

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL NO. 2585/2022

ZAKIR KHAN **(Petitioner)**

VERSUS

GOVT OF KHYBER PAKHTUNKHWA & OTHERS **(Respondents)**

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1	Reply on behalf of respondents	--	1-2
2	Affidavit	---	3
3	Copy of FIR No. 340 of 2018	"A"	4-5
4	Office Order No. 1200 dated 30.01.2019	"B"	6
5	Copy of ESTA CODE Section-6	"C"	7-8
6	Authority	---	9

①

IN THE COURT OF KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Dairy No. 15724

Dated 12-09-24

Service Appeal No. 2585 of 2023.

Mr. Zakir Khan Junior Clerk

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through

(Respondent)

Secretary Board of Revenue etc.

Para wise Comments on behalf of respondents 1 to 3 are as under:-

Respectfully Sheweth:-

That the respondents submits as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has got no cause of action to file instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands
3. That the Appeal is barred by law and limitation.

FACTS:

1. Pertains to record.
2. Incorrect, the appellant is habitually criminal and involved in immoral activities. Prior to the FIR No. 227 dated 16/09/2019 another FIR No. 340 dated 17/06/2018 under section 364-A/50/53 CPA was also lodged against him due to his immoral character/activities **(Copy of FIR is attached as annexure "A")**, in light of which the appellant was suspended as per law, rules but Later on in light of the order of Additional District & Sessions Judge dated 08/01/2019, the suspension order of the appellant was withdrawn by the respondent No. 03 vide order dated 30/01/2019 **(Flag 'B')**.
3. As explained at Para-2.
4. Pertains to record.
5. Correct to the extent that after his acquittal by the Hon,abl Darul Qaza Swat vide order dated 11/01/2023, an application dated 27.01.2023 was moved for re-instatement alongwith all back benefits.

2

But according to **Section 6 (page 167)** of ESTA CODE the appellant is not entitled for back benefits, as the appellant Zakir Khan has simply been acquitted by the Hon,able Darul Qaza Swat vide order dated 11/01/2023. While Section 6 of the ESTA CODE provides that if a government servant/accused is honorably acquitted by the competent court of law, then back benefits be given to the reinstated government servants and in case of simple acquittal then no government servant is entitled for such benefits (**Copy of the concerned section of ESTA CODE is attached at annexure "C"**).

GROUNDS:

- A. Incorrect. The respondent No. 03 has acted according to law, rules and policy of the Provincial Government.
- B. Incorrect. As explained at para-5 of the facts above.
- C. Incorrect. As explained at para-2 of the facts above.
- D. Incorrect. The dismissal of the appellant was been ordered as per law, rules and policy of Provincial Government.
- E. Incorrect. As explained in the above paras.
- F. Incorrect. The respondents seek permission to raise additional grounds at the time of arguments.

PRAYER:

In light of the above facts, it is humbly prayed that on acceptance of the instant para wise reply, the appeal of the appellant may kindly be dismissed please.

(Muhammad Ihsan Khan)
~~Secretary,~~
Board of Revenue
Revenue & Estate Department
(Respondent No. 01)

~~Commissioner,~~
Malakand Division
Saidu Sharif Swat
(Respondent No. 02)
(Amjad Ali Khan)
Commissioner, Malakand Division.

(Muhammad Asif Khan)
~~Deputy Commissioner,~~
Dir Lower
(Respondent No. 03)
~~Deputy Commissioner,~~
Dir Lower

IN THE COURT OF SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

3

SERVICE APPEAL NO. 2585/2023

ZAKIR KHAN **(Petitioner)**

VERSUS

GOVT OF KHYBER PAKHTUNKHWA & OTHERS **(Respondents)**

AFFIDAVIT

I, Muhammad Arif Khan, Deputy Commissioner, Dir Lower, do hereby solemnly affirm and declare on oath that all the contents of the reply are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this Honorable Services Tribunal.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-party nor their defence has been struck off/cost.



21
DEPONENT
CNIC # 17201-2479880-7
Cell: 0301-5946675
DEPUTY COMMISSIONER,
DIR LOWER

12 SEP 2024

ابتدائی اطلاعی رپورٹ

43-08056543-1
3875-0345-9843

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ نمبر 1531/10/1987

اوپر

درجہ

33

340

تاریخ وقت وقوع 17/10/18 وقت 07:55 بجے

تاریخ وقت رپورٹ	17/10/18 وقت 09:45 بجے	طالعید	17/10/18 وقت 10:55 بجے
نام و سکونت اطلاع دہندہ	خاروق خان ولد کمال	خان قوم عزیز خیل بچہ 38 سالہ	شہرہ ٹپپین بلوچ
مختصر کیفیت جرم (موذوقہ) حال اگر کچھ لیا گیا ہو۔	طالع 53	496A-5-11PPC	پابلیڈر دستکھانہ
جائے وقوعہ فاصلہ تقاضا سے اور سمت	اراضیات الموعوم خوارجین	واقعہ ریسہ شہرہ نیانہ	5/10 کوئٹہ جنوب شرق ازرقانہ
نام و سکونت لازم	Mob=03473687518	ذاکر خان ولد سید سعید حقیق	سکونت ریسہ شہرہ
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو: تا وقتہ بیان کرو۔	بر ایسڈ ایس ٹی	سید سعید حقیق	حیدرآباد
تقاضا سے روائی کی تاریخ و وقت	-	-	-

- سپیل ڈاؤن

اس وقت ریسہ شہرہ درجہ خاریجین سے اطلاع پہنچ کر درج کر دی۔ یہ اطلاع خان کمال کے پاس پہنچ گئی۔ خان کمال نے اطلاع دی کہ ایک شخص نے عین نام اراضیات شہرہ سے اطلاع دی ہے۔ یہ شخص جو اراضیات شہرہ کے پرنسپل ہے، اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔ اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔ اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔

اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔ اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔ اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔ اس شخص نے کہا کہ وہ اپنے ایک دوست کو اپنے ایک دوست کے پاس لے گیا ہے اور وہ وہاں موجود ہے۔





B
② ⑥

OFFICE OF THE
DEPUTY COMMISSIONER
DIR LOWER

No. 1200 /c/Estt:
Dated Timergara the 30/01/2019

dcdirlower@gmail.com Deputy Commissioner Dir Lower @dcdirlower 0945-9250001

OFFICE ORDER

Consequent upon the decision of Additional District & Session Judge, Chakdara, Dir Lower, dated 08/01/2019, in case FIR No. 340, dated 17/6/2018, U/S 496-A/5/1 PPC/50, Child Protection Act 2010, Police Station Ouch, the suspension order issued vide this office edorstment No. 14200-03/Estt: dated 22/6/2018, in respect of Zakir Khan, Junior Clerk of this office is hereby withdrawn.

The official concerned is transferred from Tehsil Office Khall to the office of Assistant Commissioner, Lalqila for duty with immediate effect.


Deputy Commissioner,
Dir Lower

No. 1201-3 /c/Estt:

Copy forwarded for information to the:-

1. The Assistant Commissioner, Lalqilla.
2. The Tehsildar Khall.
3. Official concerned for information and compliance.


Deputy Commissioner,
Dir Lower




C (7)

article 194 CSR in order to ensure that the competent authority remains in touch with the position of the official and his case; the fact of suspension may also be notified under advice to all concerned including the audit authorities in terms of Article 194 CSR; and

- (b) a report on the progress of the criminal case leading to the suspension of a Government servant under Article 194 or 194-A. CSR, as the case may be, be submitted to the authorized officer every three months for his information to ensure that he remains in touch with the position of the official and his case.

6. The O.M. issues with the concurrence of the Ministry of Finance.

(Authority -O M No 4/1274-D1, dated the 10th March, 1980)

**Dismissal or removal of Government
Servants - Allowances on reinstatement**

In continuation of this Department letter No.S(R)-13/58/SO.XII, dated the 30th September, 1958, I am directed to say, that according to Rule 152(a) of the Sind Civil Service Rules, Volume-I, (which corresponds to Rule 7.3 of Civil Service Rules, Punjab, Volume-I) when a Government servant is honourably acquitted in a departmental enquiry or trial in Court, the period of absence from duty on account of the suspension, dismissal or removal from service, has to be treated as period spent on duty. If the acquittal is otherwise than honourable, the period of absence on account of suspension, dismissal or removal will not be treated as period spent on duty unless the revising or appellate authority so directs. In this connection a question has arisen whether an acquittal on technical grounds or caused by lack of evidence should be deemed to be honourable acquittal and whether such acquittal leaves any discretion to decide whether the acquittal was or was not honourable for the purposes of determining the pay and allowances payable to such servant during the said period of absence.

Amal
[Signature]

2. Government have considered the whole question and it has been decided that for the purposes of pay and other service matters, it is primarily necessary to consider whether or not an acquittal is honourable. When a servant is suspended he does not work for his master and should obviously get no salary for the period during which he has rendered no service. Service Rule, however, make provision for payment of a subsistence allowance during the period so that the servant does not starve. Where the servant might have been falsely involved in the case or inquiry, the State is prepared to compensate him fully, provided he satisfies that he has been honourably acquitted. The burden of proof is on him. In certain cases, it may be difficult for him to discharge this burden as in the case of a discharge on technical grounds where the merits of the case have not been discussed or gone into. It should be borne in mind that payment of salary during the period of suspension is a matter of favour and not a right even though the servant is finally acquitted. It may be noted that by his conduct he contributed to his implication in the case even though he was not guilty of the offence. Therefore, he will not be entitled to salary during the suspension period unless he satisfies Government that the case against him was absolutely false and that he has been honourably acquitted. On the other hand, it will not be presumed in every case of acquittal on technical grounds that the acquittal has not been honourable. Every case should, therefore, be decided on its own facts and circumstances and if the acquittal is held to be honourable the period of absence should be treated as spent on duty.

⑧

3. The ruling reported in A.I.R(33), 1946 Sindh 121 is not relevant. That was a case for expunction of remarks. But, even in that case the Chief Court held that it was not inconsistent for a Judge to give benefit of doubt to an accused and will point a suspicious finger at him. All that it says is that having acquitted him, the court cannot proceed to suggest that his innocence had not been established.

(Authority: West Pakistan S&GAD letter No.S(R)I-13/58/SOXII, dated 10.1.1959)

Detention of Government Servants under the Public Safety Acts.

A question has arisen whether an employee of the Federal Government who is detained in prison for a period of time under the provisions of the Sind Maintenance of Public Safety Act, 1948 or a similar enactment and is released without any trial loses his service under the Government and whether such a person is entitled to any leave salary or subsistence allowance for the period he remained under detention. As some doubts seemed to exist in the matter, the question has been fully considered in consultation with the Law Division and it has been decided that the following procedure should be adopted to regulate cases of detention in prison and subsequent acquittal or conviction:-

- (i) As soon as it comes to notice that an employee has been detained in prison, action should be taken to place him under suspension; the period of the employee's detention⁹⁹ [should be treated as period spent under] committal to prison within the meaning of Article 194 C.S.R. and the pay and allowances during suspension should be regulated under F.R.53;
- (ii) If the employee is subsequently acquitted honorably he should be reinstated forthwith. He will be entitled to receive full salary for the entire period of his absence from duty under F.R.54(a);
- (iii) If on the other hand the acquittal is not honorable, then the provision of F.R.54 (b) will apply;
- (iv) If the employee is released from detention without any trial, it is open to the competent authority to take disciplinary action against him if good and sufficient reasons exist from such action. In that case the procedure prescribed in the Efficiency and Discipline Rules must be observed;
- (v) If the employee is convicted, he may be dismissed from service if his retention in service is not desirable. In that case the procedure prescribed in the Efficiency and Discipline Rules need not be observed. He will be entitled to nothing more than the subsistence allowance up to the date of his dismissal from which date the pay and allowance will cease under F.R.52.

(Authority: Office Memorandum No.F/19/1/49-Ests(SE) dated the 20th December 1949)



OFFICE OF THE DEPUTY COMMISSIONER DIR LOWER

4

No. 11467 /Lit

Dated Timergara the, 03/09/2024

☎ 0945-9250003

📠 0945-9250001

✉ dcdirlower@gmail.com

📌 dc.lowerdir

AUTHORITY

Mr. Saeed-ur-Rehman, Tehsildar Balambat Dir Lower is hereby authorized and deputed to attend the Services Tribunal Khyber Pakhtunkhwa at Swat on 04/09/2024 in case service appeal No.2585 of 2023 titled Zakir Khan VS Government of Khyber Pakhtunkhwa etc on behalf of undersigned.

DEPUTY COMMISSIONER
DIR LOWER

No. 11468-70 / Lit:

Copy Forwarded to:

1. The Registrar Services Tribunal Khyber Pakhtunkhwa Peshawar.
2. The Additional Advocate General, Services Tribunal Khyber Pakhtunkhwa at camp court Swat.
3. Official concerned for compliance. You are further directed to provide original copy of reply to the Hon,able court before attendance. Progress of the case be shared with this office. File alongwith reply (04-sets) is sent herewith for the purpose.

DEPUTY COMMISSIONER
DIR LOWER



OFFICE OF THE DEPUTY COMMISSIONER DIR LOWER

No. 13119 /III

Dated Timergara the, 11 /10 /2024

☎ 0945-9250003

☎ 0945-9250001

✉ dcclower@gmail.com

☎ 021-2541010

AUTHORITY

The Assistant Commissioner, Timergara Dir Lower is hereby authorized and deputed to attend the Services Tribunal Khyber Pakhtunkhwa at ~~Swat~~^{Peshawar} on 12 or 13 /09/2024 in case service appeal No.2555 of 2023 titled Zakir Khan VS Government of Khyber Pakhtunkhwa etc. for filing of reply on behalf of undersigned

DEPUTY COMMISSIONER
DIR LOWER

No 13130-23 /III

Copy Forwarded to:

1. The Registrar Services Tribunal Khyber Pakhtunkhwa Peshawar
2. The Additional Advocate General, Services Tribunal Khyber Pakhtunkhwa at camp court Swat
3. The Assistant Commissioner, Timergara for compliance. Original reply alongwith 03- sets photo copies are sent herewith
4. The Tehsildar Dhambar for necessary action

DEPUTY COMMISSIONER
DIR LOWER