03.07.2024 1. None present on behalf of the appellant Mr. Muhammad Jan, District Attorney alongwith Mr. Zahir Shah, Inspector for the respondents present.

02. The appeal in hand was called on for hearing after various intervals, however, neither the appellant nor anyone else appeared on his behalf till the closing time, therefore, the appeal in hand stands dismissed in default. Consign.

03. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal on this 03rd day of July, 2024.*

(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

(Aurangzeb Khattak)
Member (J)
Camp Court Swat

Kamranullah

03.01.2024 Appellant in person present. Mr. Zahir Shah, S.I (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel has not turned up from Peshawar. Adjourned. To come up for arguments on 08.02.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

(Rashida Bano)
Member (J)
Camp Court Swat

(Salah-ud-Din)
Member (J)
Camp Court Swat

Naeem Amin

08.02.2024 Tour to Camp Court Swat has been cancelled, therefore to come up for the same as before on 09.05.2024.

Reader

09.05.2024 Appellant in person present. Mr. Muhammad Jan learned District Attorney for the respondents present.

Former stated that his learned counsel is not in attendance due to general strike of the lawyers. Adjourned. To come up for arguments on 03.07.2024 before D.B at camp court Swat. Parcha Peshi given to the parties.

(Fareeha Paul)
Member (E)
Camp Court, Swat

(Rashida Bano)
Member (J)
Camp Court, Swat

Kaleemullah

06.11.2023 Appellant in person present. Mr. Zahir Shah, S.I (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is indisposed. Adjourned. To come up for arguments on 05.12.2023 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

(Fareeha Paul)
Member (E)
Camp Court Swat

(Salah-ud-Din)
Member (J)
Camp Court Swat

Naeem Amin

05.12.2023 1. Appellant in person present. Mr. Mohammad Jan learned Deputy District Attorney Zahir Shah, S.I for the respondent respondents present.

2. Appellant requested for adjournment on the ground that her counsel is not available today. Absolute chance is given to the appellant to argue the case on the next date failing which appeal will be decided on the basis of available record without arguments. To come up for arguments on 03.01.2024 before D.B at camp court, Swat. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)
Camp Court Swat

*KaleemUllah

6th June, 2023

1. Appellant in person present . Mr. Muhammad Jan, District Attorney alongwith Mr. Faisal Khan S.I (Legal) for respondents present.

2. Appellant requested for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 04.09.2023 before D.B at Camp Court, Swat. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)
Camp Court, Swat

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

*Mutazem Shah *

4th Sept. 2023

1. Appellant in person present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Lawyers are on strike. Therefore, case is adjourned. To come up for arguments on 06.11.2023 before D.B at Camp Court, Swat. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)
Camp Court, Swat

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

*Mutazem Shah *

4th April, 2023

Appellant in person present. Mr. Fazal Shah Mohmand, Addl: AG for the respondents present.

Written reply/comments on behalf of the respondents are still awaited. The time provided in Rule-12 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for filing reply is 7 days before the date fixed but despite providing opportunity the respondents have not filed the comments. They are thus placed ex-party and their right to file reply stands struck of. To come up for arguments on 02.05.2023 before D.B at camp court Swat. P.P given to the parties.

(Kalim Arshad Khan)
Chairman
Camp Court Swat

02.05.2023

Appellant in person present.

Fazal Shah Mohmand, learned Additional Advocate General alongwith Wakil Zada S.I (Legal) for respondents present.

Former made a request for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 06.06.2023 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

(Fareeha Paul)
Member (E)
Camp Court, Swat

(Rozina Rehman)
Member (J)
Camp Court, Swat

Mutazem Shah

09.02.2023 Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Inam-Ul-Haq, Inspector for the respondents present.

Representative of the respondents stated at the Bar they have received the notice on 29.01.2023 and requested for time to submit reply/comments. Request is allowed. To come up for reply/comments on 07.03.2023 before S.B at camp court Swat.

(Muhammad Akbar Khan)
Member (E)
Camp Court Swat

07th Mar. 2023 Appellant present in person. Mr. Uzair Azam Khan, Additional Advocate General alongwith Inamul Haq, Inspector for the respondents present.

Reply/comments on behalf of the respondents not submitted. Representative of the respondents requested for further time. Last opportunity granted. To come up for reply/comments on 04.04.2023 before the S.B at camp court, Swat. Parcha Peshi given to the parties.

(Fareeha Paul)
Member(E)
(Camp Court, Swat)

10.11.2022 Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General shall intimate the respondents for submission of reply/comments on 08.12.2022 before the S.B at Camp Court Swat.

(Salah-Ud-Din)
Member (J)
Camp Court Swat

8.12.22 Today is hereby cancelled, therefore the case is adjourned to 5-1-23 for the same.

05th Jan. 2023 Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Written reply/comments on behalf of the respondents not submitted. Learned AAG requested for time. Granted. To come up for written reply/comments on 09.02.2023 before S.B at camp court, Swat.

(Fareeha Paul)
Member(E)
(Camp Court, Swat)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No:- 1401/**2022**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2022	The appeal of Mr. Muhammad Rehman presented today by Uzma Syed Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on 6-10-22 Notices be issued to appellant and his counsel for the date fixed. By the order of Chairman REGISTRAR
	06.10.2022	Learned counsel for the appellant present. Preliminary arguments heard. Points raised need consideration, hence the appeal in hand is admitted to regular hearing subject to all legal and valid objections including the question of limitation. The appellant is directed to deposit security and process fee within 10 days. Out district respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days. To come up for submission of written reply/comments on 10.11.2022 before the S.B at Camp Court Swat. (Salah-Ud-Din) Member (J) Camp Court Swat

SCANNED KPST Peshawar

Rs-100/- Appellant Deposited Security & Process Fee 17/10/22

BEFORE KHYBER PKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST

Case Title: Sajjad Hussain vs ~~Hussain~~ Police

S.#	Contents	Yes	No
1.	This appeal has been presented by: UZMA Syed		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?		X
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: UZMA Syed

Signature: Uzma

Dated: 26-9-2022

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1401 **/2022**

Sajjad Hussain V/S Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-06
2.	Copy impugned order	-A-	07
3.	Copy of tribunal judgment	-B-	08-22
4.	Copy of departmental appeal	-C-	23
5.	Copy of supreme court judgment	-D-	24-30
6.	Vakalat Nama	------	37

Hussain

APPELLANT

THROUGH:

(UZMA SYED)
&
SYED NOMAN ALI BUKHARI
(ADVOCATES HIGH COURT)

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1401 /2022

Khyber Pakhtukhwa
Service Tribunal
Diary No. 1435
Dated 26-9-2022

Sajjad Hussain Ex-Constable No. 522
PS Totali, District Bunir

.....**(Appellant)**

VERSUS

1. Inspector General of Police ,KP Peshawar.
2. The Regional Police officer, Malakand, at Saidu Sharif Swat .
3. District Police Officer Buner.

.....**(Respondents)**

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 15-5-2009 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY OF 90 DAYS.

PRAYER:

Filedto-day
Registrar
26/9/2022

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 15.05.2009 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPOPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the police and was on the strength of the police force Buner.

2. That during Taliban Militancy in Buner appellant was dismissed from the service by the respondent no.3 vide order dated 15.05.2009. **Copy of impugned order is attached as Annexure-A.**

3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.

4. That some of the colleagues of the appellant have been re-instated by the Service Tribunal, Peshawar . **Copy of Judgments is attached as Annexure-B.**

5. That appellant Feeling Aggrieved, immediately preferred departmental appeal before respondent no.1& requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service by service Tribunal Peshawar, so the appellant has also entitled to re-instatement on principle of consistency and law of good governance as held by the Supreme Court of Pakistan in Judgment cited as 2022 PLC cs 94 and 2021 SCMR1313. **Copy of departmental appeal and judgment of Supreme Court is attached as Annexure – C & D.**

6. That the departmental appeal of the appellant was not responded within statutory period of 90 days, appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.

GROUNDS:

A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as *2007 SCMR 834*. Hence the impugned order is liable to be set aside.

B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as *2002 SCMR 1129*, *2006 PLC 221* and KPK Service Tribunal Judgment titled as *Abdul Shakoor Vs Govt of KPK*.

C) That according to superior court judgment reported as *2015 SCMR 795* there is no limitation was run against the void order. Moreover, the Supreme court of Pakistan has laid down vide reported judgment *PLD 2003 SC 724* and *2003 PLC (CS) 796* that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board this principle is also held in latest judgment cited as 2021 SCMR 1313 and 2022 PLC cs 94.

D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No 1 and KP Service Tribunal, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.

E) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.

F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.

G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.

H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Hussain

APPELLANT
Sajjad Hussain

THROUGH:

(UZMA SYED)
&
(SYED NOMAN ALI BUKHARI)
ADVOCATES, HIGH COURT
26-9-2022

(5)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO._____/2022

Sajjad Hussain V/S Police Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

(UZMA SYED)
ADVOCATE HIGH COURT

(6)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO._____/2022

Sajjad Hussain V/S Police Deptt:

AFFIDAVIT

I, Sajjad Hussain, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

DEPONENT

ATTESTED
Zahoor Khan Advocate
Notary Public
Peshawar District & Session Courts Peshawar

Sajjad Hussain

(A) (7)

Phone # 0939-510470
Fax # 0939-510501

ORDER.

Where is you Constable Sajjad Hussain No.522

While posted P.S Totalai according to the report received in this office vide D D No 7 dated 24.4.2009 you left the place of duty with out valid cause and intimation to your office in charge ,since then you have been un authorized absence from duty that is from this constitute mis conduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended)Ordinance 2001.

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority ,am ,therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment)ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry ,since the accused Police Officer Constable Sajjad Hussasin No 522 has been found guilty of gross misconduct as defined in the ordinance ,

I,Mr .ABDUR RASHID D.P.O,Buner as competent authority ,therefore impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER
BUNER.

OB No 49
Dated 15.5.09

ATTESTED

(A) (7)

Phone # 0939-510470
Fax # 0939-510901

ORDER.

Where is you Constable Sajjad Hussain No.522

While posted P.S Totalai according to the report received in this office vide D D No 7 dated 24.4.2009 you left the place of duty with out valid cause and intimation to your office in charge ,since then you have been un authorized absence from duty that is from this constitute mis conduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended)Ordinance 2001.

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority ,am ,therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment)ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry ,since the accused Police Officer Constable Sajjad Hussasin No 522 has been found guilty of gross misconduct as defined in the ordinance ,

I,Mr .ABDUR RASHID D.P.O,Buner as competent authority ,therefore impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER
BUNER.

OB No 49
Dated 15.5.09

ATTESTED

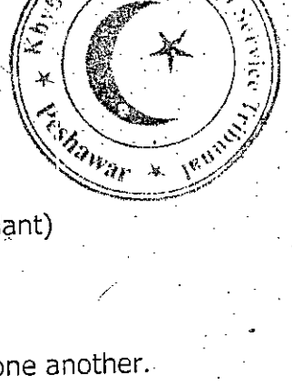
Appellant B (8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 874/2019

Date of Institution ... 20.06.2019

Date of Decision ... 05.01.2022



Aurangzeb Ex-Constable No. 390 District Buner.

... (Appellant)

VERSUS

The Regional Police Officer, Malakand, at Saidu Sharif Swat and one another.

... (Respondents)

Uzma Syed,
Advocate ... For Appellant

Noor Zaman Khattak,
District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 30-05-2009, against which the appellant filed departmental appeal followed by service appeal No 1385/2017, which was allowed vide judgment dated 29-01-2019 with direction to the appellate authority for re-deciding the appeal of the appellant within three months on merit and in accordance with law. On receipt of the judgment, the respondents once again regretted his departmental appeal vide order dated 27-05-2019, against which the appellant filed the instant service appeal with prayers that the impugned orders dated 30-05-2009 and 23-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

(9)

02. Learned counsel for the appellant has contended that the impugned orders are void, against law and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article 4 and 25 of the Constitution; that codal formalities required for imposition of major penalty of dismissal from service has not been fulfilled, while issuing the impugned orders; that the respondents acted in arbitrary and malafide manner, while issuing impugned dismissal orders dated 30-05-2009 and 27-05-2019; that the impugned order is void in a sense that retrospective effect have been given; that imposing major penalty of dismissal for 25 days absence is a harsh punishment and contrary to the norms of natural justice; that the appellant absented due to life threat to his person and his family due to militancy in the region, hence his absence was not willful, but was due to compelling reasons; that no regular inquiry has been conducted in the matter, which is must before imposition of major penalty of dismissal from service; that the appellant has been condemned unheard as no opportunity of defense was afforded to the appellant.

03. Learned District Attorney for the respondents has contended that it is correct that some of the police personnel including the appellant absented from their duty during the period of militancy but after pak army operation, the absent police personnel joined their duty but the appellant failed to resume his duty well in time; that being member of a disciplined force, the appellant absented himself from lawful duty, thus he was rightly dismissed from service; that vide judgment of this tribunal dated 29-01-2019, departmental appeal of the appellant was examined and the appellant was called in orderly room but the appellant failed to prove his innocence, hence his departmental appeal was rejected being barred by time.

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(10)

05. Placed on record is an earlier judgment of this tribunal in service appeal No 1385/2017 in favor of the appellant, which shows that the appellant was dismissed from service without conducting any inquiry against the appellant, nor any showcause was served upon the appellant and the appellant was condemned unheard. In view of the illegality on part of the respondents, the impugned orders were set aside and the appellant was re-instated in service with direction to the respondents to re-decide appeal of the appellant in accordance with law. In a manner, the period of limitation was condoned in submission of departmental appeal, but the respondents again filed his appeal on the issue of limitation without touching merits of the case, which amounts to negation of the verdict of this tribunal and on this score alone, the impugned orders are liable to be set aside. Besides, the respondents in many other similar cases has already re-instated other police personnel, who had deserted due to militancy and many others were re-instated by this tribunal, hence under the principle of consistency, the appellant also deserve the same treatment.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 30-05-2009 and 23-05-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of Presentation of Application 19-01-22
Number of Words 1200
Copying Fee 14/-
Urgent 4/-
Total 18/-
Name of Copyist
Date of Completion of Copy 19-01-22
Date of Delivery of Copy 19-01-22

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(1) (11)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7 /2018

1467
28/12/2017

Saeed Ullah, EX- Constable, No. 1655
Distt: Swat.

.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 05.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 05.12.2008 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
Registrar
28/12/17

2/1/18

ATTESTED

ATTESTED

12

ORDER
28.01.2022 Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 5/2018 titled "Noor-Ul-Amin Versus The Regional Police Officer, Malakand, Saidu Sharif Swat", the impugned orders are set aside and the appellant is re-instated in service. Since the appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he is not entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellant not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be ture copy
Khyber Service Tribunal Peshawar

Date of Presentation of Application 19/04/22
Number of Words 800
Copying Fee 10/-
Urgent -
Total 10/-
Name of
Date of Completion of Copy 20/4/22
Date of Delivery of Copy 20/4/22

ATTESTED

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017
Date of Decision ... 28.01.2022

Noor-Ul-Amin, Ex-Constable No. 75/RR Distt: Swat.

... (Appellant)

VERSUS

The Regional Police Officer, Malakand, Saidu Sharif, Swat and one another.

... (Respondents)

Uzma Syed,
Advocate ... For Appellant

Noor Zaman Khattak,
District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 6/2018 titled Nizam Khan
2. Service Appeal bearing No. 7/2018 titled Saeed Ullah
3. Service Appeal bearing No. 8/2018 titled Ubaid Ullah

02. Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 12-10-2009. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide

order dated 29-11-2017, hence the instant service appeal with prayers that the impugned orders dated 12-10-2009 and 29-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law had badly been violated; that the impugned order has been passed in volition of mandatory provision of law, hence such order is void and illegal. Reliance was placed on 2007 SCMR 1129 and 2006 PLC CS 221; that departmental appeal of the appellant was rejected being barred by time, but since the impugned order is void, hence no limitation would run against void order. Reliance was placed on 2015 SCMR 795; that delay if any is condonable if delay already condoned in identical cases. Reliance was placed on PLD 2003 SC 724 and 2003 PLC CS 796; that this tribunal in similar cases has already granted condonation of delay and granted relief, hence the appellant is also entitled to the same under the principle of consistency; that the appellant has been discriminated, as other police officials, who were dismissed with the appellant, have been re-instated, whereas the appellant has been denied the same treatment.

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

ATTESTED

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departmental appeal after lapse of 8 years, which was rejected being barred by time; that stance of the appellant being devoid of merit may be dismissed.

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

06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave

ATTESTED

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without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be ture copy

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	19/4/22
Number of Words	1600
Copying Fee	18/-
Urgent	
Total	18/-
Name of Copyist	
Date of Completion of Copy	20/4/22
Date of Delivery of Copy	20/4/22

ATTESTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 508/2018

Date of Institution 11.04.2018

Date of Decision ... 24.01.2022

Muhammad Ayub S/o Sher Ali Khan R/o Navay Kalay Mingora Swat, Ex-Constable No. 1460, PS, Imam Dhery, Swat . ... (Appellant)

VERSUS

District Police Officer, Swat and others.

... (Respondents)

Arbab Saiful Kamal,
Advocates ... For Appellant

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

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was rejected vide order dated 18-09-2017. The appellant filed revision petition dated 27-09-2017, which was also rejected vide order dated 03-10-2017 communicated to appellant on 20-03-2018, hence the instant service appeal with prayers that the impugned orders dated 21-02-2009, 18-09-2017 and 03-10-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

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02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that absence of the appellant was not willful, but was due to compelling reason of terrorism in the area and which does not constitute gross misconduct entailing major penalty of dismissal; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the appellant has been discriminated as similarly placed employees were re-instated but case of the appellant was not considered.

03. Learned Deputy District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty and did not turn up despite repeated summons; that the appellant while posted at Imam Dheri check post Police Station Kanjo absented himself without permission of the competent authority vide daily diary No 11 dated 17-10-2008; that the appellant was issued charge sheet/statement of allegation and proper inquiry was conducted; that the appellant was summoned repeatedly but he did not turn up, hence he was proceeded ex-parte; that after fulfillment of all codal formalities, the appellant was awarded with major punishment of dismissal from service vide order dated 2-02-2009; that the appellant filed departmental appeal with delay of more than seven year, which was considered but was rejected vide order dated 11-09-2017 being barred by time.

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

ATTESTED

05. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such

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personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and threats from Taliban. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

06. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022

ATTESTED

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 498/2018

Date of Institution ... 10.04.2018

Date of Decision ... 24.01.2022

Rashid Ahmad S/o Sher Zada, R/o Village Kokarai, Swat, Ex-Constable No. 1834, District Police Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal, Advocate ... For Appellant

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

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 571/2018 titled "Aamir Shah Versus District Police Officer, Kohat and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant while serving as constable in police department, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was not responded. Subsequent appeal was submitted to respondent No 2, which was rejected vide order dated 12-03-2018, hence the instant service appeal with

ATTESTED

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prayers that the impugned orders dated 21-02-2009 and 12-03-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence but absence of the appellant was not willful but was due to compelling reason of terrorism; that a large number of police personnel had deserted their jobs due to threats of Taliban, who were again re-instated in service vide orders dated 30-11-2010, 15-03-2017 and 09-08-2017, but case of the appellant was not considered positively; that this Tribunal in numerous cases has already granted relief to the similarly placed employees and the appellant is also requesting for the same treatment under the principle of consistency; that absence of the appellant was not willful, which does not constitute gross misconduct and the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the impugned order was issued with retrospective effect, which is void ab initio; that no codal formalities were fulfilled and the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated.

04. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of willful absence from duty, therefore proper departmental proceedings were initiated against him, which culminated into his removal from service under RSO 2000; that the appellant file departmental appeal with a considerable delay, which was rejected being barred by time; that numerous other officials were re-instated into service but every case has its own merits, whereas the appellant was awarded punishment for his own conduct; that final show cause notice was also served at his home address, but the appellant did not turn up, hence he was proceeded in absentia.

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

ATTESTED

06. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and keeping in view humanitarian aspect, re-instated such personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and cause of terrorism. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases under the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Situation at that particular time was so perturb, as how to proceed such large number of cases of desertion, for which publications were made in newspapers, hence the proceedings so conducted in such like cases were not in accordance with law. In the instant case no regular inquiry was conducted, nor any charge sheet/statement of allegation was served upon the appellant and the appellant was condemned unheard and which shows that the appellant was summarily proceeded without adhering to the method prescribed in law.

07. We are also mindful of the question of limitation, but since the impugned order was passed without proper legal process and when an adverse order is passed without fulfilling the legal formalities, such order is void and no limitation runs against void order. Still another reason exists for condonation of delay that the impugned order was issued with retrospective effect being void ab initio.

ATTESTED

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08. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal as well as the connected service appeal by converting the major penalty of dismissal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Respondents however are at liberty to conduct de-novo inquiry as per mandate of law, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

ATTESTED

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TO THE HONORABLE INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA

Departmental Appeal (Through proper channel) against the order Dated where by the appellant was Dismissed From The Service.

The Appellant submits as follows

1. That the appellant was appointed as police Constable and was allotted Constables No 522 and was placed on the strength of District Police Buner (appointment order attached as annex ,A)
2. That Due to the Talibanisation in District Buner and due to Threats to the appellant and his family he left District Buner in Emergency Condition because the Father of appellant his also been Murdered by Taliban.
3. That vide impugned order Dated 05-5-2008 the appellant dismissed from service without issuing any show cause Notice and without even informing him(Dismissal order is attached as annex ,B)
4. That the impugned order has been passed at the back of the appellant and rule of natural justice i-e audi altrum partem has been violated while dismissing the appellant from service .
5. That other similarly placed candidates have already been re-appointed by the competent authority .
6. That the impugned order is illegal ,voide and against the natural justice.

it is therefore kindly requested that the appellant be re-instated is service with all back benefits.

Appellant

Sajjad Hussain

Dated: 26-5-2022

2022 P L C (C.S.) 94

[Peshawar High Court (Mingora Bench)]

Before Ishtiaq Ibrahim and Wiqar Ahmad, JJ

JAWAD KHAN and others

Versus

NATIONAL DATABASE AND REGISTRATION AUTHORITY (NADRA) through Chairman at Islamabad and others

Writ Petitions Nos.1043-M, 1044-M and 1045-M of 2018, decided on 1st December, 2020.

(a) National Database and Registration Authority Ordinance (VIII of 2000)---

----Ss.3 & 35---Constitution of Pakistan, Art.3---Exploitation, elimination of---Non-statutory rules---Petitioners participated in process of recruitment for specific posts but authorities appointed them for some other posts lower in grade--- Plea raised by Authority was that petition was not maintainable as its service rules were non-statutory--- Validity--- State authorities, under Art. 3 of the Constitution were to ensure elimination of all forms of exploitation and gradual fulfillment of fundamental principles, from each according to his ability, to each according to his work--- Petitioners were not treated fairly over the years and unfair treatment of petitioners at the hands of employer in public sector domain was not at all acceptable--- National Database and Registration Authority was performing governmental functions, directly under the authority of Federal Government which was evident from S.3 of National Database and Registration Authority Ordinance, 2000--- National Database and Registration Authority was amenable to Constitutional jurisdiction of High Court--- High Court directed the Authority to treat petitioners similar to other officials--- High Court declared that petitioners were appointed to the posts for which they were tested and interviewed with effect from the date of their appointment---Constitutional petition was allowed accordingly.

1995 SCMR 650; 2005 SCMR 100; Umar Baz Khan through L.HRs v. Syed Jehanzeb and others PLD 2013 SC 268; 2016 SCMR 1299; 2016 SCMR 2146; 2014 PLC (C.S.) 987; 2017 CLC 1002; 2017 PLC (C.S.) 1270; 2018 PLC (C.S.) 133; 2018 PLC (C.S.) 292; 2019 PLC (C.S.) 1139; Dr. Shamsher Ali Khan and 27 others v. Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others 2019 MLD 87; Hameed Akhtar Niaz v. The Secretary Establishment Division, Government of Pakistan and others 1996 SCMR 1185; Government of Punjab, through Secretary Education Lahore and others v. Sameena Parveen and others 2009 SCMR 01; 2017 SCMR 571; Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others 2017 SCMR 1979 and Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another 2019 SCMR 984 ref.

ATTESTED

Dr. Shamsher Ali Khan and 27 others v. Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others 2019 MLD 87; Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others 2017 SCMR 1979; Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another 2019 SCMR 984 and Pakistan Telecommunication Co. LTD Through Chairman v. Iqbal Nasir PLD 2011 SC 132 rel.

(b) Constitution of Pakistan---

----Art.199---Constitutional petition---Laches---Principle---Laches has been relevant in grant or refusal of discretionary or equitable reliefs and is considered relevant--- Laches has never been taken as an absolute bar in cases where petitioners were found entitled to a relief which has already been granted by Court of law to similarly placed other petitioner.

Saddaqat Ali Khan through LRs and others v. Collector Land Acquisition and others PLD 2010 SC 878; Umar Baz Khan through L.HRs v. Syed Jehanzeb and others PLD 2013 SC 268; Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 and Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others 2009 SCMR 1 rel.

Muhammad Yar Malezai for Petitioners.

Fawad Ahmad, Legal Officer for NADRA/Respondents.

Date of hearing: 1st December, 2020.

JUDGMENT

WIQAR AHMAD, J.----Through this judgment, we intend to dispose of W.P. No. 1043-M, W.P. No. 1044-M and W.P. No. 1045-M of 2018. Petitioners in all the writ petitions have been having a similar case. National Database and Registration Authority (hereinafter referred to as "NADRA") invited applications for the post of Call Centre/ Customer Service Executive in O-4 scale (NADRA Special Scale) from eligible candidates by getting their proclamation published in daily newspapers on 14.08.2011. Petitioners applied for appointment on the posts. They participated in the process of recruitment. The NADRA authorities conducted their test and interview for the subject posts. In the end, they were not appointed on the post of Call Centre/ Customer Service Executive in O-4 scale but were rather appointed as Data Entry Operators for training purposes vide appointment order dated 10.01.2012. Petitioners have contended in their petitions that they accepted the said offer because it had been coupled with a promise that they would be appointed to the advertised posts on completion of one month on-job training after qualifying the review test and interview which had been promised to be conducted shortly. They further asserted that even after successful completion of training and getting qualifying scores in the review test and interview they could not be appointed to the posts for which they had applied but were appointed on the same posts of Data Entry

(26)

Operator on 23.04.2012. One of their colleague who had been similarly placed with petitioners in all these petitions had raised a similar grievance before this Court by filing his Writ Petition No.549-M/2012 which was allowed by this Court through its judgment dated 28.03.2018. Petitioners have stated that after knowing about successful outcome of his similarly placed colleague, they got courage, broke the shackles of their fear and ventured into filing the instant constitutional petitions before this Court.

2. Respondents were summoned who filed their comments, where in Para 2 they have mainly supplied their defence to the instant constitutional petitions couched in similar words in all these cases. Said Para is reproduced from their comments in the case of "Jawad Khan v. Chairman NADRA and others";

> "That the position of Customer Service Executive for newly established call Centre at Swat was advertised in daily newspaper "The Mashriq" on 14th August 2011. The eligibility criterion for the said post was Graduation with one-year experience. The petitioner applied for the post of Customer Service Executive and short listed for test/interview. During interview, the board clearly informed all the candidates who have qualified the test that their initial selection will be Data Entry operator ("DEO") on daily wages basis for a period of one month for on-job training because no candidate was found suitable for the position of Customer Service Executive. Office letter was issued to the petitioner as DEO on daily wages basis vide No. NADRA/HR /APP/35/CC/Swat dated 10th January 2012 (Copy enclosed as Annexure-A) in which all terms and conditions were clearly mentioned regarding further selection as Customer Service Executive. The petitioner accepted the offer letter and joined as DEO on daily wages basis and the same was not objected by him at that time. After completion of one month on-job training as per office letter, all candidates who have been selected as DEO on daily wages basis were reviewed through test/interview. In this regard, review test was held on 20th and 21st February, 2012 at Call Centre Swat. Candidates whose performance were outstanding during the training and also qualified the test/interview were selected as Customer Service Executive in O-4 scale at Call Centre Swat. The petitioner appeared in review test but due to overall poor performance during one month on-job training, the board recommended that Mr. Jawad Khan is not suitable for the post of Customer Service Executive. However, instead of terminating his service, he was posted as DEO on short term basis against requirement of NADRA Registration Office Malakand on 23.04.2012 for period of six months. Which has been executed from time to time based on Organization requirements."

3. Learned counsel appearing on behalf of petitioners started his arguments by submitting that facts of the instant cases depicts worst kind of exploitation of the petitioners and that also at the hands of an authority created and established by the Federal Government through a Statute, with public money. He pressed into service the guarantee against exploitation provided under Articles 3 and 4 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as "the

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Constitution"). In order to bolster his submissions, he also relied upon judgments reported as 1995 SCMR 650, 2005 SCMR 100, PLD 2013 Supreme Court 268, 2016 SCMR 1299, 2016 SCMR 2146, 2014 PLC (C.S.) 987, 2017 CLC 1002, 2017 PLC (C.S.) 1270, 2018 PLC (C.S.) 133, 2018 PLC (C.S.) 292, 2019 PLC (C.S.) 1139 and 2019 MLD 87. The learned counsel further added that petitioners in the cases in hand had been similarly placed with petitioner of W.P. No. 549-M of 2012 whose writ petition has been allowed by this Court, and declining the relief to petitioners would amount to discrimination. He also relied upon judgments of Hon'ble Supreme Court of Pakistan in the case of "Hameed Akhtar Niaz v. The Secretary Establishment Division, Government of Pakistan and others" reported as 1996 SCMR 1185 and the case of "Government of Punjab, through Secretary Education Lahore and others v. Sameena Parveen and others" reported as 2009 SCMR 01.

4. Mr. Fawad Ahmad, Legal Officer appearing and arguing the case on behalf of NADRA relied upon judgments of Hon'ble Apex Court reported as 2017 SCMR 571, 2017 SCMR 1979 and 2019 SCMR 984 and stated that since rules of the corporation have not been statutory, therefore the petitioners in all these petitions could not agitate their grievance before this Court which grievances have been arising out of their services in the corporation and the instant writ petitions have not been maintainable. He further added that the writ petitions were hit by the principle of laches as the cause of action had admittedly been accrued to petitioners on 10.01.2012 while they had approached this Court in the year 2018.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. It was a strange way in which petitioners, in all the writ petitions, have been treated by the recruiting authorities in NADRA. They had invited applications for the posts of Call Centre/Customer Service Executive in O-4, petitioners had applied for the said posts, their test and interview has admittedly been conducted for the subject posts. In the end, they have been handed over an order of appointment as Data Entry Operators in a grade and scale much below the posts for which they had applied. It was also understandable that due to the extraordinary high rate of unemployment the petitioners would have felt themselves compelled to accept the offer even if it was much below the post for which they had applied. It is not a hidden truth that a very high proportion of unemployed youth are available in Pakistan, unfortunately, while relatively lesser jobs are available. The ratio become much worse when it comes to employment in public sector corporations. People no doubt prefer jobs in public sector corporations. We are therefore not inclined to accept the plea of NADRA recruiting authorities that petitioners had not been found qualified for the advertised posts, therefore they had been offered lower posts which had been accepted by them and that they had been estopped from agitating the said grievance before this Court. They may have felt themselves compelled because of their circumstances to accept the offer but it is very difficult for us to digest or allow such like treatment to be meted to petitioners. Job seekers in this country may have been numerous but each one of them deserves respect being citizen of the land as well as fair treatment according to law as it had been their fundamental rights

guaranteed under Article 4 of the Constitution. Said article reads;

> A.4 Right of individuals to be dealt with in accordance with law, etc.-(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

It was in such circumstances that this Court has allowed writ petition of a similarly placed petitioner vide its judgment dated 28.03.2018 passed in W.P. No. 549-M/2012 by observing;

> "We are not persuaded with the arguments of learned counsel for the respondents, that the performance of petitioner was poor that he could not be appointed to the subject post of Call Data Executive, the conduct of the petitioner also provides sufficient force to this view as he is pursuing his remedy from the year 2012 through the instant writ petition and by now he must have gained sufficient experience required for the subject post. Therefore, we feel that the instant writ petition should be allowed and so respondents are directed to appoint the petitioner to the post of Call Centre Executive as advertised through advertisement in daily newspaper dated 14.08.2011 but from today and not with retrospective effect. There shall be no order as to costs."

Had the petitioners been not found suitable for the job, they may have been refused and the seats may have been re-advertised. It is also very strange to note that among the whole lot of applicants not a single person was found suitable for the job, in this age of unemployment where normally a large number of people apply for jobs whenever advertised. This is common observation that whenever jobs are advertised in public sector corporations, people having more qualification than the one required, and having more expertise than needed for the job comes forth and offer their services. In such a situation this is not believable that the recruiting authorities of NADRA would not have found even a single person capable of appointment to the post of Customer Service Executive for simply running a Call Data Centre in a District. It was not a post of an astronaut nor was running of Call Data Centre a rocket science. The plea of respondents is therefore not found appealable to a reasonable mind. Article 3 of the Constitution mandates the State authorities to ensure elimination of all forms of exploitation and gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work. We do not find the petitioners to have been treated fairly over the years and unfair treatment of the petitioners at the hands of an employer in public sector domain is not at all acceptable. It has been held by this Court in its earlier judgment rendered in the case of "Dr. Shamsher Ali Khan and 27 others v. Government of Khyber Pakhtunkhwa through Secretary Finance and 2 others" reported as 2019 MLD 87 that when actions of a public body were found unfair or unreasonable, same can be corrected by constitutional court on the principle of legitimate expectation and promissory estoppel. It was further highlighted in the judgment that the doctrine of promissory estoppel and legitimate expectation were equitable

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doctrine evolved by the judges while adjudicating upon the complaints lodged by aggrieved parties against an unfair and arbitrary action of the government. Relevant part of the observations is reproduced hereunder for ready reference;

> "The argument of the learned counsel for the respondents that writ to the respondent can only be issued, when the government or for that matter the respondent institution has taken an action in disregard of some law, can't be endorsed. It is by now settled law that the actions of the respondent while dealing with the people, if are unfair or unreasonable, can be corrected by the Constitutional Court on the principles of legitimate expectations and promissory estoppel. The doctrine of promissory estoppel and legitimate expectation are equitable doctrine evolved by the Judges while adjudicating upon the complaint lodged by the aggrieved party against an unfair and arbitrary action of the government. It falls in sphere of neither contract nor statutory estoppel. It can be said that if the government promises to any person and the promise is not inconsistent with the law of the land and not against the public interest, then afterwards the government cannot refuse to abide by its promise and in case the government acts inconsistent with its promise, then the said action of the government is subject to the judicial review by the constitutional Court."

7. The objection of representative of respondents regarding the instant writ petitions being barred by principle of laches, cannot be taken to the effect to deprive the petitioners from a right to which they had otherwise been entitled. Petitioners were found to have been similarly placed with petitioner in W.P. No. 549-M/2012, which have already been allowed by this Court and we were also informed that said judgment had already been implemented by respondents. When a similarly placed employee would be working as Customer Service Executive while petitioners are allowed to continue their job as Data Entry Operators, they would no doubt get discriminated and deprived from treatment according to law. Learned counsel for respondents has additionally been relying on one of the conditions given in the appointment order wherein it has been stated that the terms of offer have been strictly confidential and upon acceptance same would form the basis of contract with NADRA. His assertion in this respect is also considerable that the terms of appointment being dictated to be confidential, may have resulted in certain apprehensions in the mind of petitioners that taking the matter to a Court of law might cause them more harm than benefit.

8. Laches has been relevant in grant or refusal of discretionary or equitable reliefs and is considered relevant, but it has never been taken as an absolute bar, in cases where petitioners were found entitled to a relief which has already been granted by Courts of law to similarly placed other petitioner. A six member Bench of Hon'ble Supreme Court of Pakistan has held in the case of Saddaqat Ali Khan through LRs and others v. Collector Land Acquisition and others reported as PLD 2010 Supreme Court 878, in this respect ;

> "And what is further deducible from the long line of judgments, some of

which have been quoted above, is that once a judicial determination, be it of a point of fact or of a point of law, has been made and if such a determination covers not only the ones litigating before the Courts but some others also, then the dictates of justice would command that the benefits accruing from such a determination should not be restricted only to the litigating parties but should be extended even to those who had not indulged in litigation unless there were some extra-ordinary un-exceptionable reasons to the contrary and that all powers, including the powers inherent in the Courts be invoked for the purpose. This would not only ensure justice for all but would also have the effect of eliminating un-necessary litigation. And respectfully following these judgments, we endorse the views expressed therein."

Further reliance in this respect may be placed on judgment in the case of Umar Baz Khan through L.HRs v. Syed Jehanzeb and others reported as PLD 2013 Supreme Court 268. In the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others reported as 1996 SCMR 1185, Hon'ble Supreme Court of Pakistan had held that "if the Service Tribunal or Supreme Court of Pakistan decides a point of law relating to terms and conditions of service of a civil servant, which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demanded that the benefit of such judgment is extended to other civil servants." The dictates of just administration of a public sector corporation would also require that similar treatment is extended to petitioners of the instant petitions and they are given same benefit. Further reliance in this respect may be placed on judgment of Hon'ble Supreme Court of Pakistan in the case of Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others reported as 2009 SCMR 1. The bar of laches, in such circumstance, may conveniently be ignored by a constitutional Court.

9. The other objection of respondents regarding the fact that the instant constitutional petitions have not been maintainable due to the reason that service rules of the petitioners have not yet been clothed with the attire of statutory rules. It is sufficient to say that grievances of the petitioners have been arising from unfair treatment meted to them at the time of their appointments. Their grievance has not arisen when the rules of NADRA authorities had become applicable to them. In other words, they have not been agitating any of the grievance of violation of un-statutory rules of NADRA. Appointments were made by NADRA authorities under the powers vested in it by section 35 of the National Database and Registration Authority Ordinance, 2000 (hereinafter referred to as "the Ordinance"). NADRA has been established under section 3 of the Ordinance. Subsections (1), (2) and (3) of section 3 are relevant in this respect, which are reproduced hereunder for ready reference;

(1) As soon as may be, but not later than thirty days after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an Authority to be known as the National Database

and Registration Authority for carrying out the purposes of this Ordinance. (3)

(2) The Authority shall be a body corporate, with power to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by that name sue and be sued.

(3) The Authority shall consist of a Chairman, also to be called the Registrar General of Pakistan, and [not less than] five members to be appointed by the Federal Government.

The purpose, objects, functions and powers of the authority have been given in detailed in section 5 of the Ordinance which leaves no doubt that it had been performing governmental functions. Reproduction of subsections (1), (2) and (3) of section 5 would also be beneficial for the present discourse, which are accordingly reproduced hereunder;

(1) The purpose and objects of the Authority shall be to formulate and implement policies and plans for;

(a) the development and establishment of an improved and modernized system of registration in the country through appropriate means including technologically advanced, effective and efficient means like computerization, automation, creation of databases, data warehousing, networking, interfacing of databases and related facilities and services;

(b) the broadening of the registration base to bring within its purview all persons and things, wherever and whatever they may be, to the extent and in the manner laid down in this Ordinance; and

(c) the establishment and maintenance of multi-purpose databases, data warehousing, networking, interfacing of databases and related facilities and services.

(2) The purposes of developing, establishing or maintaining a registration or database system may include facilitation of identification, planning, or any other purpose permitted by law.

(3) The Authority may take such measures and exercise such powers and perform such functions as it considers necessary for carrying out the purposes of this Ordinance.

The above reproduced section clearly shows that NADRA has been performing governmental functions, directly under the authority of the Federal Government which is also evident from section 3 of the Ordinance and thus there has been no doubt that NADRA has been amenable to the constitutional jurisdiction of this Court. The question that writ petition of an employee in respect of violation of non-statutory rules of NADRA, is not maintainable is a different question altogether. If grievance of an employee arose out of any adverse order passed against him during his service, under the un-statutory rules, a writ petition before a High Court would no doubt be non-maintainable according to ratios of judgments in

the case of "Chairman NADRA Islamabad through Chairman and another v. Muhammad Ali Shah and others" reported as 2017 SCMR 1979 as well as in the case of "Maj. (Retd.) Syed Muhammad Tanveer Abbas and another v. Federation of Pakistan through Secretary, Ministry of Interior and another" reported as 2019 SCMR 984, but as stated earlier grievances of the petitioners have not been arising out of violation of the un-statutory rules but their very appointments in NADRA. Any assailed action of NADRA authorities at the time of appointments would no doubt be amenable to constitutional jurisdiction of this Court, for the reason that NADRA has itself been amenable to constitutional jurisdiction of this Court. In the case of "Pakistan Telecommunication Co. Ltd. Through Chairman v. Iqbal Nasir" reported as "PLD 2011 Supreme Court 132", Hon'ble Supreme Court of Pakistan has expressly held that PTCL had been amenable to writ jurisdiction of the High Court but writ petition of an employee arising out of violation of non-statutory rules would not be maintainable. The distinction between the two questions is necessary for the purpose of instant adjudication. Since grievances of the petitioners in the instant constitutional petitions have not been arising out of violation of any service rules of NADRA, but has been arising out of their first appointment in NADRA, facts of these cases would therefore be distinguishable from facts of cases of the private parties in the judgments reported as 2017 SCMR 1979 and 2019 SCMR 984.

10. In light of what has been discussed above, we allow the instant writ petitions and direct the respondents to treat petitioners of these connected matters similar to petitioner of W.P. No. 549-M of 2012. All the petitioners shall be appointed to the posts Call Centre/Customer Service Executive with effect from the date from which said petitioner has been ordered to be given the post of Customer Service Executive. They shall squarely be placed equal to him in all respects and shall not be discriminated in any manner.

MH/70/P Petition allowed.

ATTESTED

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2021 S C M R 1313

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, C.J., Mazhar Alam Khan Miankhel and Sayyed Mazahar Ali Akbar Naqvi, JJ

QUETTA DEVELOPMENT AUTHORITY through Director General---Appellants

Versus

ABDUL BASIT and others ---Respondents

Civil Appeal No. 1562/2020, C.M.A. No. 259-Q/2020 in C.A. No. 1562/2020 and C.A. No. 1563/2020, C.M.A. No. 260-Q/2020 in C.A. No. 1563/2020, C.A. No. 1564/2020, C.M.A. No. 262-Q/2020, C.A. No. 1565/2020 and C.M.A. No. 264-Q/2020 in C.A. No. 1565/2020, decided on 31st May, 2021.

(On appeal from the judgment dated 16.9.2020 passed by the High Court of Balochistan, Quetta in C.P. No.970/2015, C.P. No.1011/2015, C.Ps. Nos. 1258/2015, 1257/2018)

(a) Civil service---

----Civil Procedure Code (V of 1908), S. 11---Appointment orders, restoration of---Res-judicata, principle of---Applicability---Appellant Authority/employer ('the Authority") in the present round of litigation, had once again raised the same points of facts and the law raised in an earlier round of litigation involving other similarly placed employees regarding nature of appointments and then dismissal from service of the respondent-employees---Earlier part of the litigation had come to an end and had attained finality between the parties---Questions in the earlier round of litigation once decided by the competent Court of law, could not be re-agitated again by the Authority---Such aspect/issue would act as res judicata against the Authority precluding it to question the order of appointments of respondents and then their dismissals---Pros and cons of the appointments and the dismissal orders of similarly placed employees were thoroughly considered by the High Court and then upheld by the Supreme Court in the earlier round of litigation; they had attained finality, and were not open to any further dilation and consideration---Appeals were dismissed.

(b) Constitution of Pakistan---

----Art. 25---Civil service---Appointment orders, restoration of---Relief of restoration of appointments orders granted to similarly and equally placed employees---Present employees/respondents were appointed on the same terms and conditions of service as that of similarly placed employees ('earlier litigants') who had been given relief of restoration of their appointment orders by declaring the orders of their withdrawal/cancellation as null and void---Present respondents were hired and fired together in the same manner as earlier litigants and were standing on the same pedestal as them---Both sets of appointees could not be separated from

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each other with regard to their appointments and dismissal---Only difference between the two sets was that the earlier group/earlier litigants litigated for their rights and second group, i.e. the present respondents, did not go into litigation earlier and through present litigation sought the relief already given to the first group who litigated---To claim such a relief was the fundamental right of respondents and the Constitution extended protection to such right and as such they could not be treated differently; this was the mandate of Art. of 25 of the Constitution---Respondents being equally and similarly placed as the earlier litigants, they become entitled to the same relief which was extended to them---Appeals were dismissed.

Hameed Akhtar Niazi v. Secretary, Establishment Division 1996 SCMR 1185; Tara Chand v. Karachi Water and Sewerage Board 2005 SCMR 499; Government of Punjab v. Sameena Parveen 2009 SCMR 1 and Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others 2014 SCMR 1336 ref.

(c) Constitution of Pakistan---

----Art 199---Constitutional petition before the High Court---Laches, principle of---Scope---Rule of laches was applied in accordance with facts and circumstances of each case, and it could not be made a rule of universal application.

Syed Ayaz Zahoor, Advocate Supreme Court for Appellant (Via Video Link, Quetta) (in all cases).

Gul Hassan Tareen, Advocate Supreme Court (Via Video Link, Quetta) and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondents (in C.As. Nos. 1562-1563/2020).

Nemo for Respondents (in C.As. Nos. 1564-1565/2020).

Date of hearing: 31st May, 2021.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.---The Quetta Development Authority ('QDA') duly advertised different posts in various pay scales. After completing all the codal formalities under 'Quetta Development Authority Employees (Service) Regulations 2010', ('Regulations'), Departmental Selection Committee recommended the names of successful Applicants/candidates for appointment to different posts. The Director General ('DG'), QDA in exercise of powers conferred upon him under 'Quetta Development Authority Ordinance, 1978', ('The Ordinance'), vide its order dated 8th January, 2013 issued their appointment orders and resultantly almost all such appointees submitted their joining reports for their respective posts. But just after few days of such exercise, their appointments were withdrawn/ cancelled by the DG, QDA, ('the appointing authority'), vide its two different orders dated 24th January, 2013 and 12th February, 2013. For ready reference both the orders are reproduced hereinbelow respectively:-

"QUETTA DEVELOPMENT AUTHORITY 34

Dated Quetta the 24 January 2013

ORDER

No.1-16/78(135) Admn: 1860-66/. In view of weak financial position of QDA, decreasing of interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid, the recruitment orders of staff issued vide this office order No.1-16/78(135) Admn: 1574 to 1732 dated 8th January 2013 and No.1-16/78(135) Admn: 1733 to 1855 dated 9th January 2013 are hereby withdrawn/cancelled.

Sd/-

DIRECTOR GENERAL

Quetta Development Authority"

ORDER - dated-12.2.2013:

"No.1-16/78(135) Admn:525-30). In view of weak financial position of QDA, decreasing interest rates on Term Deposits of QDA by commercial banks and non-receipt of grant-in-aid, the recruitment orders of staff issued vide this office order No.1-16/78(135)Admn: 1553-60 dated 8th January 2013, office order No.1-16/78(135) Admn: 1561-67 dated 8th January 2013 and No.1-16/78(135) Admn: 1567-74 dated 8th January 2013 are hereby withdrawn/cancelled".

2. The said orders were questioned before The High Court of Balochistan, Quetta ('The High Court'). The High Court vide its detailed and elaborate consolidated judgment dated 12th January, 2015 rendered in different Writ Petitions, filed by some of the affectees, set aside the above noted withdrawal/cancellation orders by allowing their Writ Petitions, and declared the said orders to be null and void having no legal effect and their appointment orders were restored. This Court vide its judgment dated 18th September, 2015 passed in Civil Petition No.167/2015, etc dismissed the Civil Petitions and refused to grant the leave to appeal by upholding the judgment of The High Court dated 12th January, 2015. The said order was complied with and acted upon to the extent of the Petitioners of the Writ Petitions.

The present Respondents, being the remaining affectees of the withdrawal/cancellation orders (noted above) regarding their appointments, submitted their applications for reinstatement in the light of judgments rendered by The High Court and The Supreme Court noted above, but the present Appellant-DG, QDA, turned down their request. They being aggrieved and having no other remedy, approached The High Court with their respective Constitutional Petitions which were allowed vide the impugned judgment dated 16th September, 2020 and the

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Respondents, herein, were ordered to be reinstated to their respective posts in the light of recommendations of the Departmental Selection Committee and their respective appointment orders. The DG, QDA, feeling aggrieved, approached this Court with leave of this Court dated 23rd December, 2020.

3. Learned counsel for the parties were heard and record of the case perused. The main contention of the learned counsel for the Appellant was that the Constitution Petitions before The High Court filed by the Respondents were hit by the principle of laches as many of the same were filed by the Respondents after about two years and ten months. Besides the above, his next stance was that the Respondents were project employees and as per terms and conditions of their appointment orders, their services were liable to termination without assigning any reasons. Whereas the learned counsel for the Respondents, simply sought for the alike treatment to the Respondents as was meted out to the similarly placed employees of QDA who were appointed with the Respondents vide the same appointment orders dated 8th January, 2013 on similar terms and conditions of service, as per mandate of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ('The Constitution'). He further argued that principle of laches in such circumstances, looses its force. He went on to maintain that orders of withdrawal/cancellation of appointment orders had earlier been struck down qua the litigating affectees in earlier round of litigation and the same has attained finality; validity of which now cannot be considered/challenged in the present set of Writ Petitions.

4. Perusal of the record would reveal that process and procedure of appointment of the present Respondents and the Petitioners of earlier Writ Petitions, as noted above, had never been a question under dispute. It was the subsequent two orders of withdrawal/cancellation of the appointments made by the DG, QDA, as reproduced above. The legality/validity of the said two orders was elaborately discussed and considered by The High Court in its earlier consolidated judgment dated 12th January, 2015 and the same was upheld by this court vide its judgment dated 18th September, 2015. The present Appellant had contested the earlier round of litigation, and was fully aware of the entire episode in the Courts. The Appellant, (the same authority/person) in the present round of litigation, has once again raised the same points of facts and the law regarding nature of appointments and then dismissal from service of the Respondents and the learned counsel for the Appellant, even argued the same points today in the Court. The earlier part of the litigation has come to an end and has attained finality between the parties. That, questions once decided by the competent Court of law, cannot be re-agitated again by the Appellant. This aspect/issue will act as res judicata against him precluding him to question the order of appointments and then dismissals. The pros and cons of the appointments and the dismissal orders of the Petitioners in earlier round of litigation, were thoroughly considered by The High Court and then upheld by this Court. These have attained finality, not open to any further dilation and consideration.

The present round of litigation has been narrowed down only to the question of entitlement of the Respondents as per the mandate of Article 25 of the

ATTESTED

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Constitution. Whether they can be extended the same relief/benefit as was extended to their similarly placed colleagues through the intervention of the Court in an earlier round of litigation. We in the peculiar circumstances of the case, legally can only look into this aspect of the case. It's a matter of record that present Respondents were appointed on the same terms and conditions of service as that of the Petitioners of earlier Writ Petitions who have been given relief by the Court by restoring their orders of appointment and declaring the orders of withdrawal/cancellation as null and void, having no legal effect. The present Respondents were hired and fired together in the same manner as Petitioners of earlier Writ Petitions and are standing on the same pedestal as the earlier one. Both the sets of appointees cannot be separated from each other with regard to their appointments and dismissal. The only difference between the two sets is that the earlier group is the one who litigated for their rights and second group, the present Respondents, did not go to litigation earlier and through instant litigation has sought the relief already given to the first group who litigated. To claim such a relief is their fundamental right and the Constitution extends protection to their such right and as such they cannot be treated differently. The scale of justice has to be balanced on the same pattern. This is the mandate of Article of 25 of the Constitution. The law of the land in this regard has become well established. References in this regard can be made to the cases of Hameed Akhtar Niazi v. Secretary, Establishment Division (1996 SCMR 1185), Tara Chand v. Karachi Water and Sewerage Board (2005 SCMR 499), Government of Punjab v. Sameena Parveen (2009 SCMR 1) and Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others (2014 SCMR 1336). When we hold that the Respondents being equally and similarly placed as the Petitioners of earlier Writ Petitions, then they become entitled to the same relief which was extended to them.

5. In view of the law laid down by this Court (noted above), we cannot non-suit the Respondents and allow the laches to be a stumbling block in the way of dispensation of justice. This will amount to a refusal of a fundamental right accrued in their favour after earlier decisions of The High Court and this Court. The rule of laches is applied in accordance with facts and circumstances of each case. It cannot be made a rule of universal application. The question of laches, in the circumstances looses its force. The earlier judgment of The High Court was upheld by this Court and has attained finality. So, The High Court has very aptly dealt with the matter in favour of present Respondents in the present round of litigation.

6. We in the circumstances find no merit; hence these appeals are dismissed with no order as to costs. All the CMAs are also disposed of accordingly.

MWA/Q-3/SC Appeal dismissed.

ATTESTED

بعدالت

KP Service Tribunal, Peshawar

202_ منجانب

سجاد حسین بنام

پولیس

مورخہ ----

مقدمہ ----

دعویٰ ----

جرم ----

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام Peshawar کیلئے [illegible]
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر ایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی 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 با اختیارات حاصل ہوں گے۔ اور اس کا ساختہ
پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 26 ماہ 9 سن 20

العبد

بمقام Peshawar منظور ہے۔

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.
aiglegal11@gmail.com

434/Hqrs/E
06/2/23

No. 294 **/Legal dated Peshawar, the** 27 / **01** /**2023.**

To: The Regional Police Officer,
Malakand.

The District Police Officer,
Bunir.

Subject: **SUBMISSION OF PARA-WISE COMMENTS IN SERVICE APPEAL NO. 1401/2022 TITLED SAJJAD HUSSAIN VS POLICE DEPARTMENT.**

Memo:

Enclosed find copy of letter No. 165-70, dated 25.01.2023 received from the Assistant Advocate General, Khyber Pakhtunkhwa, Service Tribunal, Peshawar for further necessary action, please.

DSP/LEGAL,
For Assistant Inspector General of Police/Legal,
Khyber Pakhtunkhwa, Peshawar
26.01.2023

577
01.02.2023

No 1611 / WPC/ DPO Buner
Dt 06-02-023

Inspector legal.
for Comments with in two days.

District Police Officer
Buner

Regional Police Officer,
Malakand Region.
Saidu Sharif, Swat.
3/2/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1401/2022

Sajjad Hussain Ex-Constable No.522 P.S Totali District Buner.

..... **Appellant**

VERSUS

1. Inspector General of Police KP Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat.
3. District Police Officer Buner

.....**Respondents**

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Inspector Legal Buner

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1401/2022

Sajjad Hussain Ex-Constable No.522 P.S Totali District Buner.

..... **Appellant**

VERSUS

1. Inspector General of Police KP Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat.
3. District Police Officer Buner

.....**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 01 TO 03

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

Respectfully Sheweth:-

1. Pertain to record.

2. That the appellant while posted to P.S Totalai was found guilty of gross misconduct as it was reported vide DD No.07 dated 24/04/2009 P.S Totalai that the appellant had left the place of duty and absented himself from official duty without prior permission or approved leave of his high ups till the date of dismissal vide OB No.49 dated 15/05/2009. **(Copies of DD report and dismissal order attached as annexure A & B).** Moreover, that in the year 2009 when militancy was at its peak and the services of the appellant were direly needed by the department for the protection of lives and properties of the public, he showed cowardice and left his place of duty without ~~any~~ the permission of his high ups. Besides this, the appellant had absented himself for 101 days vide DD No.22 dated 30/09/2008 **(annexure "C")**, wherein his 101 day absentee were treated as leave without pay vide OB No.03 dated 16/01/2009. The service record of the appellant showed that he was habitual absentee and is not interested in his job.

3. Incorrect. In some cases as per rules, removal from service special Ordinance 2000 amended 2001 the competent authority has mandate to dispense the enquiry proceeding. That the appellant willfully absented himself from official duty without ~~any~~ the permission or approved leave and did not want to continue his job, hence he was dismissed from service as per law/rules.

4. That every case has its different footing, however the case of present appellant is different from those of others appellants.

5. Incorrect. As stated above, every case has its different footings. Furthermore, the appellant has not preferred any departmental appeal before the appellate authority i.e Regional Police Office, Malakand Region within the statutory period nor any record is available is in this regard. **(copy of Regional police Officer Malakand Swat letter No. 2998/E dated 08.03.2023 is attached as annexure "D")**

6. Incorrect. As stated above, the appellant has not preferred any departmental appeal before the appellate authority within the statutory period. Furthermore, Appeal of the appellant is badly time barred and has wrongly challenged the legal and valid orders of the respondents before the honorable tribunal through unsound reasons/grounds.

GROUNDS:

A. Incorrect. That the order passed by the respondents is legal and in accordance with law/rules and no violation of the article of Islamic Republic of Pakistan has been made by the respondents.

B. Incorrect. That the order of respondents is legal, lawful and in accordance with law/rules.

C. Incorrect: As explained above in various paras.

D. Incorrect. The appellant has not been discriminating and every case has its own footing, however the case of present appellant is different from those of other appellants.

E. In some cases as per rules, removal from service special Ordinance 2000 amended 2001 the competent authority has mandate to dispense the enquiry proceeding. That the appellant willfully absented himself from official duty

without any permission or approved leave and did not want to continue his job, hence he was dismissed from service as per law/rules.

F. Incorrect. This Para already explained above in detail.

G. As explained above in detail.

H. That other grounds not specifically answered in the reply, will be agitated with the permission of honorable Tribunal at the time of arguments.

PRAYER:

Keeping in view the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.

Inspector General of Police
KPK, Peshawar
(Respondent No. 01)

Regional Police Officer,
Malakand Swat
(Respondent No. 02)

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

District Police Officer Buner
(Respondent No. 03)

District Police Officer
Buner

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1401/2022

Sajjad Hussain Ex- Constable No.522 P.S Totalai District Buner.

..... **Appellant**

VERSUS

1. Inspector General of Police KP Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat.
3. District Police Officer Buner

.....**Respondents**

AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Sher Ali Khan Inspector Legal Buner to file the accompany Para-wise comments on our behalf in honorable Tribunal and do whatever is needed in honorable Tribunal.

Inspector General of Police
KPK, Peshawar
(Respondent No. 01)

Regional Police Officer,
Malakand Region
(Respondent No. 02)

District Police Officer Buner
(Respondent No. 03)

District Police Officer
Buner

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1401/2022

Sajjad Hussain Ex- Constable No.522 P.S Totalai District Buner.

..... **Appellant**

VERSUS

1. Inspector General of Police KP Peshawar
2. Regional Police Officer Malakand at Saidu Sharif Swat.
3. District Police Officer Buner

.....**Respondents**

AFFIDAVIT

We the above respondents do hereby solemnly affirm and state on oath that the contents of whole Para-wise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this honorable Tribunal.

Inspector General of Police
KPK, Peshawar
(Respondent No. 01)

Regional Police Officer,
Malakand Region
(Respondent No. 02)

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

District Police Officer Buner
(Respondent No. 03)

District Police Officer
Buner

(6) 'A' Annex-A

تھانہ ٹوٹالائی تعلقہ 07 روزنامچہ 24/04/2009 ضلع بونیر

حلقہ 07 رپورٹ عہدہ حاضری سپرد حکم شاہ HHC وقت 10:30 بجے مورخہ 24/04/009 درج ھکیہ دھشت گرد طالبان نے مورخہ 23/4/009 کو چوکی جنگل دھ حاضر کرکے مال گودام اسلحہ ایمونیشن دیگر سرکاری، نجی مال کو اپنے ساتھ لے جانا اور چوکی جنگل کی رھائیڈ کو نقصان پہنچایا ہے۔ اندریں سلسلہ مقدمہ علت 52 مورخہ 23/04/009 جرم 17 (ی) 7ATA 353PPC تھانہ ٹوٹالائی درج رجسٹر ہوچکا ہے۔ چوکی جنگل دھ حاضر HHC تاجیر خان گشتدان تاجیر خان 240، کنسٹیبل اکبر 351 جاوید اللہ مل 137 سجاد حسین 522 چوکی میں موجود تھے۔ بہ امداد اہلیان دیہ جنگل دھان بچانے میں کامیاب ہوگئے۔ جسکے ساتھ محرر تھانہ نے بذریعہ موبائل فون مزید افسران بالا کو اپنے اپنے گھروں میں تشریف فرما ہیں۔ مگر حالات نارمل نظر آتا ہے۔ تھانہ جنگل میں حاضری کرنے حاضر ہیں لہذا اندریں سلسلہ احتیاطاً رپورٹ درج روزنامچہ کی جاتی ہے۔

ضابطہ علی

نقل مطابق اصل ہے۔

ASHHC-DS TOTALAI

3-2-023-

Sir

POLICE STATION TOTALAI BUNER

3-2-023

'B' Annex-B

Phone # 0939-510470
Fax # 0939-510501

ORDER.

Where is you Constable Sajjad Hussain No.522

While posted P.S Totalai according to the report received in this office vide D D No 7 dated 24.4.2009 you left the place of duty with out valid cause and intimation to your office in charge ,since then you have been un authorized absence from duty that is from this constitute mis conduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended)Ordinance 2001.

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority ,am ,therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment)ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry .since the accused Police Officer Constable Sajjad Hussasin No 522 has been found guilty of gross misconduct as defined in the ordinance ,

I,Mr .ABDUR RASHID D.P.O,Buner as competent authority ,therefore impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER
BUNER.

OB No 49

Dated : 15.5.09

Attested

SDPO-Daggar

(8) 'C' Annex-C

تھانہ ناوگئی — نقل مد نمبر روزنامچہ 30/9/08 — ضلع بونیر

مد نمبر 22 رپورٹ غیر حاضری 1110 مرقومہ 17:45 بجے مورخہ 30.9.08 ہیڈ کانسٹیبل
سماجدین 522 جو کہ تھانہ ہذا میں تعینات ہے۔ مذکورہ
کے نشست معلوم ہوا کہ مذکورہ کنسٹیبل بغیر حصول اجازت
گھر خود چلا گیا ہے۔ مذکورہ کے ساتھ بذریعہ فون موبائل 346
رابطہ ہوا معلوم ہوا کہ مذکورہ گھر پر ہے۔ کہ وہ مزید ڈیوٹی
نہیں کرنا چاہتا ہے۔ سردست مذکورہ کنسٹیبل سماجدین 522
کے خلاف رپورٹ غیر حاضری درج روزنامچہ ہو کر تشکیل برائے
مزید کاروائی و غیرہ بالا کے خدمت میں مرسل ہوں۔

جناب عالی

نقل مطابق اصل ہے

MM Nawagai
10.1.09

— 101 days leave without Pay.
— Release Pay.

DPO Buner
16/1/09

OB. No. 3
dt. 16/1/09

Attested
SDO-Daggar

Scanned with CamScanner

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
SAIDU SHARIF SWAT.
Ph: 0946-9240381-82 & Fax No. 0946-9240390
Email: digmalakand@yahoo.com

No. 2998 **/E, dated Saidu Sharif the** 08 / 03 **/2023**

To: **The District Police Officer, Buner**

Subject:
1. **SA No. 1401/2022 OF EX-CONSTABLE SAJJAD HUSSAIN NO. 522**
2. **SA No. 1765/2022 OF EX-CONSTABLE ABDUL AZIZ NO. 501.**
3. **SA No. 1766/2022 OF EX-CONSTABLE FAYAZ AHMAD NO. 282.**
4. **SA No. 1767/2022 OF EX-CONSTABLE RASHID KHAN NO. 523**

Memorandum:

Reference your office Memo: No. 956/Legal dated 06/03/2023 on the subject cited above.

According to this office record none of the subject Police personnel have preferred departmental appeal for reinstatement into service in this office

Regional Police Officer,
Malakand, at Saidu Sharif Swat

Insp. Legal

District Police Officer
Buner

1080
09-03-2023