11/03/2013
Appellant
(Waqar Ali Shah)
Through
Naqibullah Khattak
Muhammad Nisan Khattak
Advocates, Peshawar.

CERTIFICATE:

Certified as per information furnished by my client that no such appeal has ever been filed before this Hon' able Tribunal except the instant one.
Advocate

RELIED UPON

- 1) 1996 SCNR-1185; Hameed Akhtar Niazi VS Secretary Establishment. Citation "C" If Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms & conditions of Service of a Civil Servant who litigated but covers the others who may not have taken legal proceedings.
- 2) 2003 SCMR 1030: Khawaja Abdul Nasir VS National Bank of Pakistan (relevant Page 1032). Benefit of pension/Contributory Fund extended to all falling within the category in order to do complete justice.
- 3) 2005 SCMR-499; Tara Chand VS Karachi Sewerage & Water Development Page-500. The dictate of justice and good Governances demanded that benefit of decision be extended to all others who may not have legal proceedings.
- 4) 2006 PLC (CS) 11 Lahore: When Service Tribunal or Court of ~~decided~~ decided a point of law relating to terms & conditions of service of a civil servant that covers not only the civil servant who litigated but also of others civil servants who might have not litigated or taken any legal proceedings. Rule of good governance demand that benefit of such judgment shall be extended to them also who could not litigate.

NAQIB ULLAH KHATTAK
ADVOCATE
High Court Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2013

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)
Son of Haji Umar Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.....Appellant

VERSUS

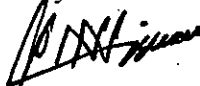
1. Govt. of Khyber Pakhtunkhwa, through Secretary C&W Department,
Peshawar.
2. Chief Engineer Central Design Office, C&W Department, Peshawar
.....Respondents

AFFIDAVIT

I, Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5) son of Haji Umar Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop, Saddar Peshawar solemnly affirm and declare on oath that the contents of the instant Service Appeal are true and correct according to my knowledge and belief and that nothing has been concealed intentionally from this honourable court.


Deponent

Identified by



Mohammad Nishan Khattak

Advocate Peshawar

NIC 14 101 - 07 89536-7

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service Appeal No. _____/2013

Waqar Ali Shah..... Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary C&W Department,
Peshawar & another..... Respondents

Addresses of Parties

Respectfully Sheweth;

Addresses of parties are as under :-

APPELLANT

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)
Son of Haji Umar Shah
R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.

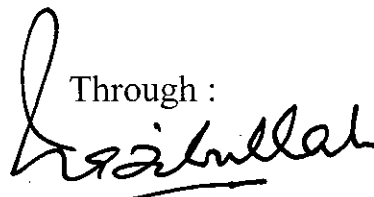
RESPONDENTS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary C&W
Department, Peshawar.
- 2) Chief Engineer Central Design Office, C&W Department, Peshawar

Appellant

Dated 11/03/2013.

Through :



(Naqibullah Khan Khattak)
Advocate High Court Peshawar.

7



ANNEXTUR (A)

OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN
OFFICE C&W DEPARTMENT K.P. 8-A, SHAMI ROAD PESH:

No. 2-E/312 Dated 29/07/2010

OFFICE ORDER

On the recommendation of the Departmental Selection Committee as per its meeting held on 27/04/2010, the Competent Authority is pleased to offer a post of Laboratory Equipment Mechanic (BPS-05), to Mr. Waqar Ali Shah S/O Haji Umar Shah R/O Mian Iqbal Chowk Qayum Stadium Tea Shop Saddar Cantt Peshawar on the following terms and conditions:-

1. He will get pay at the minimum of BPS-05 including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
2. He shall be governed by the K.P, Civil Servants Act-1973 and all the laws applicable to the Civil Servants and Rules made there under.
3. He shall, for all intents and purposes, be a Civil Servant except for the purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Fund (C.P.F) along with the contributions made by the Government to his account in the said fund, in the prescribed manner and rate fixed by the Government from time to time.
4. His employment in Communication & Works Department (CDO) is purely temporary and his services are liable to be terminated without assigning any reasons at fourteen (14) days prior notice or on the payment of 14-days salary in lieu of the notice. In case he wishes to resign at any time, 14-days notice will be necessary or in lieu thereof 14-days pay will be forfeited.
5. He shall, initially be on probation for a period of two years extendable up to 3-years.
6. He shall, produce a Medical Certificate of fitness from the Medical Superintendent of Police & Services Hospital Peshawar, before reporting himself for duty as required under the rules.
7. He has to join duty at his own expenses.
8. He shall have to serve any where in K.P.
9. If he accepts the post on the above conditions, he should report to the office of the Chief Engineer (CDO) C&W Department K.P. Peshawar, within 14-days of the receipt of this offer and produce original documents in connection with his qualification, domicile and health/age etc.

CHIEF ENGINEER

Copy for information to the:-

1. Accountant General, K.P. Peshawar
2. P.S. to Secretary, to Govt: of K.P.C&W Department Peshawar.
3. Mr. Waqar Ali Shah S/O Haji Umar Shah R/O Mian Iqbal Chowk Qayum Stadium Tea Shop Saddar Cantt Peshawar.

Administrative Officer



Annex

ANNEXTUR (8)

OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN
OFFICE C&W DEPARTMENT KHYBER PAKHTUNKHWA
8-A, SHAMI ROAD PESHAWAR

No.2-E/ 361 Dated 18 /08/2010

OFFICE ORDER

In compliance with the directive vide Secretary, to GOKP C&W Department letter No.SOE/C&WD/17-4/2010, dated 13.08.2010, and in continuation of this office order No.E-2/356 dated 13/08/2010, the office orders issued in respect of the following officials are hereby cancelled.

Sl.No.	Name	Father's Name	Order No. & Date
1.	Waqar Ali Shah ✓	Umar Shah	2-E/312, 29.07.2010
2.	Muhammad Junaid Abid	Abid Jan	2-E/313, 29.07.2010
3.	Mian Amin Jan	Mian Fazal-e-Naeem	2-E/309, 29.07.2010
4.	Noorullah	Rahmatullah	2-E/271, 29.07.2010
5.	Khalid	Muhammad Sardar	2-E/287, 22.07.2010
6.	Arif Shah	Haji Alif Shgh	2-E/323, 29.07.2010
7.	Adnan Yaqub	Yaqub Khushi	2-E/304, 29.07.2010
8.	Zafar Iqbal	Muhammad Bashir	2-E/320, 29.07.2010
9.	Waheed Ahmed	Jamshid Khan	2-E/314, 29.07.2010
10.	Asif Khan	Zarif Khan	2-E/257(d) 29.07.2010
11.	Amjid Ali	Ghulam Hassan	2-E/303, 29.07.2010
12.	Sher Aman Shah	Mir Akbar Shah	2-E/315, 29.07.2010
13.	Jawad Khan	Muhammad Younas	2-E/319, 29.07.2010
14.	Matti-ullah Shah	Abdul Qayum	2-E/317, 29.07.2010
15.	Fida Jan	Faqir Muhammad	2-E/308, 29.07.2010
16.	Rashid Hameed	Abdul Hameed	2-E/310, 29.07.2010
17.	Said Farosh	Mian Farosh	2-E/254, 01.07.2010
18.	Ashfaq Ahmad ✓	Manzar Saleem	2-E/256, 01.07.2010
19.	Arif Khan	Dad Karim	2-E/253, 01.07.2010
20.	Gohar Muhammad	Qadir Muhammad	2-E/257(a)01.07.2010
21.	Muhammad Tariq	Namdar Khan	2-E/257(b)01.07.2010

CHIEF ENGINEER CDO

Copy to the:-

1. Secretary, to GOKP C&W Department Peshawar, with ref: to above for information please.

CHIEF ENGINEER CDO

Attended
PNK
Muhammad Nishan Khattak
Advocate
Phone No:0333-9710510

9



ANNEXTUR (C)

OFFICE OF THE CHIEF ENGINEER
CENTRAL DESIGN OFFICE C&WD
8-A SHAMI ROAD PESHAWAR

No.E-2/356 Dated 13.08.2010.

OFFICE ORDER

In compliance with the directive vide Secretary, to GOKP C&W Department letter No.SOE/C&WD/17-4/2010, dated 13.08.2010, the office orders issued in respect of the following officials are hereby cancelled.

Sl:No.	Name	Father's Name	Order No. & Date
✓ 1	Mir Afzal *	Muhammad Khan	2-E/307, 29.07.2010.
✓ 2	Shehzad Khan	Shaukat Khan	2-E/306, 29.07.2010
✓ 3	Shahid Ahmed *	Abdur Rashid	2-E/302, 29.07.2010
✓ 4	Faridullah *	Badshah Gul	2-E/300, 29.07.2010
✓ 5	Muhammad Aftab *	Muhammad Yousaf	2-E/322, 29.07.2010
✓ 6	Haroon	Faqir Muhammad	2-E/301, 29.07.2010
✓ 7	Faizullah	Siraj Muhammad	2-E/272, 19.07.2010
✓ 8	Shakeel Ahmed	Gulmast Khan	2-E/273, 19.07.2010
✓ 9	Akbar Hussain *	Khan Afzal	2-E/275, 19.07.2010
✓ 10	Javed *	Abdur Rahim	2-E/318, 29.07.2010

It is further added that it seems very difficult rather impossible to withdraw/cancel all the recruitment orders regarding class-iv, as, office of the CE CDO, Principal Architect & the recently established Flood Damages Restoration Project Directorate of C&W Department are all dependent and functions with the help and assistance of these very class-iv staff please.

CHIEF ENGINEER CDO

Copy to the:

- Secretary, to GOKP C&W Department Peshawar, with ref: to above for information.

[Signature]
CHIEF ENGINEER CDO

[Signature]
Muhammad Nishan Khattak
Advocate
Phone No. 0333-9710510

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE IJAZ AHMED CHAUDHRY

Civil Petitions No.401 to 409-P/2012

(Against the judgment dated 12.6.2012 passed by
the KPK Service Tribunal, Peshawar in Appeals
No.3125-3133/10)

Secretary, Govt. of KPK, Communication
& Works, Peshawar and others

Petitioners (in all cases)

Versus.

Muhammad Aftab
Akbar Hussain
Mir Afzal
Shahid Ahmad
Asif Khan
Arif Khan
Gohar Muhammad
Said Farosh
Rashid Hamid

Respondent (in CP 401-P/12)
Respondent (in CP 402-P/12)
Respondent (in CP 403-P/12)
Respondent (in CP 404-P/12)
Respondent (in CP 405-P/12)
Respondent (in CP 406-P/12)
Respondent (in CP 407-P/12)
Respondent (in CP 408-P/12)
Respondent (in CP 409-P/12)

For the petitioners:

Mr. Zahid Khan, Addl.A.G. KPK

For the respondents:
(in CPs 401-408-P/12)

In person

Date of hearing:

19.09.2012

ORDER

EJAZ AFZAL KHAN, J:- These petitions have arisen out of the judgment dated 12.6.2012 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar, whereby, the appeals filed by the respondents were allowed, the orders cancelling their appointments were set aside and they were re-instated in service with back benefits.

2. The main contention of the learned Addl.A.G. was that where codal formalities were not complied with, the appointments of the respondents being against the law could not be restored by the Service Tribunal.

3. We have gone through the available record carefully and considered the submissions of the learned Addl.A.G.

ATTESTED

[Signature]
Superintendent,
Supreme Court of Pakistan

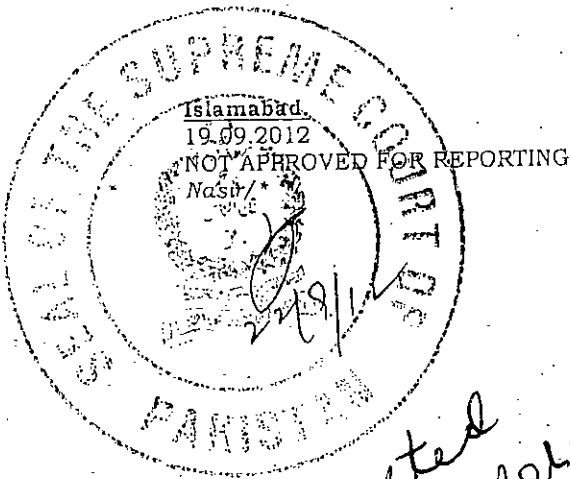
4. When, we asked the learned Addl.A.G. whether the respondents were eligible for appointment against their respective posts, the answer was in the affirmative. When, we asked the learned Addl.A.G. whether the person flouting the codal formalities has been proceeded against or he is still in service, the answer was that he has not been proceeded against and that he is still in service. Where the person flouting the codal formalities is still in service and enjoying all the perks and privileges with impunity why should the respondents be ousted from service for none of their faults, that too when their eligibility to hold the posts is not disputed. The impugned judgments thus being free from any error or infirmity much less legal or jurisdictional are not open to any interference.

5. For reasons discussed above, these petitions being without merit are dismissed and leave to appeal refused.

Per. J. J. Azhar Khan, J
Per. J. J. Ahmed Chaudhry, J

Certified to be True Copy

[Signature]
 26/9/12
 Superintendent
 Supreme Court of Pakistan
 ISLAMABAD



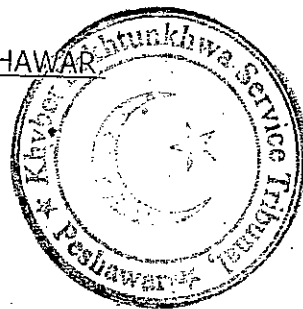
Attested
Nasirullah
Advocate Faisalabad

JK-NO: 9654/2012 Civil/Criminal
 Date of Presentation: 19-09-2012
 No. of Words: _____
 No. of folios: 6
 Regulation Fee Rs: 500
 Copy Fee In: 37
 Court Fee stamps: 0.52
 Date of Completion of Copy: _____
 Date of delivery of Copy: 25/9/12
 Compared by: [Signature]
 Received by: [Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 3125/2010

Date of Institution. ... 22.12.2010
Date of Decision ... 12.06.2012



Muhammad Aftab Ex-Naib Qasid S/O Muhammad Yousaf
Flat No. 67/C, Moh. Gulshan Rahman Colony, Kohat Road,
Peshawar C/O Chief Engineer, C&W Deptt. Peshawar.

(Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Peshawar.
2. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer, Central Design Office, C&W Department, Khyber Pakhtunkhwa Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 13.8.2010 WHEREBY APPOINTMENT ORDER OF THE APPELLANT HAS BEEN CANCELLED AND HIS DEPARTMENTAL APPEAL ELICITED NO RESPONSE WITHIN THE STATUTORY PERIOD.

SHAHZADA IRFAN ZIA,
Advocate

For appellant

MR. ARSHAD ALAM,
Addl. Government Pleader

For respondents.

MR. SULTAN MAHMOOD KHATTAK,
MR. NOOR ALI KHAN,

MEMBER
MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER.- This appeal has been filed by Muhammad Aftab, the appellant, under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 13.8.2010, whereby his appointment order has been cancelled. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated into service with all back benefits.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Brief facts of the case as averred in the memo: of appeal are that respondent No. 3 advertised posts of different categories including the post of Naib Qasid in the press. The appellant applied for the post of Naib Qasid and after

successful completion of prescribed selection process, and on the recommendations of the Department Selection Committee, he was appointed as Naib Qasid by the competent authority on regular basis, vide order dated 29.7.2010. The appellant took over charge of the post and started to perform his duties to the entire satisfaction of his superiors. His appointment order has been cancelled vide impugned order dated 13.8.2010. Feeling aggrieved, the appellant filed departmental appeal on 6.9.2010 through proper channel, which has not been decided within the statutory period of ninety days, hence the present appeal on 22.12.2010, which is well within time.

3. The appeal was admitted to regular hearing on 17.1.2011 and notices were issued to the respondents. They filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

4. The learned counsel for the appellant argued that being fully qualified for the post, the appellant was appointed as Naib Qasid by the competent authority on 29.7.2010. He took over charge and served on the post for some time and valuable rights have been accrued to him. Subsequent cancellation of appointment order is in clear violation of principles of locus poenitentiae. He further argued that appointment order of the appellant has been cancelled without any reason, which is against the spirit of Section 24-A of General Clauses Act. In support of his arguments, the learned counsel relied on a judgment of august Supreme Court of Pakistan as reported in PLJ 1999 SC 1104. He stated no charge sheet/statement of allegations has been issued to the appellant nor proper enquiry conducted and he has been condemned unheard. In case of removal from service, conduct of regular enquiry against a civil servant is mandatory under the law even against a probationer, but no such enquiry has been conducted. He requested that the appeal may be accepted as prayed.

5. The learned AGP on the other hand, argued that while appointing the appellant codal formalities have not been observed. During selection process, representative of the Administrative Department was not present. Hence appointment order of the appellant was illegal and such appointment order can be withdraw/rescinded at any time. He requested that the appeal may be dismissed.

6. The Tribunal observes that the appellant was appointed as Naib Qasid by the competent authority vide order dated 29.7.2010. He took over charge of the post and served on the post for some time and valuable rights have been accrued to him. If there was some flaw in selection process, it was the responsibility of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

respondents for which the appellant could not be suffered. The Tribunal further observes that appointment order of the appellant has been subsequently withdrawn through the impugned order dated 13.8.2010 but no reason whatsoever given for withdrawal of appointment order, which is against the spirit of Section 24-A of General Clauses Act, 1897. However, the last para of the impugned order clearly shows that the Chief Engineer, CDO was not willing to cancel appointment order of the appellant and not acted independently. The impugned order is nothing but a nullity in the eyes of law. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

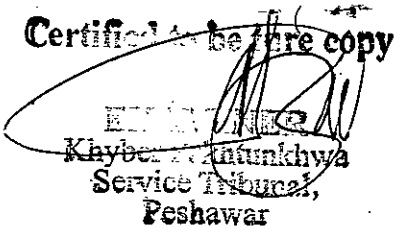
7. In view of the above, the appeal is accepted, the impugned order dated 13.8.2010 is set aside, and the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

8. Having common questions of law and fact, this order will also dispose of other connected service appeals No. 3126/2010, Akbar Hussain, No. 3127/2010 Mir Afzal, No. 3128/2010 Shahid Ahmad, No. 3129/2010 Asif Khan, No. 3130/2010 Arif Khan, No. 3131/2010 Gohar Muhammad, No. 3132/2010, said Farosh and 3133/2010 Rashid Hameed, in the same manner.

ANNOUNCED
12.6.2012

sd/- Sultan Mahmood Khan
Member
sd/- Nisar Ali Khan
Member

Certified to be true copy



Date of Presentation of Application 15-3-2013
 Number of 1200
 Copies 8
 Urgent 7
 Total 10
 Name of [Signature]
 Date of 15-3-2013
 Date of Delivery 15-3-2013

ANNEXTUR (E)

15

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OFFICE OF THE
CHIEF ENGINEER CDO
C&W DEPARTMENT KPK
Sd # 19, Bungalow # 13/28
Sham Road Peshawar.
Ph No. 091-9211133
No. 17/E-II
Dated 28/11/2012

To: The Secretary,
Khyber Pakhtunkhwa
C&W Department Peshawar.

Subject: RE-INSTATEMENT IN SERVICE.

Ref: Your letter No.SOE/C&WD/17-4/2012, dated 09.11.2012.

Before any comments on the subject matter, please refer to the H'able Supreme Court of Pakistan Islamabad decision in Hameed Akhtar Niaz's case at 1996 SCMR 1185, reproduced below:-

"The Supreme Court has consistently hold, that if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of Civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings in such a case, the dictates of justice and rules of good governance demand that the benefit of the said decision be extended to other civil servants also who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum".
(Copy attached as Annexure A)

Therefore, in pursuance of the above quoted judgment of August Supreme Court of Pakistan, the following ex-officials who have not taken any legal proceedings in such case, after their termination from service and submitted departmental appeal for re-instatement in Government Services, may be allowed the same benefits as decided by the Hon'able Supreme of Pakistan Islamabad in judgment dated 19.09.2012 please.

- ✓ 1. Waqar Ali Shah,
2. Mian Amin Jan,
3. Arif Shah,
4. Adnan Yaqub,
5. Zafar Iqbal,
6. Matti-ullah Shah,
- ✓ 7. Ashfaq Ahmad,
8. Javed,
9. Haroon Khan,
10. Muhammad Juraid Abid.

Dattar BPS-7
Lab. Assistant BPS-05
Naid. Head, BPS 01
Lab. Attendant, BPS 02.
Dattar, BPS 02.
Naid. Head, BPS 01.
Chk. Clerk, BPS 01.
Naid. Head, BPS 01.
Head Clerk, BPS 01.
Head Clerk, BPS 01

CHIEF ENGINEER CDO

Attended
EMK
Muhammad Nishan Khattak
Advocate
Phone No. 0333-9710510

1950-1951

1952

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Annex-E

Page-12

Office of the Chief Engineer CDO
C&W Department KPK
St# 19 Bungalow # 13/28
Shami Road Peshawar
Ph No.091-9211133
No.17/E-III
Dated Peshawar 28/11/2012

To

The Secretary
Khyber Pakhtunkhwa
C& W Department Peshawar.

Subject: RE-INSTATEMENT IN SERVICE

Your letter No. SOE/C&WD/17-4/2012 dated 09.11.2012

Before any comments on the subject matter, please refer to the Hon'able Supreme Court of Pakistan Islamabad decision in Hameed Akhtar Naiz's case at 1996 SCMR-1185 reproduced below :-

“ The Supreme Court has consistently hold, that if the Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms & conditions of service of civil servant who litigated, but also of others civil servants, who may have not taken any legal proceedings in such a case, the dictates of justice and rules of good governance demand that the benefit of the said decision be extended to other civil servants also who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.” (Copy attached as Annexure-A).

Therefore, in pursuance of the above quoted Judgment of august Supreme Court of Pakistan the following ex-officials who have not taken any legal proceedings in such case, after their termination from service and submitted departmental appeal for reinstatement in Govt service may be allowed the same benefits as directed by the Hon'able Supreme Court of Pakistan Islamabad in Judgment dated 19.09.2012 please.

- | | |
|---------------------------|----------------------|
| 1. Waqar Ali Shah, | Daftari BPS-2 |
| 2. Mina Amin Jan, | Lab: Assistant BPS-5 |
| 3. Arif Shah, | Naib Qasid BPS-1 |
| 4. Adnan Yaqub, | Lab: Attendant BPS-2 |
| 5. Zafar Iqbal, | Daftari, BPS-2 |
| 6. Mattiullah Shah, | Naib Qasid BPS-1 |
| 7. Ashfaq Ahamd, | Chowkidar BPS-1 |
| 8. Javed, | Naib Qasid BPS-1 |
| 9. Haroon Khan, | Naib Qasid BPS-1 |
| 10. Muhammad Junaid Abid, | Naib Qasid BPS-1 |

Sd/-

CHIEF ENGINEER CDO

درخواست عمارد عالی بر ملازمت

عتاب عالی! سائل حسب ذیل عین تزار فی

1۔ پیک سائل کو حضور نے بطور Laboratory Equipment مکانیک
BPS-5 مورخ $29 \frac{7}{2010}$ لکھی تھی۔ اور پھر کوئی رقم ملے
آپ حضور نے مورخ $8 \frac{8}{2010}$ کو سائل جمع دینے 20 اہلکاروں
کے تعیناتی کا حکم نامہ دیا جس نے لاکھوں کے بجائے سائل
توزار سے بر طرف ہوا

2۔ پیک بر طرف شدہ 21 اہلکاروں میں سے 9 اہلکاروں
آپ حضور کے حکم مورخ $8 \frac{8}{2010}$ کو سروس ٹرمینل کیا اور
صالح کیا

3۔ تندرکن اہلکاروں کو سروس ٹرمینل خیر بھونو انا پساور
مورخ $6 \frac{6}{2012}$ کو ملازمت پر بحال کیا۔ بعد حکومت جانب
سے CPWA کو PMA سپریم کورٹ نے مورخ $9 \frac{9}{2012}$
کو ایڈیشن سماعت کے بعد خارج کیا
لہذا تندرکنہ بالا مندرجہ حالت کی دولتی میں سائل کو بھی ملازمت پر
بحال کیے جانے کا حکم ہمارے تزار مافی

المستوفی
20 $\frac{11}{2012}$

دعا علی شاہ ولد عالی ع شاہ مایاں اقبال چوک پساور

خدمت صائب سکرٹری صاحبہ حکم سے مندرجہ ذیل بلوں کی تیار اور

ANNEXTUR (F)

Laboratory
Equipment
Mechanic (BPs-S)

اپیل / درخواستی افراد کی ایک سائل پر ملازمت
از 297 رپورٹ

2010
مطالعہ فیصلہ کا سیرم کورٹ آف باکٹان

صائب عالمہ : سائل حسب ذیل سے درخواست تیار کی گئی
1۔ یہ سائل ایک زیریاب حکم سے مندرجہ ذیل بلوں سے تیار کیے گئے ہیں
Laboratory Equipment اور 297 کو
Mechanic 2010
تعمیرات کر دیئے گئے۔ سائل کی کاپی (تعمیرات کے حوالے سے) تیار
کی گئی ہے اور درخواستیوں کو مطلع کیا گیا ہے۔

2۔ درخواستیوں سے سائل کو بغیر کسی نوٹس / شکوے / خارج شدہ / ایکوٹی
کے طور پر 188 کی ملازمت سے برطرف / ہٹایا گیا۔
3۔ یہ سائل کے ساتھ دیگر نوٹس شدہ افراد پر ملازمت کو کھلا کر 138
اور 188 کی ملازمت سے برطرف / نوٹس سے برخواست کیا گیا۔
4۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے (9) ملازمین نے سروکار کیا
اور ان کی ہم سے کوئی نوٹس / ملازمت سے برطرف / ہٹا دیا گیا۔

تیار اور مندرجہ بالا سائل علیحدہ علیحدہ دائرے میں ملازمت سے برطرف / ہٹا
کئے گئے ہیں۔ خلاف حکمت سے سیرم کورٹ آف باکٹان میں
افاضت برائے دائرے میں دیا گیا ہے کہ جب اپیل کو سیرم کورٹ نے 199
خارج کر دیا۔
5۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔

6۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
7۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
8۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
9۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
10۔ یہ سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔

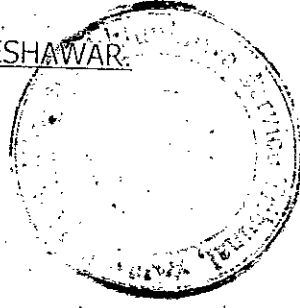
اپنے اور مندرجہ بالا سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
مجال کریمہ - ڈیپارٹمنٹ آف ایجوکیشن - سائل کے ساتھ دیگر نوٹس شدہ ملازمین سے سروکار کیا گیا ہے اور
دائرے میں سے ایک دو طرفہ شدہ ملازمین سے سروکار کیا گیا ہے۔
24/12/2012

Attested
Muhammad Nishan Khatok
Advocate
Phone No-0333-9710510

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 438/2011

Date of Institution. ... 14.3.2011
Date of decision ... 15.2.2013



Waheed Ahmad son of Jamshaid Khan R/O Ghazi Abad,
Feroz Colony Dalazak Road, Peshawar. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, C&W Department, Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer Central Design Office, C&W Department, Peshawar. ... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 13.8.2010 WHEREBY APPOINTMENT ORDER OF THE APPELLANT HAS BEEN CANCELLED AND NO RESPONSE RECEIVED UPON THE DEPARTMENTAL REPRESENTATION/APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD.

S.NO	Date of Hearing	Order/Proceedings of the Court with signature of Judge/Magistrate.
1	2 15.2.13	3 Appellant with counsel and Mr. Arshad Alam AGP for the respondents present. Arguments heard and record perused. 2. This appeal has been filed by Waheed Ahmad, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 13.8.2010, whereby his appointment order has been cancelled. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and appointment order dated 29.7.2010 of the appellant be restored with all back/consequential benefits. 3. At the very outset the learned counsel for the appellant produced a certified copy of a consolidated judgment date 12/6/12 of this tribunal in service Appeal No. 3125/2010, Muhammad Aftab and three others Versus Province of Khyber Pakhtunkhwa through Sectary, C&W

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Department, Peshawar etc.", and stated that similarly placed persons have already been reinstated into service. The appellant is also entitled to the same treatment. He requested that the appeal may be accepted as prayed for.

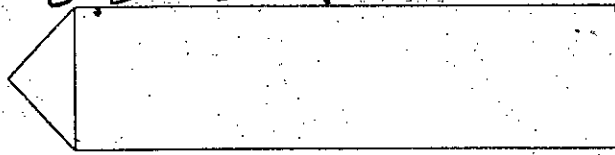
4. In view of the above, this appeal is also decided with the same directions as issued in Service Appeal No. 3125/2010 with further direction to the respondents to ascertain as to whether the appellant of this case is a person similarly placed person with the appellants in the aforementioned service appeals or otherwise. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
15.2.2013

sd/- Syed Manzoor Ali Qadri member
sd/- Naas Ali Qadri member

Certificate
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
copy

Date of Application 15-3-2013
No. 800
Ur. 6
Tot. 2
No. 8
Date of 15-3-2013
Date of Disposal 15-3-2013



مورخہ
مقدمہ
دعویٰ
جرم

9 ماہ مارچ

2013ء پنجاب

وقار علی شاہ

ذکار علی شاہ

بنام حکومت خیر بخش خواہ بزرگ
یکم دہائی احمدی انڈیا ڈبلیو
پشاور اور ایڈووکیٹ

سرور مسل

باعث تحریر آنکہ

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

آں مقام کے لئے **نعمت اللہ شاہ** و **محمد شہان ذہاک**

ریڈ ویکس پشاور

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 براندگی 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 داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Attested & accepted.

2013

9 ماہ مارچ

المرقوم

Hasilullah

Naqeeb Ullah Khan Khattak
Advocate High Court
Cell No. 0300-5861466
Cell No. 0343-9122233

2220193
چوک مشنری پشاور

Mob: 0345-9223239

پشاور

Muhammad Nislah
Advocate
Muhammad Nislah Khatta
Advocate
Phone No: 0333-9110510

وقار علی شاہ
14107-0789536-7

بسم الله الرحمن الرحيم

الحمد لله

بسم الله الرحمن الرحيم

الحمد لله
والصلاة والسلام على

ص

الحمد لله

والصلاة والسلام على
الرسول الكريم

والصلاة والسلام على

الحمد لله

والصلاة والسلام على

الرسول الكريم

بسم الله الرحمن الرحيم
الحمد لله
والصلاة والسلام على
الرسول الكريم

الحمد لله

والصلاة والسلام على

الرسول الكريم

الحمد لله

والصلاة والسلام على
الرسول الكريم

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

In Service Appeal No. 565 /2013

Waqar Ali Shah

Versus

Government of KPK through Secretary C&W etc

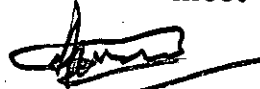
APPLICATION UNDER SECTION 5 OF LIMITATION ACT 1908 ON
EBHALF OF APPELLANT/PETITIONER FOR CONDONATION OF
DELAY IN FILING THE SERVICE APPEAL IN HAND.

Respectfully Sheweth,

1. That the Appellant/Petitioner has filed the above titled Service Appeal before this honorable Tribunal on 11-3-2013 for reinstatement in service illegally terminated by the Respondents.
2. That the Appellant was appointed as Laboratory Equipment Mechanic by the Respondent Department on 29-07-2010 and took over the charge as such but all of sudden the said appointment order was cancelled by the Respondent under their office order dated 18-9-2010 without showing any cause or reason and in utter violation of the principle of Natural Justice, audi alteram partem and Section 24-A of General Clauses Act 1897 and the said order 20 other colleagues were also terminated.
3. That the said order was challenged before this honourable Tribunal by some of my aggrieved colleagues before this honourable Tribunal in service Appeal which Service appeal was accepted on 12-6-2012.
4. That the Respondent department went into Civil Petition for Leave to Appeal vide No.401-409 of 2012 before Supreme Court of Pakistan, which Petitions were dismissed being without merit and Leave to Appeal was dismissed on 19-9-2012.
5. That the Appellant preferred Departmental Appeal to the Respondent (Chief Engineer C&W) for reinstatement in service in accordance with the judgment of Supreme Court of Pakistan and the Chief Engineer was kind enough to recommend my reinstatement alongwith other 9 who failed to litigate earlier on 28-11-2012 to the Secretary C &W Department (Respondent No.1)

6. That another Departmental Appeal dated 24-12-2012 was moved by the Appellant before the Respondent No.1 which is as yet unactioned.
7. That the office order dated 18-8-2010 was a void order having no backing of legal force, as such no limitation runs after a void order.

Prayer:-It is, therefore, humbly prayed that the delay in filing the instant Service Appeal may kindly be condoned to meet the ends of justice.



Petitioner/Appellant

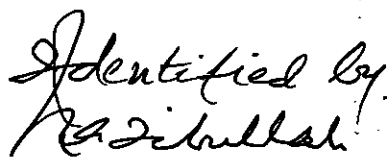
Through



(Naqibullah Khattak)
Advocate High Court

AFFIDAVIT

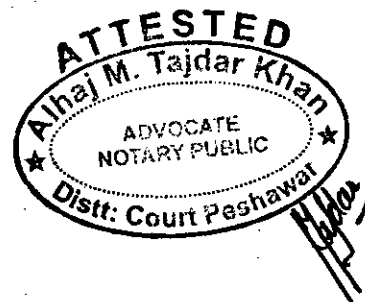
I, Naqibullah Khattak Advocate under instructions of my client, solemnly affirm and declare on his behalf that the contents of the instant Application are true and correct according to the instruction as conveyed and that nothing is concealed intentionally from this honourable court.

Identified by


Advocate Peshawar



Deponent



BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

In Service Appeal No. 865 /2013

Waqar Ali Shah

Versus

Government of KPK through Secretary C&W etc

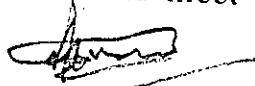
APPLICATION UNDER SECTION 5 OF LIMITATION ACT 1908 ON
EBHALF OF APPELLANT/PETITIONER FOR CONDONATION OF
DELAY IN FILING THE SERVICE APPEAL IN HAND.

Respectfully Sheweth,

1. That the Appellant/Petitioner has filed the above titled Service Appeal before this honorable Tribunal on 11-3-2013 for reinstatement in service illegally terminated by the Respondents.
2. That the Appellant was appointed as Laboratory Equipment Mechanic by the Respondent Department on 29-07-2010 and took over the charge as such but all of a sudden the said appointment order was cancelled by the Respondent under their office order dated 18-~~8~~-2010 without showing any cause or reason and in utter violation of the principle of Natural Justice, audi alteram partem and Section 24-A of General Clauses Act 1897 and the said order 20 other colleagues were also terminated.
3. That the said order was challenged before this honourable Tribunal by some of my aggrieved colleagues before this honourable Tribunal in service Appeal which Service appeal was accepted on 12-6-2012.
4. That the Respondent department went into Civil Petition for Leave to Appeal vide No.401-409 of 2012 before Supreme Court of Pakistan, which Petitions were dismissed being without merit and Leave to Appeal was dismissed on 19-9-2012.
5. That the Appellant preferred Departmental Appeal to the Respondent (Chief Engineer C&W) for reinstatement in service in accordance with the judgment of Supreme Court of Pakistan and the Chief Engineer was kind enough to recommend my reinstatement alongwith other 9 who failed to litigate earlier on 28-11-2012 to the Secretary C & W Department (Respondent No.1)

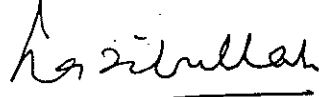
6. That another Departmental Appeal, dated 24-12-2012 was moved by the Appellant before the Respondent No.1 which is as yet unactioned.
7. That the office order dated 18-8-2010 was a void order having no backing of legal force, as such no limitation runs after a void order.

Prayer:-It is, therefore, humbly prayed that the delay in filing the instant Service Appeal may kindly be condoned to meet the end of justice.



Petitioner/Appellant

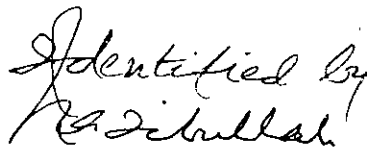
Through



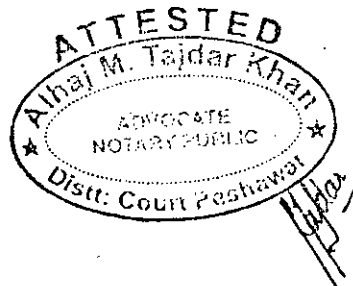
(Naqibullah Khattak)
Advocate High Court

AFFIDAVIT

I, Naqibullah Khattak Advocate under instructions of my client, solemnly affirm and declare on his behalf that the contents of the instant Application are true and correct according to the instruction as conveyed and that nothing is concealed intentionally from this honourable court.

Identified by

Advocate Peshawar


Deponent



بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين

صلى الله عليه وسلم

14/2

~~بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين~~

بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. 565/2013

Waqar Ali Shah S/O Haji Umer Shah

Appellant

Versus

1. Secretary, to Govt. of Khyber C&W Department
2. Chief Engineer Central Design Office C&W Department

Respondents

COUNTER AFFIDAVIT

We the Respondents hereby affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and that nothing has been concealed from the Hon'ble Tribunal.

AFFIANT

Chief Engineer
Central Design Office
C&W Department Peshawar
(Respondent No. 2)

Secretary
to Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
For Respondent No. 1

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No. 565/2013

Waqar Ali Shah Ex: Lab: Equipment Mechanic (BPS-05) S/O Haji Umer Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop, Saddar Road Peshawar.

Appellant

Versus

1. Secretary, to Govt. of Khyber C&W Department
2. Chief Engineer Central Design Office C&W Department

Respondents

Written Reply on behalf of Respondents No. 1, 2

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is not maintainable in its present form.
2. That the appeal is premature.
3. That the appeal has no cause of action and locus standi.
4. That the appellant has not come to the Hon'ble Tribunal with clean hands.
5. That the appeal is bad due to non-joinder and mis-joinder of necessary party.
6. That the appellant concealed the material facts from the Hon'ble Tribunal.
7. That the appellant concealed the material facts from the Hon'ble Tribunal.
8. That the appellant is estopped by his own conduct to file the instant appeal.
9. That the appeal is time barred.

FACTS

1. Pertains to appellant's record.
2. Not admitted. Appellant has not performed any duty and nothing is available on office record. However, it may be added that while appointing the appellant, proper codal

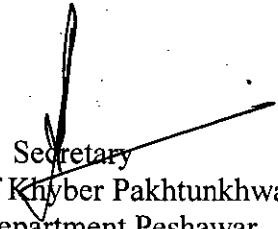
formalities were not observed which include representation of the Administrative Department. Therefore, the Competent Authority had been pleased to direct that all such appointments made by the Chief Engineer CDO C&W Department Peshawar since its establishment for his office may be cancelled w-e-f 13-08-2010 positively as the appointments are made without observing proper codal formalities/procedure. The Orders annexed "A".


3. Pertains to record.
4. Pertains to record.
5. Correct to the extent that an application dated 10-07-2012 was submitted before Respondent No. 2 which was forwarded to the Respondent No. 1. The rest of the Para is incorrect, hence denied. (Copy of the application is annexed "B" while forwarding letter of the appeal is already annexed-"E".)

GROUNDS

- A. Incorrect. That the appellant was treated in accordance with law, rules and facts.
- B. Not admitted. Because of illegal appointments, therefore, there is no question of vested right in favor of appellant.
- C. The General Clauses Act, 1897, 21 "Power to make to include power to add to amend, vary, rescind orders, rules bye laws. The Respondents have the power to recall or cancel any order (Shown in his appointment order) (annexed "C").
- D. No comments.
- E. No comments.

In view of the fore going facts of the case, it is humbly prayed that the appeal which is not based on facts may please be dismissed.


Secretary
to Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
Respondent No. 1


Chief Engineer
Central Design Office
C&W Department Peshawar
Respondent No. 2

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar.

Appeal No.565/2013.

Waqar Ali Shah Ex: Lab: Equipment Mechanic (BPS-05) S/O Haji Umer Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop, Saddar Road Peshawar.

Appellant

Versus

1. Secretary, to Govt: of Khyber Pakhtunkhwa C&W Deptt:

Respondant No.1.-

2. Chief Engineer, Central Design office C&W Deptt:

Respondant No.2.

Respondents

Written Reply on behalf of Respondents No.1,2.

Respectfully Sheweth,

Preliminary Objections:

1. That the appeal is not maintainable *in its present form*.
2. That the appeal is premature.
3. That the appeal has no cause of action and locus standi.
4. That the appellants have not come to the ^{honorable} Tribunal with clean hands.
5. That the appeal is bad due to non-joinder ^{of necessary parties} of necessary party.
6. That the appellants concealed the material facts from the ^{honorable} Tribunal.
7. That the appellants concealed the material facts from the ^{honorable} Tribunal.
8. That the appellants are stopped by his own conduct to file the instant appeal.
9. That the appeal is time barred.

Atty. Atty. Ahmad Ahmad Khan

Adv. DAL

30-1-14

FACTS

1. Pertain to appellant's record.
2. Not admitted. Appellant has not performed any duty and nothing is available on office record. However, it may be added that while appointing the appellant, proper codal formalities were not observed which include representation of the Administrative Department. Therefore, the competent authority had been pleased to direct that all such appointments made by the Chief Engineer CDO C&W Department Peshawar since its establishment for his office may be cancelled w.e.f 13.08.2010 positively as the appointments are made with observing proper codal formalities/procedure. *Annexure A*

3. ~~No comments. pertains to record.~~
4. ~~No comments. pertains to record.~~
5. ~~No comments. pertains to record.~~

in view of the fact that an application dated 10.7.12 was submitted before Respondant No 2 which was which was forwarded to the Respondant No 1 the rest of the para is incorrect hence deleted. (copy of the application is 'B' and full forwarding letter is already Annexure A)

Continued on P. 2

6. Grounds

- A. Incorrect. That the appellant was treated in accordance with law, rules and facts.
- B. Not admitted. Because of illegal appointments, therefore, there is no question of vested right in favor of appellant.
- C. The General Clauses Act, 1897, 21 "Power to make to include power to add to amend, vary, rescind orders, rules. bye laws. The respondents have the power to recall or cancel any order (Shown in his appointment order). (C)
- D. No comments.
- E. No comments.

In view of the fore going facts of the case, it is humbly prayed that the appeal which is not based on facts may please be dismissed.

Secretary, to Govt:
Khyber Pakhtunkhwa,
C&W Department Peshawar.
For Respondant No.1

Chief Engineer.
Central Design Office
C&W Department Peshawar
for Respondant No.2.

*Amicus Affidavit subject to AA
Govt: Plead
Khyber Pakhtoon
Tribunal P*

*Add: Advocate General
(Service Tribunal) K.P.K
Peshawar.*

*Resubmitted for
revising pl*

*A.G.
06/05
Support*

please note the same
[Signature]
31/1/2014

AA/CPD

*Record is incomplete kindly provide letter dated
complete Record at to the undersigned at the
earliest.*

AAG/SO:GP

Agwad.

Please do the needful.
[Signature]
31/1/14

*AA/CPD
GP: GP: Phase
examine the
letter [Signature]*

[Signature]
31/1/14



ANNEXTUR (A)

OFFICE OF THE CHIEF ENGINEER CENTRAL DESIGN
OFFICE C&W DEPARTMENT K.P. 8-A, SHAMI ROAD PESH:

No. 2-E/312 Dated 29/07/2010

OFFICE ORDER

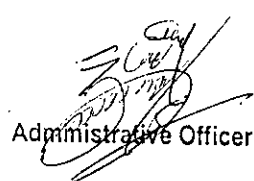
On the recommendation of the Departmental Selection Committee as per its meeting held on 27/04/2010, the Competent Authority is pleased to offer a post of Laboratory Equipment Mechanic (BPS-05), to Mr. Waqar Ali Shah S/O Haji Umar Shah R/O Mian Iqbal Chowk Qayum Stadium Tea Shop Saddar Cantt Peshawar on the following terms and conditions:-

1. He will get pay at the minimum of BPS-05 including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
2. He shall be governed by the K.P. Civil Servants Act-1973 and all the laws applicable to the Civil Servants and Rules made there under.
3. He shall, for all intents and purposes, be a Civil Servant except for the purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount contributed by him towards Contributory Provident Fund (C.P.F) along with the contributions made by the Government to his account in the said fund, in the prescribed manner and rate fixed by the Government from time to time.
4. His employment in Communication & Works Department (CDO) is purely temporary and his services are liable to be terminated without assigning any reasons at fourteen (14) days prior notice or on the payment of 14-days salary in lieu of the notice. In case he wishes to resign at any time, 14-days notice will be necessary or in lieu thereof 14-days pay will be forfeited.
5. He shall, initially be on probation for a period of two years extendable up to 3-years.
6. He shall, produce a Medical Certificate of fitness from the Medical Superintendent of Police & Services Hospital Peshawar, before reporting himself for duty as required under the rules.
7. He has to join duty at his own expenses.
8. He shall have to serve any where in K.P.
9. If he accepts the post on the above conditions, he should report to the office of the Chief Engineer (CDO) C&W Department K.P. Peshawar, within 14-days of the receipt of this offer and produce original documents in connection with his qualification, domicile and health/age etc.


CHIEF ENGINEER

Copy for information to the:-

1. Accountant General, K.P. Peshawar
2. P.S. to Secretary, to Govt: of K.P.C&W Department Peshawar.
3. Mr. Waqar Ali Shah S/O Haji Umar Shah R/O Mian Iqbal Chowk Qayum Stadium Tea Shop Saddar Cantt Peshawar.


Administrative Officer

Most immediate
Top priority



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/17-4/2010
Dated Peshawar, the August 13, 2010

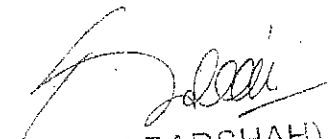
TO

✓
The Chief Engineer (CDO)
C&W, Peshawar

Subject:

CANCELLATION OF APPOINTMENTS MADE BY CHIEF ENGINEER
(CDO) C&W, PESHAWAR

I am directed to refer to the subject noted above and to state that the competent authority has been pleased to direct that all the appointments made by the Chief Engineer (CDO) C&W Peshawar since its establishment, for his office may be cancelled today (13.08.2010) positively, as the appointments have been made without observing codal formalities/procedure, under intimation to a concerned.


(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

Endst even No. & date

Copy is forwarded to the:-

1. Special Assistant to Chief Minister Khyber Pakhtunkhwa, Peshawar
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
3. Accountant General Khyber Pakhtunkhwa, Peshawar
4. Chief Engineer (CDO/Centre), C&W Peshawar.
5. PS to Secretary, C&W Peshawar.

(RAHIM BADSHAH)
SECTION OFFICER (

RI
 169

The Chief Engineer, (CDO)
 C&W Department Peshawar.

Subject:- RE-INSTATEMENT IN SERVICE.

Sir,

We the following Ex: officials of O/O the Chief Engineer, CDO C&W Department Peshawar are submitted the following few points for your kind consideration and necessary action please:-

1. We the undersigned were appointed as Class-iv by your good office in the year 2010 after fulfilling all codal formalities.
2. In pursuance of the orders, we reported for duties along with medical certificates.
3. Unfortunately, the appointment orders were cancelled vide your O/order No.2-E/361, dated 18.08.2010 & No. E-2/356 dated 13-08-2010 (Annexure-I)
4. The cancellation order includes 21 & 10 newly appointed Government Servants were issued without any notice/explanation etc; which required under the rules.
5. Aggrieved with the illegal act of the Department, one Mr. Muhammad Aftab, Naib Qasid filled the subject appeal before the Service Tribunal for setting aside the impugned order dated 13.08.2010 (Annexure-II) along with M/S Akbar Hussain appeal No.3126/2010, Mir Afzal appeal No.3127/2010, Shahid Ahmad appeal No.3128/2010, Asif Khan appeal No.3129/2010, Arif Khan appeal No.3130/2010, Gohar Muhammad appeal No.3131/2010, Said Farosh appeal No.3132/2010 and Rashid Hameed appeal No.3133/2010 whose appointment orders have also been cancelled.
6. The Service Tribunal accepted the above appeal (Annexure-III) and set aside the impugned order dated 13.08.2010 by reinstating the appellants into service with all back benefits (para 7 of Annex-V refers) and also disposed off other connected service appeals being have question of law and facts (Para 8 of Annex-V refers).
7. In this regard, being the similar affectees, We, invite your kind attention towards the judgement of August Supreme Court of Pakistan in Hameed Akhtar Niaz's case at 1996 SCMR 1185 (Annex-IV) reproduced below:-

"The Supreme Court has consistently hold, that if the Service Tribunal or Supreme Court decides a point of law relating to the terms and conditions of service of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings in such a case, the dictates of justice and rules of good

Nomenclature	Initial
CE CDO C&W Deptt: Pesh:	
Principal Engr: (H/way)	
S.E. (HQ)	
Principal Engr (Buildings)	
Admn: Officer/ B&A Officer	✓
Duty: idel	

CE CDO C&W Deptt: Peshawar	
Dairy No.	652/2111
Date.	10-07-2012

Pl. sent to S. (CDO)
 21/12/12

governance demand that the benefit of the said decision be extended to other civil servants also who may not be parties to that litigation, instead of compelling them to approach the tribunal or any other legal forum".

Therefore, in pursuance of the above quoted judgement of August Supreme Court of Pakistan Hameed Akhtar Niaz's case at 1996 SCMR 1185 (Annexure-IV), our services may please be reinstated accordingly with all back benefits and obliged please.

Your's obediently,

1. Waqar Ali shah
Daftari BS-02
2. Mian Amin Jan
Lab Assistant BS05
3. Arif shah
Naib Qasid BS-01
4. Adnan Yaqub
Lab Attendant BS-02
5. Zafar Iqbal
Daftari BS-02
6. Matti-ullah Shah
Naib Qasid BS-01
7. Ashfaq Ahmad
Chowkidar BS-01
8. Javed
Naib Qasid BS-01

OFFICE ORDER

In compliance with the directive vide Secretary, to GOKP C&W Department letter No.SOE/C&WD/17-4/2010, dated 13.08.2010, and in continuation of this office order No.E-2/356 dated 13/08/2010, the office orders issued in respect of the following officials are hereby cancelled.

Sl.No.	Name	Father's Name	Order No. & Date
1.	Waqar Ali Shah ✓	Umar Shah	2-E/312, 29.07.2010
2.	Muhammad Junaid Abid	Abid Jan	2-E/313, 29.07.2010
3.	Mian Amin Jan	Mian Fazal-e-Naeem	2-E/309, 29.07.2010
4.	Noorullah	Rahmatullah	2-E/271, 29.07.2010
5.	Khalid	Muhammad Sardar	2-E/287, 22.07.2010
6.	Arif Shah	Haji Alif Shah	2-E/323, 29.07.2010
7.	Adnan Yaqub	Yaqub Khushi	2-E/304, 29.07.2010
8.	Zafar Iqbal	Muhammad Bashir	2-E/320, 29.07.2010
9.	Wahced Ahmed	Jamshid Khan	2-E/314, 29.07.2010
10.	Asif Khan	Zarif Khan	2-E/257(d) 29.07.2010
11.	Amjid Ali	Ghulam Hassan	2-E/303, 29.07.2010
12.	Sher Aman Shah	Mir Akbar Shah	2-E/315, 29.07.2010
13.	Jawad Khan	Muhammad Younas	2-E/319, 29.07.2010
14.	Matti-ullah Shah	Abdul Qayum	2-E/317, 29.07.2010
15.	Fida Jan	Faqir Muhammad	2-E/308, 29.07.2010
16.	Rashid Hameed	Abdul Hameed	2-E/310, 29.07.2010
17.	Said Farosh	Mian Farosh	2-E/254, 01.07.2010
18.	Ashfaq Ahmad ✓	Manzar Saleem	2-E/256, 01.07.2010
19.	Arif Khan	Dad Karim	2-E/253, 01.07.2010
20.	Gohar Muhammad	Qadir Muhammad	2-E/257(a) 01.07.2010
21.	Muhammad Tariq	Namdar Khan	2-E/257(b) 01.07.2010

CHIEF ENGINEER CDO

Copy to the:-

- Secretary, to GOKP C&W Department Peshawar, with ref: to above for information please.

CHIEF ENGINEER CDO

Attested
Muhammad Nishan Khattak
Advocate
Phone No:0333-9710510

9



ANNEXTUR (C)

OFFICE OF THE CHIEF ENGINEER
CENTRAL DESIGN OFFICE C&W
8-A SHAMI ROAD PESHAWAR

No.E-2/356 Dated 13,08.2010.

OFFICE ORDER

In compliance with the directive vide Secretary, to GOKP C&W Department letter No.SOE/C&WD/17-4/2010, dated 13.08.2010, the office orders issued in respect of the following officials are hereby cancelled.

Sl.No.	Name	Father's Name	Order No. & Date
1	Mir Afzal *	Muhammad Khan	2-E/307, 29.07.2010.
2	Shehzad Khan	Shaukat Khan	2-E/306, 29.07.2010
3	Shahid Ahmed *	Abdur Rashid	2-E/302, 29.07.2010
4	Faridullah *	Badshah Gul	2-E/300, 29.07.2010
5	Muhammad Aftab *	Muhammad Yousaf	2-E/322, 29.07.2010
6	Haroon	Faqir Muhammad	2-E/301, 29.07.2010
7	Faizullah	Siraj Muhammad	2-E/272, 19.07.2010
8	Shakeel Ahmed	Gulmast Khan	2-E/273, 19.07.2010
9	Akbar Hussain *	Khan Afzal	2-E/275, 19.07.2010
10	Javed *	Abdur Rahim	2-E/318, 29.07.2010

It is further added that it seems very difficult rather impossible to withdraw/cancel all the recruitment orders regarding class-iv, as, office of the CE CDO, Principal Architect & the recently established Flood Damages Restoration Project Directorate of C&W Department are all dependent and functions with the help and assistance of these very class-iv staff please.

Copy to the:

- Secretary, to GOKP C&W Department Peshawar, with ref: to above for information.

CHIEF ENGINEER CDO

[Handwritten Signature]
CHIEF ENGINEER CDO

Affirmed
[Handwritten Signature]
Muhammad Nishan Mirattak
Advocate
Phone No. 0333-9710510

The General Clauses Act, 1897

(Act no. 10 of 1897)

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	<u>Preamble</u>
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3	<u>Definitions</u>
4	<u>Application of foregoing definition to previous enactments</u>
4A	<u>Application of certain definitions to Indian Laws</u>
5	<u>Coming into operation of enactments</u>
5A	<u>Coming into operation of Governor General Act</u>
6	<u>Effect of repeal</u>
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7	<u>Revival of repealed enactments</u>
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9	<u>Commencement and termination of time</u>
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21 ✓	<u>Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules, or bye-laws</u>
22	<u>Making of rules or bye-laws and issuing of orders between passing and commencement of enactment</u>
23	<u>Provisions applicable to making of rules/or bye-laws after previous publication</u>
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30	<u>Application of Act to Ordinances</u>
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31	<u>Construction of references to Local Government of a Province</u>

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules, or bye-laws -

Where, by any (Central Act) or Regulations, a power to (issue notifications) orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued).

22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment -

Where, by any (Central Act) or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation, but rules, bye-laws or orders so make or issued shall not take effect till the commencement of the Act or Regulation.

23. Provisions applicable to making of rules or bye-laws after previous publication -

Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:- The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby.

The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the (Government concerned) prescribed.

There shall be published with the draft a notice specifying a date on after which the draft will be taken into consideration.

The authority having power to make the rules or bye-laws , and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may me received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified.

The publication in the (Official Gazette) of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

①
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. _____/2013

Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)

Son of Haji Umar Shah

R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,

Saddar Peshawar.....Appellant

VERSUS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary C&W
Department, Peshawar.
- 2) Chief Engineer Central Design Office, C&W Department, Peshawar
..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS OF OFFICE ORDER DATED 18.08.2010 OF THE RESPONDENTS VIDE WHICH THE SERVICES OF THE APPELLANT WERE TERMINATED FROM THE POST OF LABORATORY EQUIPMENT MECHANIC (BPS-5) IN THE ABSENCE OF ANY SHOW CAUSE NOTICE, CHARGE SHEET, SUMMARY OF ALLEGATIONS OR ANY INQUIRY AND THE DEPARTMENTAL APPEAL BEFORE RESPONDENT NO.2 OF THE APPELLANT WAS ACCDED TO ON 28.11.2012 AND RECOMMENDED TO RESPONDENT NO.1 FOR APPELLANT REINSTATEMENT BUT OF NO AVAIL AS YET DESPITE LAPSE OF MORE THAN 90 DAYS.

- 4) That another of appellant's colleague challenged the impugned order before this hon'ble Tribunal in service appeal No.438/2011 on 14.03.2011 which service appeal too was accepted on 15.02.2013. (Photocopy enclosed).
- 5) That the appellant relying on plethora of judgments of Supreme Court of Pakistan preferred departmental appeal before respondent No.2 who was kind enough to recommend his appeal along with other affectees/ aggrieved ex-employees to respondent No.1 on 28.11.2012, which is as yet unactioned. (Photocopy enclosed as Annexure "D").
- 6) That being aggrieved from the non-action on the recommendations of respondent No.2, the impugned order dated 18.08.2010 of respondents assails on the following grounds inter alia before this Hon'ble Tribunal.

GROUNDS:

- A) That the impugned office order dated 18.08.2010 terminating the services of the appellant is against law and facts, hence not tenable in the eye of law.
- B) That no rhyme/ reason was shown by the respondents, no charge sheet, no summary of allegations was served nor any enquiry was conducted in the termination of the services of the appellant.
- C) That vested right accrued to the appellant with his appointment and doctrine of locus poenitentiae was applicable in appellant's case.
- D) That the well settled principle of law as laid down by the Supreme Court is being violated by the respondents which apex court has held in various judgments that when service tribunal or Supreme Court of Pakistan decides question of law relating to terms and conditions of civil service who litigated would be applicable to those civil servants too who could not litigate but similarly placed. These judgments were brought into the kind notices of the respondents but of no avail as yet.

(4)

E) That other legal grounds would be raised before this Hon'ble Tribunal at the time of full hearing of the instant service appeal with the prior approval of this hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of the instant Service Appeal the impugned office order dated 18.08.2010 of the respondents may graciously be set aside and the appellant be reinstated in service with all back benefits of pay and service as the appellant has never been engaged in any business/ service during the period of his termination of service.

Appellant
(Waqar Ali Shah)

11/1031/2013
Through

Naqibullah Khattak

Muhammad Nisan Khattak
Advocates, Peshawar.

CERTIFICATE:

Certified as per information furnished by my client that no such appeal has ever been filed before this Hon'able Tribunal except the instant one.

Naqibullah
Advocate

RELIED UPON

- 1) 1996 SCNR-1185: Hameed Akhtar Niazi VS Secretary Establishment. Citation "C" If Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms & conditions of Service of a Civil Servant who litigated but covers the others who may not have taken legal proceedings.
- 2) 2003 SCMR 1030: Khawaja Abdul Nasir VS National Bank of Pakistan (relevant Page 1032). Benefit of pension/Contributory Fund extended to all falling within the category in order to do complete justice.
- 3) 2005 SCMR-499: Tara Chand VS Karachi Sewerage & Water Development, ^{relevant} Page-500. The dictate of justice and good Governances demanded ^{fairness} that benefit of decision be extended to all others who may not have legal proceedings.
- 4) 2006 PLC (CS) 11 Lahore: When Service Tribunal or Court of Pakistan decides a point of law relating to terms & conditions of service of a civil servant that covers not only the civil servant who litigated but also of others civil servants who might have not litigated or taken any legal proceedings. Rule of good governance demands that benefit of such judgment shall be extended to them also ^{who could not litigate}.

Naqibullah
NAQIB ULLAH KHATTAK
ADVOCATE
High Court Peshawar

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. _____/2013


Waqar Ali Shah. Ex-Laboratory Equipment Mechanic (BPS-5)
Son of Haji Umar Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary C&W Department,
Peshawar.
2. Chief Engineer Central Design Office, C&W Department, Peshawar
.....Respondents

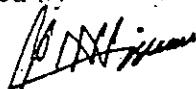
AFFIDAVIT

I. Waqar Ali Shah. Ex-Laboratory Equipment Mechanic (BPS-5) son of Haji Umar Shah R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop, Saddar Peshawar solemnly affirm and declare on oath that the contents of the instant Service Appeal are true and correct according to my knowledge and belief and that nothing has been concealed intentionally from this honourable court.


Deponent

NIC 14101-0789536-7

Identified by



Mohammad Nishan Khattak
Advocate Peshawar

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Service Appeal No. _____/2013

Waqar Ali Shah..... Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary C&W Department,
Peshawar & another..... Respondents

Addresses of Parties

Respectfully Sheweth;

Addresses of parties are as under :-

APPELLANT

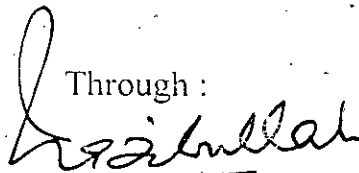
Waqar Ali Shah, Ex-Laboratory Equipment Mechanic (BPS-5)
Son of Haji Umar Shah
R/O Mian Iqbal Chowk, Qayum Stadium Tea Shop,
Saddar Peshawar.

RESPONDENTS

- 1) Govt. of Khyber Pakhtunkhwa, through Secretary C&W
Department, Peshawar.
- 2) Chief Engineer Central Design Office, C&W Department, Peshawar

Appellant

Through :



(Naqibullah Khan Khattak)
Advocate High Court Peshawar.

Dated 11/03, 2013.