


FORM OF ORDER SHEET

Court of _____

Appeal No. 606/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/04/2024	<p>The appeal of Mr. Muhammad Zubair presented today by Mr. Kabir Ullah Khan Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 606 /2024

Muhammad Zubair

VERSUS


The Registrar Peshawar High Court Peshawar &
others

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APPELLANT

Through


Kabirullah Khattak
Advocate, High Court
Peshawar.

Dated: 29/04/2024

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 606 /2024

Muhammad Zubair Senior Clerk BPS-14 posted at
District and Session Judge Bunir.

Appellant

VERSUS

1. The Registrar Peshawar High Court Peshawar
2. The District & Session Judge /Chairman of DPC Buner
at Daggar,
3. Mr. Abdul Akbar Assistant BPS-16 posted at Senior
Civil Judge District Buner.

Respondents

APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED
PROMOTION ORDER DATED 15/10/2022
WHEREBY PRIVATE RESPONDENT WHO IS
JUNIOR TO THE APPELLANT WAS
PROMOTED TO THE POST OF ASSISTANT
BPS-16.

PRAYER:-

ON ACCEPTANCE OF THIS APPEAL THE
IMPUGNED PROMOTION ORDER DATED
15.10.2022 PASSED BY THE RESPONDENT

(2)

NO.2 TO THE EXTENT OF PRIVATE
RESPONDENT NO.3 MAY VERY
GRACIOUSLY BE SET ASIDE AND THE
APPELLANT BEING SENIOR MAY KINDLY
BE CONSIDERED FOR PROMOTION TO THE
POST OF ASSISTANT BPS-16 FROM HIS
DUE DATE BEING ILLEGIBLE / SENIOR
WITH ALL BACK AND CONSEQUENTIAL
BENEFITS.

ANY OTHER RELIEF DEEMED
APPROPRIATE IN THE CIRCUMSTANCES
OF THE CASE NOT SPECIFICALLY ASKED
FOR, MAY ALSO BE GRANTED TO THE
APPELLANT.

Respectfully Sheweth,

1. That the appellant is initially appointed as a Junior Clerk at the year 1994 and later on promoted to post of Senior Clerk on 12.02.1996.
2. That after appointment the appellant performing his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant.

3)

3. That while performing his official duty with respondent department the appellant was compulsory retired from service on 05.08.2011 on the basis of alleged allegation against which the appellant filed service appeal No.41/2016 which was accepted by this Hon'ble Tribunal on 25.01.2022 whereby the appellant was reinstated on his service with all back and consequential benefits. (Copy of service tribunal judgment is attached as annexure "A").

4. That in compliance of the judgment of this Hon'ble Tribunal the appellant was reinstated on 02.01.2023, after decision of this Hon'ble Tribunal the appellant came to know that the respondent department conducted departmental promotion committee in the light of the said committee the promotion order was issued on 15.10.2022, whereby the respondent No.3 has been promoted to the post of Assistant BPS-16 being Junior to the appellant. While the appellant has been ignored for promotion being senior to the respondent No.3 in the final seniority list dated 18.05.2010, as well as in the seniority list dated 08.11.2022. It is pertinent to mention here that one of other colleague namely Ghulam Nabi who was Junior to the

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appellant was promoted to the post of Assistant BPS-16 prior to the impugned promotion order. This fact is known to the appellant after reinstatement but the respondent department was not provided, copy of the said promotion order to the appellant. (Copy of reinstatement order, promotion order & seniority list are attached as annexure "B, C, D & E").

5. That the appellant submitted departmental appeal on 12.11.2022 against the promotion order dated 15.10.2022 but no response has been given by the respondent department. (Copy departmental of appeal is attached as annexure "F").

6. That the appellant submitted an application to respondent No.2 for providing seniority list of the year 2022/2023 & 2024 and DPC meeting. (Copy of application is attached as annexure "G").

7. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:-

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A. That the impugned promotion orders dated 15.10.2022 is against the law, facts, norm of justice, material on record therefore not tenable and liable to be set aside.

B. That the appellant is most senior and was placed at the top of the seniority list of 2010 & 2022, and after reinstatement with all back and consequential benefits again got his position in seniority list, therefore liable to be considered for promotion, but the appellant was ignored which is against the norms of justice.

C. That the appellant is discriminated as the appellant was appointed as senior clerk 1996, junior official whose were promoted to the post of Assistant was promoted to the post of Senior clerk on 2003 & 2005 respectively, hence the appellant is senior most then the promoted officials.

D. That inaction and omission of respondent department, not to considered the appellant for promotion is against the spirit of section 9 of Civil Servant Act 1973 and service rights duly protected under the civil servant rules.

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E. That the appellant is more than 26 years of service in senior most forester and depriving him from his legal right of promotion by promoting other official illegally will also affect his promotion chance in future.

F. That the appellant is not treated according to law and rules and will keep deprive from the benefits promotion by promoting blue eye person.

G. That the apex court has already clearly held in case of Anita Turab (PLD-2013 Supreme Court Page No.195) that matter of tenure, appointment, posting, transfer and promotion, of service could not be dealt with in an arbitrary manner but could only be sustained if it was in accordance with law. Whenever there was statutory provision or rules or regulation of government the matter of appointment of Civil Servants that must be followed honestly and scrupulously and discretionary must be exercised and structured, transparent and reasonable manner, thus the verdict of the Hon'ble Supreme Court fully favours the appellant's case.

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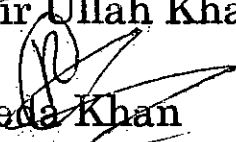
H. That any other ground not raised here may graciously be allowed to be raised at the time of arguments on the instant service appeal.

It is therefore, most humbly prayed that on acceptance of this appeal the impugned promotion order dated 15.10.2022 passed by the respondent no.2 to the extent of private respondent no.3 may very graciously be set aside and the appellant being senior may kindly be considered for promotion to the post of assistant BPS-16 from his due date being illegible / senior with all back and consequential benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.


APPELLANT

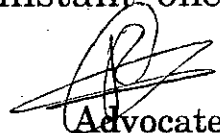
Through


Kabir Ullah Khattak
&

Roeeza Khan
Advocates, High Court
Peshawar.

Dated: 29/04/2024

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.


Advocate.

(8)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2024

Muhammad Zubair

VERSUS

The Registrar Peshawar High Court Peshawar & others

AFFIDAVIT

I, Muhammad Zubair Senior Clerk BPS-14 posted at District and Session Judge Bunir, do hereby solemnly affirm and declare that all the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.


DEPONENT

Identified by 

Roeeda Khan
Advocate High Court
Peshawar.



27/9/24

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BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2024

Muhammad Zubair

VERSUS

The Registrar Peshawar High Court Peshawar &
others

ADDRESSES OF PARTIES

PETITIONER.

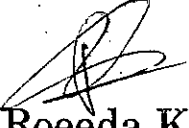
Muhammad Zubair Senior Clerk BPS-14 posted at
District and Session Judge Bunir.

ADDRESSES OF RESPONDENTS

1. The Registrar Peshawar High Court Peshawar
2. The District & Session Judge /Chairman of DPC Bunir
at Daggar.
3. Mr. Abdul Akbar Assistant BPS-16 posted at Senior
Civil Judge District Bunir.


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 29/04/2024

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BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2024

Muhammad Zubair

VERSUS

The Registrar Peshawar High Court Peshawar & others

APPLICATION FOR CONDONATION OF DELAY (if any)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That in compliance of the judgment of this Hon'ble Tribunal the appellant was reinstated on 02.01.2023, after the decision of this Ho'ble Tribunal, the appellant came to know that the respondent department conducted departmental promotion committee in the light of the said committee the promotion order was issued on 15.10.2022, whereby the respondent No.3 has been promoted to the post of Assistant BPS-16 being Junior to the appellant. While the appellant has


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been ignored for promotion being senior to the respondent No.3 in the final seniority list dated 18.05.2010, as well as in the seniority list dated 08.11.2022.

GROUNDS:


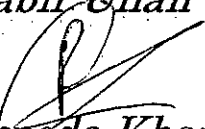
- A. That the dispute of the appellant is come under the definition of continuous cause of action against which no limitation has been run as per the judgment of Supreme Court.
- B. That there are so many judgment of the Supreme Court that limitation has been counted from the date of knowledge.
- c. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.


Appellant

Through

Date: 29.04.2024


Kabir Ullah Khattak
&

Rozeeda Khan

Advocates, High Court
Peshawar

"A" (18) (Q)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 41/2016

Date of Institution ... 19.02.2016

Date of Decision ... 25.01.2022



Zubair Ahmad S/O Nisar Ahmad R/O Khat Killi Tangi, Tehsil Tangi District Charsadda, Ex-Reader/Senior Clerk, of the Establishment of Respondents.

(Appellant)

VERSUS

The appellate judge through Registrar, Peshawar High Court Peshawar and one another. ... (Respondents)

Syed Noman Ali Bukhari,
Advocate

For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Reader/Senior Clerk in district judiciary, was proceeded against on the charges of misconduct and was ultimately awarded with major penalty of compulsory retirement from service vide order dated 06-08-2011. Feeling aggrieved the appellant filed departmental appeal dated 24-10-2011, which was rejected vide judgment dated 16-11-2015, hence the instant service appeal with prayers that the impugned order dated 06-08-2011 and 16-11-2015 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED


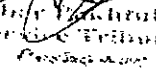
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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2. Learned counsel for the appellant has contended that the impugned orders are against law, fact and norms of natural justice, therefore liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the order dated 06-08-2011 had been issued with retrospective effect, which as per verdict of the apex court could not legally be done, therefore the order is not tenable in the eye of law and liable to be set at naught; that the appellant has not been connected with the charges, rather the evidence on both the inquiry files suggests that the appellant has not committed any negligence in performance of his duty; that the appellant has not sent any threatening messages to the Civil Judge, nor misbehaved with him and the charges so leveled against the appellant are frivolous and not based on facts; that other charges of corruption, missing of court management file and the case file of Muhammad Saleem Vs Bakht Feroosh etc were not proved, so remarks given by civil judge-1 in the ACR for the year 2010 of the appellant has automatically washed out as the same allegations in the complaint and remarks in the ACR for the year 2010 were based on malafide; that no data from concerned mobile company regarding alleged receipt of messages to the cell number of civil judge-1 and his steno were obtained and placed on inquiry file, hence remain unproved, even the phone owner was not called for inquiry despite the application of appellant, which caused grave miscarriage of justice; that the opinion/ recommendations of the inquiry officer and authorized officer and making it ground for imposing major penalty of compulsory retirement from service by the respondents in the impugned order with regard to absence of appellant from duty with effect from 07-12-2010 to 20-12-2010 are also not in accordance with rules of medical leave, as such impugned order/ judgment to this effect is not tenable; that malafide of the respondents is also evident from the fact that the he was not the authority of appellant, still his explanations were called regarding his absence, thus acted beyond his powers and on this score alone, the impugned orders being void ab initio is liable to be set aside; that the respondents altogether ignore the

ATTENDED


By: 
Civil Judge-1
District Court
Faisalabad



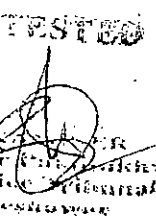
factum of the appellant illness and the appellant was suspended from service during inquiry proceedings; that the appellant fell ill due to severe fever, the appellant applied for three days leave, which was allowed to the appellant and the appellant being resident of Charsada, went to his home, where his fever turned in typhoid, which is evident from record and the appellant was advised bed rest for fourteen days with effect from 07-12-2010 to 20-12-2010, but his illness was ignored by the respondents; that statement of the superintendent of session court Buner would reveal that the appellant had fulfilled the requirement for the grant of medical leave, still his application for medical leave was not allowed by predecessor of the respondent, thus impugned order is nullity in the eye of law; that no proper procedure has been followed before awarding major punishment of compulsory retirement, as no proper inquiry has been conducted, the appellant have not been properly associated with the inquiry proceedings, statement of witnesses if any were never recorded in presence of the appellant nor opportunity was afforded to the appellant to cross-examine such witnesses, thus the proceedings so conducted are defective in the eye of law; that the appellant have not been afforded fair opportunity of personal hearing, thus the appellant have been condemned unheard; that the appellant have never committed any act or omission with bad or malafide intentions which could be termed as misconduct, albeit the appellant have been awarded penalty; that the appellant have seventeen years spotless service at his credit and the penalty so awarded is harsh; that the appellant was victimized due to personal grudge of the civil judge for no fault of him.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was posted as reader with civil judge-1 Buner; that during his posting, he misbehaved with the said judicial officer; that the appellant was also in the habit of absenting himself from his official duty and a complaint was made by the then civil judge to the then district & session judge, who called his explanation,

(15)

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but reply so furnished by the appellant was not found satisfactory and he ordered inquiry into the allegations; that Additional District & Session Judge-1 was appointed as authorized officer, who charge sheeted the appellant and statement of allegation was served upon him and senior civil judge was appointed as inquiry officer, who conducted inquiry and sent his inquiry report to the authorized officer; that the authorized officer concurred with the recommendations of the inquiry officer and recommended imposition of major penalty within the meaning of Rule-4(1)(B) of E&D Rules, 1973; that the District & Session Judge transferred the appellant from the court of Civil Judge-1 to his own office and on assumption of charge, the appellant again started absenting himself on one pretext or the other; that his explanation was called time and again; that the appellant submitted medical prescriptions advising the appellant for bed rest, however there was no application with any of the medical prescription; that the appellant was advised to appear before a standing medical board, however the appellant did not comply with the orders and willfully defied the same; that the inquiry officer recommended the appellant for imposition of major penalty within the meanings of rules ibid, to which the authorized officer also agreed; that the appellant remained indulged in maligning integrity of the judicial officers by sending text messages and past history of the appellant is reflective of frequent departmental inquiries and disciplinary actions taken against him, some even conveyed to Peshawar high court; that the appellant remained a permanent headache for the whole local set up throughout his service career and he paid no heed to his official responsibilities, absented himself from official duty unabated on one pretext or the other and his overall conduct was totally unbecoming of a responsible official; that due to his least interest in his job and contemptuous behavior toward his colleagues and superiors, no judicial officer would accept him for duty; that as a result of the above mentioned two fold departmental proceedings and concurrent recommendations of the inquiry officer and authorized officer in both the above cases and taking a lenient view, the official was compulsory retired from service.

TESTED


(2)

(16)

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was posted as Reader with Civil Judge-1 Buner and while performing his duty as reader, the tussle between him and the civil judge erupted on the issue of misplacement of court management file, upon which the civil judge abused the appellant in court and ordered him to get out of court. Record would suggest that such misplaced file was later on found somewhere else but differences between them went worst when the appellant submitted a complaint against the behavior of civil judge-1 to the District & Session judge on 24-09-2010. In retaliation, the civil judge-1 also submitted a complaint against the appellant on 02-10-2010 to the district & session judge followed by another letter dated 17-02-2010 complaining against the misbehavior of the appellant. Since disciplinary proceedings were already in progress against the appellant on first complaint dated 02-10-2010 of the civil judge-1, hence his second complaint was also referred to the authorized officer i.e. the additional district & session judge, who was made authorized by the district & session judge to proceed against the appellant. No heed was paid upon the complaint of the appellant, but while considering the complaint of the civil judge-1, the appellant was suspended from service vide order dated 20-12-2010 and charge sheet/statement of allegation was served upon the appellant on 03-01-2011, whereupon he was charged on account of absence from duty with effect from 07-12-2010 to 20-12-2010 and his salary was also stopped vide order dated 18-01-2011. The appellant responded to the charge sheet vide letter dated 11-01-2011 supported with medical prescription and bed rest advised by doctor with pleadings that he was suffering from typhoid and was unable to attend to his duty with a further stance that the appellant had already submitted leave application to the concerned office alongwith his medical prescriptions. Placed on record is statement

OFFICE OF THE DISTRICT & SESSION JUDGE
BUNER
Dist. & Sess. Jdg.
Buner

of Mr. Shah Rawan, Superintendent Session Court Buner, which would testify the

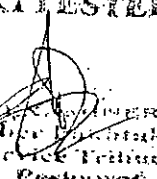


submission of his leave application in time alongwith his medical prescription for bed rest for the mentioned period of absence. To this effect, the inquiry so conducted by senior civil judge submitted its report on 10-02-2011 and contents of the report would reveal that stance of the appellant regarding his illness was not accepted and his absence was termed as gross misconduct and negligence.

06. The appellant was also issued another charge sheet on the same date i.e. 03-01-2011 containing the allegations of misplacement of court management file, misbehavior with the civil judge-1, disobedience, absence from duty and corruption, to which also the appellant responded vide letter dated 11-01-2011 denying all the allegations. Another inquiry to this effect was also conducted on the above allegations and the inquiry officer submitted its report on 18-02-2011. Perusal of the inquiry report would suggest that the appellant was exonerated of rest of the charges and he was held guilty only for misbehavior.

07. In pursuance of the both the inquiry proceedings undertaken simultaneously, the authorized officer i.e. additional district & session judge recommended the appellant for major penalty of removal from service vide his report submitted on 01-03-2011 and based on such report, final show cause notice was served upon the appellant on 11-03-2011 and he was ultimately awarded with major punishment of compulsory retirement from service with effect from 12-06-2011 vide order dated 06-08-2011. We have noticed that the disciplinary proceedings were initiated against the appellant upon annoyance of the civil judge-1, who was his immediate boss and such annoyance turned into a personal grudge, when the appellant enraged the civil judge-1 by submitting a complaint against him to the district & session judge regarding his disgrace in open court by the civil judge concerned, hence the whole proceedings in the first place, can be termed as vengeance inflicted in retaliation having no value in the eye of law and on this score alone, the impugned orders are liable to be set at naught. Record reveals that after the occurrence, the appellant was subjected to disciplinary

ATTESTED


 THE DISTRICT & SESSION JUDGE
 DISTRICT JUDGE
 DISTRICT JUDGE
 DISTRICT JUDGE

proceedings on different accounts at a time, his salary was stopped as well as he was suspended from service. In a manner, he was bombarded with penalties before due legal process was taken, which smacks malafide on part of the respondents. The appellant was served with two charge sheet/statement of allegations and two inquiries were conducted against him, but both the inquiries were found to be fact-finding inquiries, where the appellant was not associated with proceedings of the inquiry, nor he was afforded opportunity of defense, whereas the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

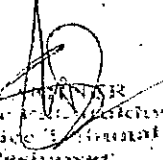
08. In both the inquiries statement of witnesses have been recorded but not in presence of the appellant nor the appellant had been afforded opportunity to cross-examine such witnesses, skipping a mandatory step in disciplinary proceedings as prescribed in law, thus deprived the appellant of his lawful right, which was not warranted by law. Reliance was placed on 2002 SCMR 433, 2012 PLC (CS) 728 and 1997 S C M R 1073. In both the inquiries, amongst so many allegations leveled against the appellant, only the allegation of misbehavior and absence was stated to be proved. The allegation of misbehavior is factual in nature, for which another inquiry was required to be conducted to prove such charges, but statement of the complainant being civil judge was considered enough, which however was not warranted. In case of absence, the appellant had already submitted his application alongwith medical prescriptions and bed rest, which is evident from statement of the superintendent of session court placed on record and denial of leave on medical grounds shows malafide on part of the

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respondents as leave on medical grounds cannot be refused as per leave rules, even otherwise absence on medical grounds without permission of the competent authority does not constitute an act of gross misconduct entailing major penalty. Reliance is placed on 2003 SCMR 214. Since the respondents were in a blind fury, hence constituted a medical board for verification of his medical prescriptions and his check up to ascertain genuineness of his claim. It is very rare that upon submission of medical prescription for grant of leave on medical grounds, the appellant is subjected to appear before a medical board and in the instant case; his referral to the medical board is based on mala fide, as referring him to medical board was not expedient. The medical board submitted its report on 17-01-2011, which was signed only by a medical officer and which was objected by the appellant, hence another letter dated 03-02-2011 was manipulated, which was signed by three members, which raises suspicion that respondents were bent upon removing the appellant from service at any cost, which however was not warranted.

09. Additional District & Session Judge, in the capacity as authorized officer, after perusal of both the inquiry reports, had submitted his report to the authority with recommendation of award of major penalty upon the appellant and the authority vide order dated 06-08-2011 awarded major punishment of compulsory retirement upon the appellant. Perusal of the impugned order would reveal that since the misconduct was not so grave, which could justify imposition of major penalty, hence in order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. Purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society. Concept of minor penalty in law was to make an attempt to reform the individual wrong doer.

TESTED








In service matter, extreme penalty for minor act depriving a person from right of earning would defeat the reformatory concept of punishment in administration of justice. Reliance is placed on 2006 S C M R 60.

10. We are of the considered opinion that the appellant was not treated in accordance with law and was unlawfully awarded with major punishment of compulsory retirement from service in a revengeful manner, which however was not warranted. The charges of misbehavior and sending threatening messages to civil judge-1 were not proved against the appellant by the inquiry officer and so was the allegation of absence, which was neither so long nor willful, it however was noted that leave on medical grounds was initially granted for three days by the civil judge-1 but later on, when the tussle escalated, the remaining leave was refused. All the actions of respondents were based on malafide only to penalize the appellant for lodging complaint against him to the district & session judge and it can easily be inferred that disciplinary proceedings against the appellant were based on personal grudge, which was not warranted. In view of the situation, the instant appeal is accepted. The impugned orders dated 06-08-2011 and 16-11-2015 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
25.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 11-04-2022
Number of Words 4000
Copying Fee 42/-
Urgent 41/-
Total 46/-
Name of Copyist _____
Date of Completion of Copy 11-04-2022
Date of Delivery of Copy 11-04-2022



OF DISTRICT & SESSIONS JUDGE/ZILLA QAZI,
BUNER

E-mail: dsjbuner@yahoo.com

Ph:+92-939-510434

Fax:+92-939-512162

No. _____ /DSJ, Buner

Dated at Buner the _____

OFFICE ORDER

In continuation of this office order bearing No.1635-39/dsj/Buner dated 25.06.2022, and in the light of Judgment dated 25.01.2022 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar, in Service Appeal No.41/2016 as well as order dated 29-11-2022, passed in Execution Petition No.212/2022 and subsequent letter No.01/Admn dated 02.01.2023 of the Hon'ble Peshawar High Court, Peshawar, Mr. Zubair Ahmad, is conditionally reinstated in his service as Senior Clerk, with all back benefits, subject to final decision of the Hon'ble Apex Court in the pending CPLA NO.264-P/2022 and submission of undertaking by the official in respect of refund of arrears, if the CPLA is decided against him.

(Haq Nawaz)

District & Sessions Judge/ZQ,
Buner at Dagggar.

No. 01-5 /DSJ/Buner

Dated Dagggar the, 02/01/2023.

Copy forwarded for information to:

- 1) The worthy Registrar, Peshawar High Court, Peshawar w/r to their good self letter referred above.
- 2) The worthy Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 3) The learned Senior Civil Judge (Admn) Buner.
- 4) The District Accounts Officer, Buner.
- 5) Mr. Zubair Ahmad, Senior Clerk.
- 6) Office copy for record.

District & Sessions Judge/ZQ,
Buner at Dagggar.

o/c



OFFICE OF DISTRICT & SESSIONS JUDGE/ZILLA QADSI, BUNER

E-mail: dsjbuner@yahoo.com
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/DSJ, B

No.

Dated Daggar the

OFFICE ORDER
15-10-2022

Consequent upon the recommendations of Departmental Promotion Committee in its meeting held on 15.10.2022, the following officials are hereby promoted to the posts mentioned against their names with immediate effect in the public interest.

S. #	Name of official	Present post held with BPS	Remarks
1	Mr. Abdul Akbar	Senior Clerk(BPS-14)	Promoted to the post of Assistant (BPS-16) against the vacant post. (BD-4007)
2	Mr. Habib Gul	Junior Clerk(BPS-11)	Promoted to the post of Senior Clerk (BPS-14) against the vacant post. (BD-4007)

(Haq Nawaz)
District & Sessions Judge/Chairman of DPC
Buner at Daggar

OFFICE OF THE DISTRICT & SESSIONS JUDGE/ZO, BUNER AT DAGGAR.
No. 3086-42/DSJ, Buner
Dated Daggar the 15/10/2022.

Copy for information to:
The worthy Registrar, Peshawar High Court, Peshawar.
Mr. Rahatullah, Additional District & Sessions Judge, Swat, (Nominee of Peshawar High Court, Peshawar).
Mr: Ihteshamul Haq Danishmand Khan, Additional District & Sessions Judge-I Buner (Nominee of the D&SJ, Buner).
The Senior Civil Judge, (Admn) Buner at Daggar.
District Accounts Officer, Buner at Daggar.
Mr. Abdul Akbar, Assistant District & Sessions Judge, Buner at Daggar.
Mr. Habib Gul, Senior clerk.
Copy.

District & Sessions Judge/Chairman of DPC
Buner at Daggar

(23) D

Final Seniority List of Readers, Assistants, Senior Clerks & Junior Clerks

13.05.2010

Refer to "Civil Servants (Seniority) Rules, 1993" 2., 3.(a)(b) (ESTACODE page No. 253)

S. NO.	NAME OF OFFICIALS	PRESENT POST	PRESENT SCALE	DATE OF 1 ST ENTRY INTO GOVERNMENT SERVICE	APPOINTED IN BPS	DATE OF PROMOTION / CHARGE TAKEN TO THE PRESENT GRADE	PROMOTED AS	TOTAL LENGTH OF SERVICE	DATE OF BIRTH	QUALIFICATION	DOMICILE	SIGNATURE OF THE OFFICIALS
1.	Muhammad Hussain	Assistant	14	29.05.1980	01	14.03.1985 01.07.1994 15.01.2000	Jr.Clerk Asst S.G	30 yrs	06.01.1961	BA, LLB	Buner	
2.	Zamin Taj	Civil Nazir	14	17.06.1977	01	01.02.1983 14.12.1994	N.N C.N	33 yrs	13.03.1952	FA	Buner	
3.	Bakht Wali Shah	Reader/Asstt	14	18.04.1990	01	07.02.1994 14.01.2000	Sr.C Asst	20 yrs	20.02.1971	FA	Buner	
4.	Sherin Zada	Reader/Asstt	14	07.04.1985	01	05.12.1993 01.01.1995 14.01.2000 11.11.2003	Jr.Clerk SC S.G Asst	25 yrs	02.02.1961	BA	Buner	
5.	Ibrar Hussain	Senior Clerk	09	14.02.1996	07	14.02.1996	Sr.C	14 yrs	28.04.1967	BA	Mkd: Agency	
6.	Zubair Ahmad	Senior Clerk	09	21.09.1994	05	15.02.1996	Sr.C	16 yrs	30.09.1975	BA	Charsadda	
7.	Ghulam Ghani	Senior Clerk	09	17.01.1994	01	01.02.1995 11.11.2003	Jr.Clerk Sr.C	16 yrs	15.03.1967	SSC	Buner	
8.	Abdul Akbar	Senior Clerk	09	14.02.1996	05	11.11.2003	Sr.C	14 yrs	18.10.1972	MA, LLB	Buner	
9.	Said Wahid Shah	Senior Clerk	09	15.02.1996	05	09.03.2005	Sr.C	14 yrs	20.05.1972	BA	Buner	
10.	Razi Mulk	Senior clerk	09	15.01.1994	01	26.01.1995 15.01.2000 16.06.2007	Daf Jr.Clerk Sr.C	16 yrs	20.04.1972	SSC	Buner	
11.	Sher Qayum	Junior Clerk	07	01.03.1994	01	18.04.1994 06.05.2000	PS Jr.Clerk	16 yrs	01.07.1975	FA	Buner	
12.	Azam Ali	Junior Clerk	07	18.05.2000	05	-	-	10 yrs	25.03.1972	FA	Buner	
13.	Mustafa Kamal	Junior Clerk	07	18.05.2000	05	-	-	10 yrs	10.05.1968	BA	Buner	
14.	Ali Abbas Khan	Junior Clerk	07	19.01.2004	05	-	-	6 yrs	03.03.1983	BA	Buner	
15.	Nazar Muhammad	Junior Clerk	07	19.01.2004	05	-	-	6 yrs	05.04.1975	BA	Buner	
16.	Muhammad Naeem	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	10.10.1983	MA	Buner	
17.	Muhammad Hasham	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	02.01.1983	FA	Buner	
18.	Salim Khan	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	20.05.1979	BA	Buner	
19.	Salim Khan	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	20.04.1982	FA	Buner	
20.	Ahmad Gul	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	06.02.1977	FA	Buner	
21.	Habib Gul	Junior Clerk	07	09.03.2005	05	-	-	5 yrs	02.02.1987	SSC	Buner	
22.	Sher Ahmad Khan	Junior Clerk	07	05.03.2000	01	09.03.2005	Jr.Clerk	10 yrs	02.02.1987	SSC	Buner	
23.	Shaheen Wahab	Junior Clerk	07	08.05.2000	01	09.03.2005	Jr.Clerk	10 yrs	20.05.1977	FA	Buner	
24.	Said Muhammad	Junior Clerk	07	30.04.2004	01	-	-	6 yrs	25.11.1974	FA	Buner	
25.	Nosher Gul	Junior Clerk	07	18.06.2007	05	-	-	3 yrs	03.05.1988	FSc	Buner	
26.	Rozi Gul	Junior Clerk	07	30.04.2004	01	-	-	6 yrs	2.2.1980	BA	Buner	
27.	Sajjad	Junior Clerk	07	01.11.2008	07	-	-	2 yrs	1.4.1988	B.Sc	Buner	

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E^v (24)

**TENTATIVE SENIORITY LIST OF SENIOR CLERKS (BPS-14) OF
DISTRICT JUDICIARY, BUNER. AS PER DIRECTIONS OF PESHAWAR HIGH COURT. PESHAWAR LETTER NO.15149/SDJ/HRW/ADMN DATED 08/11/2022.
SUBJECT TO FINAL DECISION OF THE HON'BLE APEX COURT IN THE PENDING CPLA NO.264-P/2022.OF THE OFFICIAL AT Sr NO.1.**

S. #	NAME & QUALIFICATIONS	DOMICILE	DATE OF BIRTH/RETIREMENT	POST	DATE OF 1 ST ENTRY INTO GOVERNMENT SERVICE	DATE OF APPOINTMENT / PROMOTION IN PRESENT POSITION.	PRESENT POSTING
1.	Mr. Zubair Ahmad BA.	Charsadda	30/09/1975 29/09/2035	Senior Clerk (BPS-14)	21/09/1994	15/02/1996 as Sr. Clerk	Digitization Cell Sessions Court, Buner
2.	Said Wahid Shah BA(P#00274544)	Elai, Buner	20/05/1972 19/05/2032	Senior Clerk (BPS-14)	15/02/1996	09/03/2005	Record Keeper
3.	Razi Mulk SSC(P#00274830)	Bajkata, Buner	20/04/1972 19/04/2032	Senior Clerk (BPS-14)	15/01/1994	16/6/2007	Reader to SCJ(Admn)
4.	Sher Qayum FA(P#00275175)	Rega, Buner	01/07/1975 30/06/2035	Senior Clerk (BPS-14)	01/03/1994	20.05.2010	Muharrir to AD&SJ-II
5.	Azam Ali FA(P#00274812)	Karapa, Buner	25/03/1972 24/03/2032	Senior Clerk (BPS-14)	18/02/2000	20.05.2010	At the Disposal of CJ Totalai, Buner
6.	Mustafa Kamal BA(P#00274229)	Shalbandi, Buner	10/05/1968 09/05/2028	Senior Clerk (BPS-14)	18/05/2000	20.05.2010	Muharrir to CJ-V
7.	Ali Abbas Khan BA(P#00273641)	Amnawar, Buner	03/03/1983 02/03/2043	Senior Clerk (BPS-14)	19/01/2004	20.05.2010	Reader to SCJ(J) Buner
8.	Mr. Nazar Muhammad BA(P#00272854)	Chinglai, Buner	05/04/1975 04/04/2035	Senior Clerk (BPS-14)	19/01/2004	11/02/2017	Reader to CJ-Totalai
9.	Mr. Muhammad Naeem M.A (P#00273628)	Kalpani, Buner	10/10/1983 09/10/2043	Senior Clerk (BPS-14)	09/03/2005	22/06/2019	Muharrir to D&SJ Buner
10.	Mr. Muhammad Hasham FA (P#00273632)	Chanar, Buner	02/01/1983 01/01/2043	Senior Clerk (BPS-14)	09/03/2005	21.11.2020	On leave
11.	Mr. Salim Khan MA(00273236)	Bajkata, Buner	20/05/1979 19/05/2039	Senior Clerk (BPS-14)	09/03/2005	15.01.2022	Reader to DSJ, Buner
12.	Mr. Ahmad Gul BA.LLB (Diploma in Crim) P#00273585	Ambella Buner	20/04/1982 19/04/2042	Senior Clerk (BPS-14)	09/03/2005	15.01.2022	Care Taker Sessions Court, Buner
13.	Mr. Habib Gul, BA(P#00273088)	Ghazikhanai, Buner	06/02/1977 05/02/2037	Senior Clerk (BPS-14)	09/03/2005	15.10.2022	Acting Steno to Civil Judge-V, Buner

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01-3-24

District & Sessions Judge,
Buner at Daggur.

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 10/11/22
 19-11-22
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 17-11-22

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To

REGISTRAR, PESHAWAR HIGH COURT,
PESHAWAR.

THROUGH: PROPER CHANNEL:

SUBJECT: APPEAL AGAINST THE DPC MINUTES DATED 15/10/2022 AND PROMOTION ORDER/ NOTIFICATION DATED 15/10/2022 WHEREBY THE JUNIOR OFFICIALS WERE PROMOTED TO THE POST OF ASSISTANT BS-16. WHICH IS ILLEGAL AGAINST LAW AND FACTS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS DEPARTMENTAL APPEAL, IMPUGNED PROMOTION ORDER AND DPC DATED 15/10/2022 MAY PLEASE BE SET-ASIDE AND THE APPELLANT BEING SENIOR MAY ALSO BE CONSIDER FOR PROMOTION TO THE POST OF ASSISTANT (BPS-16) FROM HIS DUE DATE BEING ELIGIBLE WITH ALL BACK AND CONSEQUENTIAL BENEFITS.

RESPECTFULLY SHEWETH:

FACTS:

1. That appellant was appointed as Senior Clerk in the year 19996 vide order dated 12/02/1996. The appellant work with full zeal and zest (Copy of appointment order is attached as Annexure-A).
2. That the appellant was compulsory retired from the service vide order dated 5-8-2011 on baseless allegation. The appellant challenge the same in KP Service Tribunal Peshawar in appeal no: 41/2016, which was accepted by the Hon'ble KP Service Tribunal vide judgment dated 25-01-2021 and the appellant was reinstated into service with all back and consequential Benefits. (Copy attached as Annexure-B).
3. That in compliance of the judgment the appellant was reinstated into service. The appellants came to know that the deptt. conducted DPC for promotion on 15/10/2022. The appellant file application for provision of DPC, the Copy of DPC was not provided to appellant but

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the promotion order of junior official was handed over to the appellant of same date. (Copy attached as annexure-c).

4. That the appellant was senior most senior clerk which is evident from the seniority list of 2010 (which is issued before the termination order of the appellant) but the appellant was ignored despite the fact that the appellant was reinstated by the KP Service Tribunal Peshawar with all back and consequential benefits. Hence, the appellant aggrieved from the impugned promotion order file this departmental appeal on the following grounds amongst other. (Copy attached as Annexure-D & E).

GROUND:

- A. That the impugned promotion order dated 15/10/2022 is against the law, facts, norm of justice, material on record, therefore not tenable and liable to be set aside.
- B. That the appellant is senior most and was placed at the top of the seniority list of 2010, and after reinstatement with all back and consequential benefit again got his position in seniority list, therefore liable to be consider for promotion. But the appellant was ignored which is against the norms of justice.
- C. That the appellant is discriminated as the appellant was appointed as senior clerk in 1996, junior official whom were promoted to the post of assistant was promoted to the post of senior clerk on 2003 and 2005 respectively. Hence the appellant is senior most than the promoted officials. Copy of orders is attached as annexure-F.
- D. That inaction and omission of respondent department, not to consider the appellant for promotion is against the spirit of section-9 of Civil Servants Act,1973 and service rights duly protected under the Civil Servants laws.
- E. That the appellant has more than 26 years of service and senior most forester and depriving him from his legal right of promotion by promoting other official illegally will also affect his promotion chances in future.
- F. That the appellant is not treated according to law and rules and will keep deprive from the benefits of promotion by promoting blue eyes person.


(27)

- G. That the apex Court has already clearly held in case of Anita Turab (PLD-2013 Supreme Court Page No. 195) that matter of tenure, appointment, posting, transfer and promotion, of service could not be dealt with in an arbitrary manner but could only be sustained if it was in accordance with law. Whenever there was statutory provision or rules or regulation of government the matter of appointment of Civil Servants that must be followed honestly and scrupulously and discretionary must be exercised and structured, transparent and reasonable manner, thus the verdict of the Honorable Supreme Court fully favours the appellant's case.
- H. That according to fresh amendment the appellant has the right to promoted with his due date i.e when the junior to the appellant was promoted.
- I. That the appellant has not been treated and accordance with the law and has been discriminated because his other colleagues and juniors to the appellant have been promoted and ignored the appellant despite of having seniority eligibility and post of availability.

It is, therefore, most humbly prayed that the impugned promotion order dated 15/10/2022 may please be set aside and consider the appellant for promotion from his due date.

Date: 12-11-2024

Yours Obediently,


Senior Clerk Muhammad Zubair
O/o the District & Session Judge Buner,

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(28)

2011-2020

2021-2020

2022-2021

2023-2022

2024-2023

2025-2024

2026-2025

27 1/2 - 11 1/2 = 16
 16 - 1 1/2 = 14 1/2
 14 1/2 - 1 1/2 = 13
 13 - 1 1/2 = 11 1/2
 11 1/2 - 1 1/2 = 10
 10 - 1 1/2 = 8 1/2
 8 1/2 - 1 1/2 = 7
 7 - 1 1/2 = 5 1/2
 5 1/2 - 1 1/2 = 4
 4 - 1 1/2 = 2 1/2

Allowed as
 per rules for which
 litigation is legally
 entitled.

28
 2024

27 1/2

2024

مورخہ
مقدمہ
دعویٰ
جرم

2024 منتخب
محمد زبیر
بنام

اہل خانہ
لاہور

باعث تحریر آنکہ

مقدمہ متدرجہ عنوان بالا میں اپنی طرف سے واسطے بیرونی و جواب دہی وکل کاروائی متعلقہ
آن مقام صاحب کیلئے گڈوائسنگٹ اور وہ
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 ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
وزرائی پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری یا نظرقہ یا ایبل کی برآمدگی
اور منسوخی نیز دائر کرنے ایبل نگرانی و نظرتانی و بیرونی 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 پرداختہ منظور قبول ہوگا و زمان مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے کہ بیرونی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

الرقوم 29 ماہ اپریل 2024

مقام
کے لئے منظور ہے۔

محمد زبیر