

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR**

SERVICE APPEAL No. 970 /2024

Muhammad Ayub Khan

**VERSUS-**

Education Department


Government of KPK

**I N D E X**

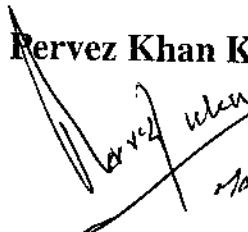
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Dated: 07-07- 2024

Amended appeal: 28.08.2024

  
**Muhammad Ayub Khan Khalil**  
**(Appellant)**

**THROUGH: Pervez Khan Khalil, Senior Advocate,**  
**Peshawar**

  
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Amended SERVICE APPEAL No. \_\_\_\_\_/2024

Muhammad Ayub Khan, Ex- SST/Head Master, GMS, Forest College, Peshawar  
R/O Village Tehkal Bala, Tehsil & district, Peshawar. (Appellant)

Khyber Pakhtunkhwa  
Service Tribunal

-: VERSUS: -

Diary No. 15237

1. Government of Khyber Pakhtunkhwa through Director, Elementary & Secondary Education, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Peshawar. (Respondents)

Dated 28/8/24

AMENDED SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 r/w 12-2/151 C.P.C, AGAINST THE IMPUGNED FINAL REGRET ORDER/LETTER OF 2<sup>nd</sup> July, 2024 OF THE RESPONDANTS WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REGRETED.

**PRAYERS:**

1. On acceptance of the instant service appeal the impugned Regret orders/letters NO.SO (Primary-M/E&SED/5-1/G.MISC/Mr. Muhammad Ayub Khan Khalil /SST PESHAWAR/2024 of 2<sup>ND</sup> July, 2024, may kindly be set aside and appellant allowed re-instatement or compulsory retirement with full Pensionary & service benefits for his service rendered before registration of criminal case as KP Govt. allowed to two civil servants cited herein in appeal.
2. **In alternative:** Allow compassionate allowance in lieu of prayer-1, with payments of Gratuity and G.P. Fund as contemplated by Section 19 of Civil Servant Act, 1973, *inter alia*.

*Respectfully Sheweth,*

**FACTS:**

Facts giving rise to the present Appeal are as under:-

1. Appellant joined Education Department Khyber Pakhtunkhwa as C.T teacher on 26-01-1986 and after diligently working for 18 years was promoted as SST (G) teacher on 01-09-2003. Appellant served as regular civil servant for more than 27 years of admitted continued service and was

lastly posted as Head Master Government Middle School Forest College, Peshawar. (3)

2. In connection with recovery of payment due from a neighbor afghan refugee who had run to his country, appellant departed to Afghanistan on 23.12.2008 on Pakistani Passport NO.AD 11338315 and returned on 19.01.2009. Landing from PIA flight on Islamabad airport appellant was informed that in the backdrop of old family vendetta he along with his brothers, has falsely been nominated in case F.I.R NO. 06 dated 03.01.2009 for the offence u/s 302 P.P.C. Appellant, who was extremely distraught, while returning home, sought en-route transitory bail from the Court of District & Sessions Judge, Islamabad on 20.01.2009, returned home at Peshawar & joined the investigation. Later, appellant was sent to judicial lock-up. Since the appellant had no adult male member of the family to pursue his defense in the court of law, therefore, due to short of effective defense, sadly say no defense, appellant was convicted as the opponent party was an influential family. Thus a serious miscarriage of justice caused to the innocent appellant from the unjust incarceration. Ulterior motive of the opponent party for false involvement of the appellant was to blackmail his family to abandon some precious disputed landed property in their favour, therefore stretch the net to falsely implicate the innocent appellant along with his four relatives. Documentary evidence in the shape of exit & entry on the passport, PIA ticket and transit bail are annexed at pages 10-12.
3. Based on F.I.R the Director Elementary Education Khyber Pakhtunkhwa Peshawar, respondent-1, suspended the appellant w.e.f 03-01-2009, ostensibly u/s 4 of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 then applicable, and latter while mistakably proceeding on the advice of Finance Deptt GOKPK, respondents under the misconceived and inapplicable Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, imposed major penalty of removal from service on the appellant vide Notification NO. 3107-10 on 31.12.2012 but w.e.f 11.07.2012, the date of judgment. The appellant was not associated with any formal disciplinary proceeding, served with any show-cause notice, adopted procedure prescribed in section 3-A of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 nor afforded personal hearing whatsoever, prescribed by the law & rules ibid, notwithstanding that appellant was present in judicial lock-up at Peshawar and waiting for fair departmental proceeding. Copy of Suspension & Removal order annexed at Page 13-15.
4. The appellant after undergoing the unearned sentence, preferred departmental appeal/representation dated 05-10-2021 before respondents. The matters was remained in consideration for considerable period amongst Responding departments, Establishment Department & Finance Department GOKPK and finally vide order of 02<sup>nd</sup> July, 2024 latest, the appeal was regretted and communicated to the appellant. Copy of departmental appeal and regret final order are annexed at pages 16 & 33 respectively while Correspondence *inter se* at pages 17- 32 of appeal.
5. This is on records that vide pay slip for the month of August, 2012, issued to the appellant; the respondents' party has acknowledged his regular service of 26 years, 07 months & 12 days whereas as per terms & condition of service

qualifying service for pension is 10 years and for full pension benefits 25 years. Copy of pay slips annexed at page 33.

(4)

6. During his entire service period and up-till the date of registration of F.I.R the appellant has unblemished, rather meritorious service record, with no adverse report in his professional career, hence subject appeal on the following grounds, amongst other to be canvassed at the time of arguments.

## **GROUND S:**

**Following grounds are presented in support of the prayers:**

- A. That undeniably, during his entire service period and up-till the date of registration of F.I.R the appellant has unblemished and meritorious service record, with no adverse report in his professional career. He gave his sweat & blood to his professional carrier for about 27 years, hence was deserve to be considered for lesser punishment by the respondents in the mitigating circumstances.
- B. That appellant, undeniably was suspended under N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 then applicable, and latter mistakably proceeding under Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, non applicable, on the ill advice of Finance Department GOKPK and was imposed major penalty of removal from service in absentia vide Notification NO. 3107-10 on 31.12.2012 but w.e.f 11.07.2012.
- C. That, appellant, before his removal from service by the authority, necessary proceeding provided in section 3-A of RSO 200 was not followed/completed as prescribed. The authority after conviction of the appellant did not employed independent mind as provided in clause (a) or (b) of section 3-A whatever the case might be. Anyhow, when the law requires a thing to be done in a particular manner it should have been performed/done in the manner and not otherwise and if not performed in prescribed manner then it would be nullity in the eyes of law. Reliance is placed on 2005 SCMR 177 and 2007 SCMR 1086. Instant digression betrays malafide as well as professional apathy in public business. Thus not following prescribed method & procedure, laid down in section 3-A of RSO,2000 then applicable, the removal order stood mis-founded, against the law, void *ab-anitio* thus nullity in eyes of law, therefore, the prayers for recall and rescind should be confirmed by this august tribunal while exercising powers u/s 12-2 r/w 151 C.P.C, *inter alia*.
- D. As a matter of fact when accused convicted then the competent authority should have examined the facts and grounds on which the order of conviction was passed by a court of criminal jurisdiction and would have gone for proceeding provided in clause (a) or (b) of section 3-A of RSO 2000 as the case might be. Proceeding so the competent authority might have gone for the option of compulsory retirement of the appellant had it applied independent mind as provided in section 3-A of RSO 2000 referred. No such statutory exercise was adopted as reveals from the record. Thus the short-circuited procedure adopted by the respondents stands alien to RSO 2000, superfluous, perverse and nullity in the eyes of law. Reliance is placed on 2005 SCMR 177 and 2007 SCMR 1086. Thus, appellant was not treated in

accordance with prescribed law and provisions of RSO, 2000 applicable. After all, when the law requires a thing to be done in a particular manner it should have been performed/done in the manner and not otherwise and if not performed in prescribed manner then it would be nullity in the eyes of law. **Reliance is placed on 2005 SCMR 177 and 2007 SCMR 1086.** (5)

- E. That, Finance Deptt GOKPK without having any authority & jurisdiction advised respondent-2 to proceed under Rule 17 (2) of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011. Ostensibly, respondent-2 following Rule 17(2) of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 on the advice proceeded illegally on the misconceived Rules and imposed major penalty, also disregarded section 5 as instructed in Rule 8 (b) of Rules 2011 if the proceeding was purported to be completed under Rules 2011. Thus, the whole departmental proceeding based on misconceived provisions turned perverse and nullity in the eyes of Law. Copy of Finance Deptt advice at page 26. Had the competent authority afforded appellant personal hearing provided in Rule 15 of Rules 2011 these vital lacunas would have been pre-empted in time, paving way for using independent mind by the competent authority as per law. Anyhow, the applicable law for proceeding against the appellant was N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 and not Rules 2011. This learned tribunal in case "Sajjad Hussain VERSUS Administrative Judge Peshawar High Court" on misapplication of wrong law in departmental proceeding has accepted the appeal and re-instated the appellant into service with back benefits.
- F. That the legal points raised in the forgoing paragraphs are not mere technical but are statutory and command of the law. Therefore while undertaking departmental proceeding against the appellant respondents should have not substituted command of the law with their self conceived practices and caprices in excitement for punishing the convict multi-pronged while proceeding against him under the mixed enactments of RSO 2000 and Rules, 2011. The demeanor has vitally perverted and reduced departmental proceeding in nullity of law.
- G. That, appellant has already completed qualifying service for pension before the eventful day of registration of F.I.R and was a fit and proper person for the job of the respondents on the last working day. The unfortunate family enmity roped him in a false case latter which has no nexus with his unblemished professional carrier, meritorious public service he rendered and acknowledged by the respondents on record. This learned tribunal in the case of Abdul Qadus Ex-C.T GHS Sirikot Haripur VERSUS Govt. of NWFP through Secretary Education has held that:
- "The appellant has long service at his credit and considers it appropriate to compensate him for the service rendered by him before he was involved in criminal case which subsequently resulted in conviction of the appellant by the court through judicial proceedings. In order to get his pension for the period before his involvement in the criminal case, the retirement order dated 26.8.2000 is amended to the extent that he will stand retired from service on the date of registration of F.I.R i.e. 5.6.1985. The appeal is accepted to that extent and the impugned order is set aside. No order as to cost. File be consigned to the record room. ANNOUNCED.*

- H. That, the charge of offence did not relate to the appellant's public duty and functions but beyond & extraneous. Therefore, *stricto sensu*, did not fall in the pail of 'Misconduct. Even post-sentence, the previous suspicions inadvertently crept in the parties, were successfully removed and a compromise through Jirga was effected between the parties without payment of any blood money (Khoon Baha).
- I. That, government servant's pension is a right earned through service and not a discretionary grant. Pension is earned by the civil servant through his qualifying service with the employer which is 10 years at minimum. Pension is not the bounty from the employer to be considered on exterior premises as held by the superior courts from time to time.
- J. That, pension being a material part of service follows from rendering of qualifying period of service. It is not a bounty of the State but as a right acquired after putting-in qualifying service. The grant of pension cannot be refused so arbitrarily with such a non-speaking final order.
- K. The final order is non-speaking one as it does not disclose reasons for denial of pension or grant of Compassionate allowance with payments of Gratuity and G.P. Fund in lieu of pension, contemplated by Section 19 of Civil Servant Act, 1973.
- L. That, West Pakistan Civil Service Pension Rules, 1963 and Article 371-A of Civil Service Regulations do not bar, rather both support grant of pension for the non-disputed service period, when the F.I.R was not registered and appellant convicted as he was a fit and proper person for the job.
- M. That, neither the petitioner was associated to any disciplinary proceeding, minimum enquiry nor the petitioner afforded with formal opportunity of defense or personal hearing. Even no proceeding as prescribed in Rule 8 of KPK E&D Rules, 2011 was followed by issuing to appellant any show-cause Notice or affording him personal hearing before issuing the adverse orders. Thus the appellant was condemned unheard and met with circumvented proceeding in absentia.
- N. That, the apex court in **Mir Ahmad Khan** case while setting principle in the matter of pension, has not ignored even temporary service of employees of the Commissionerate Afghan Refugees, who were allowed pension benefits by completion of ten years service. Reliance is placed on 1997 SCMR 1477.
- O. That Article 371-A of the Civil Services Regulations GOP, considers Government servants borne even on temporary establishments who have rendered more than 5 years' continuous temporary service, count such service for the purpose of pension and gratuity excluding broken periods of temporary service, if any, rendered previously what to say of regular 27 years of admitted service of the appellant. While sub-article (ii) of the CSR ibid admit temporary and officiating service followed by confirmation; for the purpose of pension.
- P. Thus, admittedly the appellant has put in more than 27 years of regular service before his services were terminated. He was, therefore, entitled to pensionary benefits under Regulation 371-A.(i) of Civil Service Regulations and Pension Rules 1963 too, *inter alia*.

- Q. That, Article-A of Civil Service Regulations and section 23 of The West Pakistan Civil Service Pension Rules, 1963 were interpreted by apex court in the case Chairman, Pakistan Railway Versus GOP wherein as principle it was held that "pension is not the bounty from the State/Employer to the servant/employee, but it is fashioned on premise and the resolution that the employee serves the employer in the days of ability later become incapacitated from performing this duties. It was also held that a pension system is intended to promote efficient, continued and faithful service of the employee to the employer during service in return of economic security to the employees and their dependents by an arrangement under which pensions become property of the individual as a matter of right upon the termination of public service". (7)
- R. Pension is a periodical allowance of money granted by the Government in consideration or recognition of past services, loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants and it presupposes the continued life of the recipient. Summing up, pension is not only compensation for loyal service rendered in the past, but also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life of the employee when his physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is pension when one gives his best high time in the hey-day of life to his employer, in the days of invalidity and economic insecurity he is recompensed by way of periodical payment of pension. The term has been judicially defined as a stated allowance or stipend made in consideration of past service. Thus, the pension payment to a Government employee is earned by rendering reasonably long and efficient service (at least 10 years) and therefore can be said to be a deferred portion of compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is inability of the ex-employee to feed for oneself and the dependants due to old age as one may still wish to live even if he ends-up incapacitated of old age and penniless.
- S. A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended in Pakistan to the widows and the dependent children of the deceased civil servants. The *raison d'être* for pension seems to be inability of the civil servant to provide for oneself and his family due to his old age.
- T. A person who enters Government service always looks forward for retirement benefits. Grant of pension being the most valuable of such benefits. Pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. **Reliance for K-N paragraphs ante on P L D 2013 Supreme Court 829.**
- U. Those, line-departments of government of Khyber Pakhtunkwa on identical departmental appeals and in similar placed cases, have allowed pension benefits, even re-instated into service the convicts in 302 PPC cases and then retired to qualify them for pension. Immediate examples can be cited one of Abdul Wahab, Clerk of Revenue & Estate, District Dir upper and another Mr. Jamil Ahmed a uniform Sepoy of Malakand levy, both convicted for the same offence, were extended the benefits of pension. Respondents agitated

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pension case of the appellant with Establishment Deptt & Finance Deptt GOKPK on the same analogy citing the precedents in their correspondence, however was cold-shouldered in well-entrenched bureaucratic mess arbitrarily. Denying the same to the appellant by the provincial government has discriminated him. The principle of parity, consistency & equality was violated within the ranks of a single provincial hierarchy (Government of Khyber Pakhtunkhwa) in appellant's case which is unfortunate and not tenable in law.

- V. By depriving appellant from his job as well as forfeiting his pension earned through rendering more than 27 years of admitted service the appellant was subjected to the undesired 'double jeopardy' protected against vide Article 13 of constitution of the Islamic Republic of Pakistan, 1973, Section 403 of the Cr.P.C and section 26 of General Clauses Act, 1898. This principle set therein prohibits prosecuting or punishing a person twice for the same offense.
- W. That in worst case scenario the appellant may kindly be allowed Compassionate allowance in lieu of prayer-1, with payments of Gratuity and G.P. Fund as contemplated by Section 19 of Civil Servant Act, 1973, *inter alia*.
- X. That, departmental appeal for grant of pension having been unsuccessful, appellant received regret letter from respondent-2 vide NO.SO (Primary-M/E&SED/5-1/G.MISC/Mr. Muhammad Ayub Khan Khalil /SST PESHAWAR/2024 of 2<sup>ND</sup> July, 2024, hence preferred instant appeal under section 4 of the Service Tribunals Act, 1973 r/w sections 12-2/151 of C.P.C, *inter alia*, before this hon'ble Service Tribunal.
- Y. That, all reliefs solicited herein service appeal fall in the pail of Terms & Condition of civil servant and this tribunal has got jurisdiction to entertain the appeal. That, respondents have not dealt the appellant in accordance with the spirit of binding laws, rules, and above all, the underlying concept of pension.
- Z. Any other relief not specifically prayed for but appurtenant therewith, ancillary thereto, concomitant to the caption payer, or arise during the pendency of the appeal may also be allowed, with cost throughout please.
- AA. That appellant would like to offer some other grounds during the course of arguments with permission of the hon'ble tribunal please.

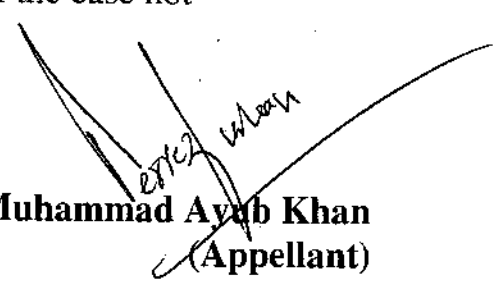
**PRAYER:**

In light of the above facts, points of law as well as legal elucidation put forth this honorable tribunal is respectfully prayed to grant reliefs as prayed for in heading of the service appeal please.

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

Original Appeal: Dated: 07-07- 2024

Amended Appeal Dated: 28-08- 2024

  
Muhammad Ayub Khan  
(Appellant)

Through:  
Pervez Khan Khalil, Senior Advocate, Peshawar.



Service Appeal No. \_\_\_\_\_/2024

Muhammed Ayub Khan, Ex- SST/Head Master, GMS, Forest College, Peshawar.

-: VERSUS: -


Government of Khyber Pakhtunkhwa through Director, Elementary & Secondary Education, Peshawar.

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**AFFIDAVIT:**

I, Muhammad Ayub Khan S/O Muhammad Yaqub Khan R/O of Tehkal Bala, Tehsil & District Peshawar, CNIC NO: 17301-1504383-9, do hereby solemnly affirm and declare on oath that the contents of accompanying amended appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal, deliberately.

Dated: 28-08-2024.

  
Muhammad Ayub Khan  
(Deponent)

Through:  
Pervez Khan Khalil, Senior Advocate, Peshawar

