


FORM OF ORDERSHEET

Court of _____

Misc. application No. 452/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07/06/2024	<p>The Misc. application in Appeal No. 625/2022 submitted today Mr. Yasir Saleem Advocate. It is fixed for hearing before Division Bench at Peshawar on 10.06.2024. Original file be requisitioned. Parcha Peshi given to counsel for the applicant.</p> <p>By the order of Chairman  REGISTRAR</p>

2. *That in the appeal, at Para No. 08 the date is inadvertently mentioned as 03/01/2021 i.e. on which the appellant went to the DPO office Nowshera to submit his reply to show cause notice was written down inadvertently as 03/01/2021 which was infact 03/01/2022. (Copy of Service Appeal is attached as annexure "B").*
3. *That due to the above mentioned mistake, at page No. 03 of the judgment the date is mentioned as 03/01/2021 instead of 03/01/2022.*
4. *That due to this clerical mistake the department is now reluctant in processing the back benefits of the applicant/appellant.*
5. *That it is in the interest of justice to rectify the mistake mentioned above and this Hon'ble Tribunal has got the jurisdiction to entertain the application.*

It is, therefore, most humbly prayed that on acceptance of this application the date 03/01/2021 may be rectified as 03/01/2022 and this rectification may also be made in the judgment.

Dated:- 07/06/2024

Applicant/Appellant

Through:-


YASIR SALEEM
Advocate Supreme Court
Of Pakistan

AFFIDAVIT:

It is do hereby solemnly affirm and declare on oath 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'ble Court.


DEPONENT

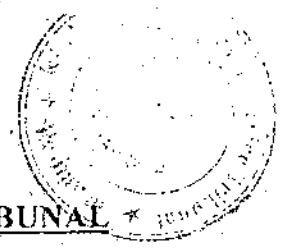


07 JUN 2024

Annex "A"

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(4)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 625/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Zia-ur-Rehman, Ex-Constable Police Lines Nowshera.
..... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa.
 2. The Regional Police Officer Mardan, Khyber Pakhtunkhwa.
 3. The District Police Officer, Nowshera.
-(Respondents)

Mr. Yasir Salim, ... For appellant
Advocate

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution..... 26.04.2022
 Date of Hearing..... 15.02.2024
 Date of Decision..... 15.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 626/2022, titled "Muhammad Abbas Versus the Provincial Police Officer, Khyber Pakhtunkhwa etc." and Service Appeal No. 627/2022, titled "Muhammad Abid Versus Provincial Police Officer, Khyber Pakhtunkhwa etc.", as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the

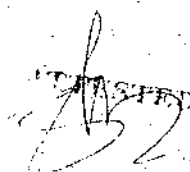
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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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impugned order dated 29.12.2021, whereby the appellant was awarded major punishment of dismissal from service, against which his departmental appeal dated 10.01.2022 was regretted vide office order dated 30.03.2022. It has been prayed that on acceptance of the appeal, the impugned orders dated 29.12.2021 and 30.03.2022 might be set aside and the appellant might be reinstated into service with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that various posts of Police Constable BPS- 07 were advertised seeking applications from candidates. The appellant, having qualification of intermediate, duly applied for the post through online application and roll number was issued to him. He appeared in the test and qualified the test and physical test also. He was appointed by the competent authority on the recommendations of Departmental Selection Committee. After appointment, he took over the charge of his post and started performing his duties. While performing his duties, on some anonymous complaint having allegations against him, a fact finding inquiry was conducted vide letter dated 10.12.2021. The appellant appeared before the Inquiry Officer (I.O) and denied all the allegations, however, the I.O submitted his report vide letter dated 24.12.2021 and held the appellant guilty of all charges. One, Khalilullah, owner of Shaheen Printing Press, also appeared and recorded his statement before the I.O. Without issuing any charge sheet and without conducting regular inquiry, the appellant was issued final show cause notice on 28.12.2021 giving him 07 days to

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submit his reply. On, 03.01.2021, when he went to the office of DPO Nowshera to submit his reply to the show cause notice, he was informed that he had already been dismissed from service vide order dated 29.12.2021. Feeling aggrieved, he filed departmental appeal on 10.01.2022, which was regretted vide office order dated 30.03.2022; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that no proper procedure was followed before the dismissal order dated 28.12.2021 was issued. He stated that no charge sheet was served upon him nor any regular inquiry was conducted rather only a fact finding inquiry was conducted and that too in a biased manner. He further argued that without waiting for reply to show cause notice, the appellant was awarded major penalty of dismissal from service vide order dated 29.12.2021. Learned counsel further argued that the appellant was not provided fair opportunity to defend himself nor opportunity of personal hearing was afforded to him and hence he was condemned unheard. He further argued that inquiry officer had admitted in his report that the appellant, alongwith other dismissed candidates, himself appeared for the examination. During the fact finding inquiry, it

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was never proved that the paper of the appellant was actually filled by one Sifatullah or that he helped the appellant in solving the paper. So far as putting wrong entry of date of birth in application form was concerned, learned counsel for the appellant argued that it was not filled by the appellant himself, rather it was filled by a person sitting in Shaheen Computers Kheshgi Payan who mistakenly and unintentionally put wrong entry and the same had been stated by the I.O in his report also. Learned counsel stated that after noticing his mistake, the appellant himself brought it into the notice of ETEA administration upon which it was replied that it was not a big issue and could be rectified at the time of verification of documents. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a complaint was received to the then District Police Officer, Nowshera, wherein it was highlighted that a person namely Sifat Ullah S/O Farzand Ali R/O Kheshgi Bala, a school teacher, appeared for other candidates in ETEA test held for recruitment of Police Constables. Complaint further stated that Zia-ur-Rehman, Muhammad Abbas and Muhammad Abid sons of Inam Ali got their test passed through the said Sifat Ullah, who received Rs. 600,000/- from each candidate. A fact finding enquiry was conducted wherein the enquiry officer highlighted that according to ETEA report, the appellant, as well as his two brothers and one person namely Sifatullah, while submitting online application forms mentioned

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their date of birth as 01.01.1998 and ETEA authorities allotted them roll numbers according to their dates of birth. When they were asked about their similar date of birth, they replied that they had not applied themselves rather their application forms were submitted by a person namely Khalil, owner of Shaheen Computer Khesghi Payan, who in his statement disclosed that it was a human mistake. He further argued that the enquiry officer collected all relevant material from the ETEA authorities and recommended major punishment for the appellant. He was issued final show cause notice to which he submitted his reply on 29.12.2021 but the same was found unsatisfactory, hence he was awarded major punishment of dismissal from service. He requested that the appeal might be dismissed.

7. Arguments and record presented before us shows that the appellants, who are brothers, were awarded major punishment of dismissal from service on the ground of using fraudulent means to pass their test arranged by ETEA for appointment as Constable in the provincial police. A fact finding inquiry was conducted after receipt of an anonymous complaint wherein it was highlighted that one Sifatullah, a school teacher, appeared for some candidates, in ETEA test. Names of the appellant Ziaur Rehman, Muhammad Abbas and Muhammad Abid, had been mentioned by the complainant for whom Sifatullah appeared and solved their test papers by receiving rupees six lacs each from them. During the inquiry, it was revealed that date of birth of all the three appellants, as well as Sifatullah, was the same and they were provided

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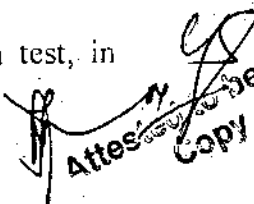
roll numbers in series, based on that date. However, during the inquiry, it was clarified that the online forms were not filled by the appellants, rather a computer operator filled them and put the wrong information unintentionally. Inquiry Report further states that all the three appellants appeared in the examination physically, as verified through the video clip provided by ETEA.

8. If we look at the procedure adopted by the Inquiry Officer in conducting the inquiry, it is found that he simply got the statements of the appellants, Sifatullah and the Computer Operator who filled the online application forms. After getting their statements, he arrived at a conclusion according to his own wisdom. He failed to take into consideration the statement of the complainant of the anonymous complaint that he had all the evidence which he was ready to share with the DPO Nowshera. No effort seems to be made by the Inquiry Officer in getting to know the complainant and the evidence that he had to present, in support of the allegations he was leveling against the appellants.

9. After going through the details of the appeal in hand, it has been noted that the entire proceedings were initiated on the basis of an anonymous complaint without trying to get any information about the complainant and documentary evidence to prove the allegations. In this regard the provincial government has issued clear instructions that anonymous complaints should not be entertained. Moreover, there is no denial of the fact that the appellants appeared in the written test, in

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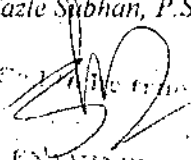
person, and got it passed. They also passed the physical test and were resultantly recommended for appointment. As far as order of dismissal is concerned, despite the fact that seven days were given for reply to the final show cause notice, the competent authority passed the order of dismissal in a hasty manner, on the very next day of issuance of the notice, which is against the rules. They had to wait for the reply, which was submitted on the seventh day of the receipt of the show cause notice.

10. In view of the above discussion, instant appeal, alongwith the connected appeals, is allowed as prayed for. Cost shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of February, 2024.


(FAREEHA PAUL)
 Member (E)


(RASHIDA BANO)
 Member (J)

Fazle Subhan, P.S.
 Certified true copy

 REGISTRAR
 High Court of Peshawar
 District Tribunal
 Peshawar

Date of Presentation _____
 Number of Pages Page 7
 Copying fee 35/-
 Urgent _____
 Total 35/-
 Name of Counsel _____
 Date of Counsel _____
 Date of Receipt _____

15/2/2024

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SA 625/2022



15th Feb. 2024 01. Mr. Yasir Saleem, Advocate for the appellant present.

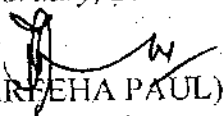
Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the appeal is allowed as prayed for. Cost shall follow the event.

Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of*

February, 2024.


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS


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Annex 'B' 12



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Service Appeal No. _____ /2022

Zia ur Rehman, Ex-Constable Police Lines Nowshera

APPELLANT

V/S

1. The Provincial Police Officer, Khyber Pakhtunkhwa.
2. The Regional Police officer, Khyber Pakhtunkhwa.
The District Police Officer, Nowshera.

RESPONDENTS

SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 29.12.2021,
WHEREBY THE APPELLANT HAS BEEN AWARDED THE
MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE
AGAINST WHICH HIS DEPARTMENTAL APPEAL DATED
10.01.2022 HAS ALSO BEEN REGRETTED VIDE OFFICE
ORDER DATED 30.03.2022.

PRAYER:

On acceptance of this appeal the impugned dismissal order dated 29.12.2021 and appellate order dated 30.03.2022 may please be set aside and I may kindly be reinstated into service with all back benefits.

Respectfully Sheweth.

FACTS:

1. That various posts of police constable BPS-7 has been advertised which are also uploaded on ETEA website seeking applications from desirous candidates wherein last date of submission of application was shown as 30.09.2020 (Copy of the advertisement is attached as annexure A).
2. That the appellant having qualification of Intermediate, duly applied for the post so advertised through online application thereafter roll number was issued to the appellant which was conducted by educational testing and evaluation agency (ETE) Peshawar. The appellant duly appeared in the test and fortunately qualified the test and undergone the physical test and was successful in physical test also.

Y/S

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3 That being successful in screening test and physical endurance test the appellant was duly appointed by the competent authority on the recommendations of duly constituted departmental selection committee. (Copy of the final merit list is attached as annexure B).

4 That after appointment the appellant took charge of his post and started performing his duties. The appellant was assigned duty for body election 2021. (Copies of Naqal Mudh & daily Tehsitwise Deployment at polling stations is attached as annexure C).

That while performing his duties in the said capacity, a fact finding inquiry was conducted vide letter dated 10.12.2021 on some allegations of misbehaviour and false allegations against the appellant. (Copy of letter dated 10.12.2021 is attached as annexure D).

That the appellant appeared in the fact finding inquiry and denied all the charges. However the inquiry officer in a partial manner conducted the inquiry and submitted his report vide letter dated 27.12.2021 merely on the basis of surmises and conjecture and held the appellant guilty of all charges. Even one Mr. Jit Ullah owner of Sinaheco Police Station appeared and recorded his statement before the inquiry officer. (Copies of statements and facts findings inquiry report dated 24.12.2021 are attached as annexure E & F).

That out of course the fact finding inquiry report or without issuing any order and without conducting any further inquiry the appellant was served final show cause notice on 28.12.2021 giving 7 days to show cause against the charges. (Copy of final show cause notice is attached as annexure G).

That the appellant appeared before the office of DPO Nowshera on 30.12.2021 to show cause to the office he was held guilty of the charges and was dismissed from service, however, the appellant was not served by the office of DPO Nowshera on the date of dismissal. (Copies of reply to Show Cause Notice dated 03.01.2022, its receipt and dismissal order dated 29.12.2021 are attached as annexure H & I).

That the appellant filed an appeal on 10.01.2022 against the dismissal order on the ground that the appellant was not served with office order on 30.12.2021. (Copy of departmental appeal dated 10.01.2022 & order dated 30.03.2022 are attached as annexure J & K).


That the impugned order is illegal, arbitrary against the law and fact hence liable to be set aside inter alia on the following grounds.

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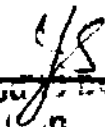
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GROUNDS OF SERVICE APPEAL

- A. That the appellant have not been treated in accordance with law hence my rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before the dismissal order dated 28.12.2021, no charge sheet has been served upon me nor any regular inquiry has been conducted. Only a fact finding was conducted and that too in a very partial and biased manner, thus the impugned order is liable to be set aside on this score alone.
- C. That I have astonishingly and illegally without waiting for reply of the appellant on the very next day he was awarded the major penalty of dismissal from service vide order dated 29.12.2021.
- D. That findings of the inquiry report was not provided to the appellant and as such he was not provided fair opportunity to defend himself and as such the impugned order is defective and liable to be set aside.
- E. That the appellant was provided to the appellant and he was constrained to file an application to the respondent that he could be able to know the outcome of inquiry proceedings which resulted in his dismissal. (Copy of application under RTI Act is attached as annexure I).
- F. That the appellant have not been given opportunity of personal hearing before the issuance of the impugned order hence have been condemned unheard.
- G. That the appellant duly applied for the post, appeared in screening and physical test and remained successful, I duly took over charge of my post and started performing my duties, thus the order of my appointment has been acted upon and valuable rights has been created in my favour. As principle of *LOCUS PONATENTIE* strongly lies in my favor so my service could not be snatched away illegally with one stroke of pen.
- H. That the appellant was appointed by the competent authority after observing all codal formalities, no illegality or irregularity has been committed in the process of appointment.



- L. That the inquiry officer had admitted during his report that the applicant along with other dismissed candidates himself appeared for the examination. It is pertinent to mention here that during the fact finding inquiry, it was never proved that the paper of the applicant was actually filled by one Sifatullah or that the said Sifatullah had helped the applicant in solving his paper, though in his inquiry report he, without any proof or justification concluded that the applicant used illegal ways to pass his exams. Thus the whole precedence conducted against the applicant prior to his dismissal is null and void, ineffective in nature and thus not sustainable in the eye of law.
- M. That so far as putting wrong entry of date of birth in application form is concerned, it was submitted to the inquiry officer, and the applicant did not himself fill his form rather it was filled by a person sitting in Shaheen Computers Kheshal Payal, who mistakenly and unintentionally put wrong entries in his online form who personally appeared before the inquiry officer and admitted his mistake as there were hundreds of forms to be filled by him on that day it is pertinent to mention here that after noticing his mistake the applicant himself brought it to the notice of ETTA Administration however the applicant was replied that it was not a big issue and can be rectified at the time of verification of documents.
- N. That if all there was any irregularity committed in the process of submission of online forms, the same can neither be attributed to the undersigned nor can he be punished for the faults or lapses committed by others.
- O. That the applicant was appointed after the rigors of selection process by the competent authority on the recommendations of duly constituted departmental selection committee and he after appointment took charge of his post so valuable rights has been accrued in the favor of applicant which can not be snatched through any illegal means.
- P. That the appellant have never committed any act or omission which could be termed as misconduct, albeit he was awarded major penalty of dismissal from service.
- Q. That the appellant is young and energetic and wants to service for his department albeit his career has been stigmatized by the impugned dismissal order.

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O. That the appellant seek permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that On acceptance of this appeal the impugned dismissal order dated 29.12.2021 and appellate order dated 30.03.2022 may please be set aside and I may kindly be reinstated into service with all back benefits.

Any other relief as deemed appropriate in circumstances of the case, not specifically asked for, may also be granted to the appellant.

Appellant

Through.

Yasir Saleem
Advocate High Court,
Peshawar

Certificate:-

It is certify that no such like Service Appeal has earlier been filed by the Appellant in this Honourable Tribunal.

ADVOCATE.

AFFIDAVIT

I, Zia Ullah Khan S/O Nawar Khan Ex- Arabic Teacher G MS Adam Abad Swabi, do hereby solemnly affirm and declare on oath that contents of the accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

R Ahmad
DEPONENT

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