

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**FAREEHA PAUL** ... **MEMBER(Executive)**

*Service Appeal No. 508/2020*

Date of presentation of Appeal.....31.12.2020  
Date of Hearing.....05.06.2024  
Date of Decision.....05.06.2024

**Sher Khan**, Computer Operator, Office of the Advocate General, Khyber Pakhtunkhwa, Peshawar R/O Lala Zar Colony University Campus, Peshawar.....(*Appellant*)

Versus

1. **The Secretary Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs Department, Peshawar.**
2. **The Advocate General Government of Khyber Pakhtunkhwa, Peshawar Office at Peshawar High Court, Peshawar.**

.....(*Respondents*)

Present:

Qazi Jawad Ehsanullah, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney ....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER NO.15315/AG/PF/SHER KHAN/2020 DATED 09.12.2020 PASSED BY RESPONDENT NO.2 ON THE DEPARTMENTAL APPEAL OF THE APPELLANT, WHEREBY LATTER WAS DENIED BACK BENEFITS NO LEGAL AND VALID GROUNDS.**

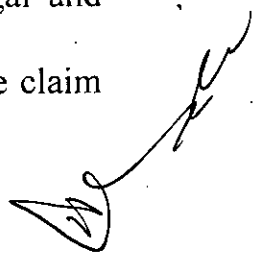
**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was serving as Computer Operator in the office of Advocate General Khyber Pakhtunkhwa, Peshawar; that upon certain allegations, he was served with show cause notices; that he was dismissed from service on 30.04.2014 vide two orders; that the same were challenged before the Tribunal and this Tribunal vide two

judgments dated 16.02.2018 passed in Service Appeal Nos.1211/2014 and 1212/2014, reinstated the appellant in service; that in Service Appeal No.1211/2014, the appellant was reinstated and the penalty was converted into minor penalty of censure by treating the intervening period as leave of the kind due and the in the judgment passed in Service Appeal No.1212/2014, penalty of dismissal was converted into withholding of two annual increments for a period of two years; that the said judgments were challenged before the Supreme Court of Pakistan and the Supreme Court vide judgment dated 18.10.2019, remanded back the judgment passed in Service Appeal No.1211/2014 for decision afresh, and the second petition was remanded to the department for inquiry; that this Tribunal, vide judgment passed in Service Appeal No.1211/NEEM/2014, sent the matter back to the respondents by reinstating the appellant into service; that the department conducted de-novo inquiry and vide order dated 13.08.2020, reinstated the appellant into service and the intervening period was treated as leave without pay.

2. Feeling aggrieved, he filed departmental appeal but the same was rejected, hence, the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.



4. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. After his dismissal from service vide order dated 30.04.2014, in the first round of litigation before the Tribunal, he had filed Service Appeal Nos: 1211/2014 and 1212/2014. Vide judgment passed in Service Appeal No.1211/2014, the Tribunal had held that:

*"In the stated circumstances, this Tribunal is of the view that the impugned punishment is excessive. Consequently, for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due. The present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room."*

While in other case i.e. Service Appeal No.1212/2014, filed by the appellant, the Tribunal had decided the case in the following manner:

*"In the light of the stated circumstances, this Tribunal is of the view that the impugned punishment is excessive/harsh. Resultantly for the purpose of safe administration of justice the impugned punishment is converted to minor penalty of censure. The intervening period shall be treated as leave of the kind due. The present service appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room."*

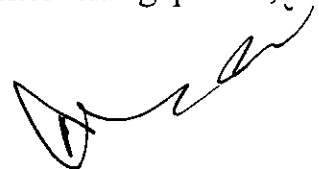
7. Both the judgments were challenged before the Supreme Court of Pakistan and the Supreme Court, in response to the petition filed against the judgment passed in Service Appeal No.1212/2014, of the

Tribunal, remanded back one matter to the Department for de-novo inquiry. While the other Service Appeal bearing No.1211/2014 was remanded back to this Tribunal for decision afresh. Resultantly, vide judgment passed in Service Appeal No.1211/NEEM/2014, the Tribunal re-decided the matter afresh in the following manner:

*"As a sequel to the above, the instant appeal is accepted, impugned order dated 30.04.2014 is set aside and the appellant is reinstated into service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room."*

8. The respondent department conducted de-novo inquiry and in the inquiry report, it has been held that the appellant was not solely responsible for the duties on which he was penalized. Besides, the charges leveled against him were also not proved. Therefore, he has been exonerated from the charge in the inquiry report and the inquiry officer has recommended him just for issuance of warning.

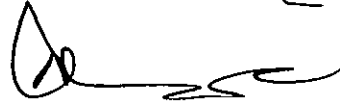
9. The order of dismissal dated 30.04.2014 had been set aside four times, once by the Supreme Court and three times by this Tribunal in its judgments. However, the only issue of back benefits was directed to be decided by the respondent department, but strictly in accordance with law. However, the respondents have exonerated the appellant in the inquiry report but has not held entitled the appellant for the back benefits of the intervening period, with no supporting grounds or justification.




*Service Appeal No. 508/2021 titled "Sher Khan -vs- The Secretary Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs Department, Peshawar and other" declared on 05.06.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member Executive. Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

10. In view of the above situation, instant service appeal is accepted, the impugned order is set aside and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5<sup>th</sup> day of May, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)


\*Mutazem Shah\*




15.02.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Written reply on behalf of newly impleaded respondents submitted which is placed on file. Learned to counsel for the appellant seeks time in order to go through the same. Granted. To come up for arguments on 05.06.2024 before D.B. P.P given to the parties.

SCOTTISH  
PESHAWAR

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

kaleemullah  
S.A No.508/2021

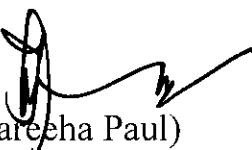
ORDER


5<sup>th</sup> June. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Arshad, Admin Officer for the respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is accepted, the impugned order is set aside and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5<sup>th</sup> day of June, 2024.*

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman