

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD**

Service Appeal No.15608/2020

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

Muhammad Junaid (Ex-Constable No. 1329) S/O Muhammad Javed,  
Caste Gujjar, R/O Village Salayian, Tehsil & District Mansehra.

.... (Appellant)

**VERSUS**

1. Deputy Inspector General of Police, Hazara Range, Abbottabad.
2. District Police Officer, Mansehra.

.... (Respondents)

Shad Muhammad Khan  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution.....07.12.2020  
Date of Hearing.....23.07.2024  
Date of Decision.....23.07.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the impugned orders passed by the respondents may kindly be set aside and the appellant may graciously reinstated in service along with all back benefits.”



2. Brief facts of the case are that appellant was appointed vide order book No. 90 dated 13.05.2019 in connection with compensation of killing of Shahzad Son of Ali Khan by the Police in respect of which case was registered vide FIR No.208 dated 06.11.2018 U/S 302 PPC, P.S Phulra. That on 24.09.2020, appellant was discharged from service. Feeling aggrieved, he filed departmental appeal, which was rejected on 13.11.2020. Then he filed revision petition on 17.11.2020, which was also rejected vide order dated 17.03.2021, hence, the instant service appeal.
3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard learned Deputy District Attorney and have gone through the record and the proceedings of the case in minute particulars.
4. Learned counsel for the appellant argued that the impugned order dated 24.09.2020 was void *ab-initio* as it had been passed without fulfilling codal formalities. He further argued that no regular inquiry had been conducted and no charge sheet/statement of allegations as well as show cause notice had been served upon appellant. He further submitted that the appellant had been condemned unheard as no opportunity of personal hearing as well as cross-examination had been provided to him. Lastly, he concluded that the appellant was appointed on merit, therefore, he requested for acceptance of the instant service appeal.
5. Conversely, learned Deputy District Attorney argued that the impugned order was correct, legal and passed after observing all codal formalities. He submitted that the competent authority had the power to pass any order under summary proceedings; that the appellant had been appointed on the basis of compensation in the lieu of murder, which had been found void by the trial



court due to which he had been dismissed. Further, submitted that there was no need of final show cause notice as he had been dismissed in compliance of court order. Lastly, he submitted that the appeal was groundless and not maintainable, therefore, requested for dismissal of the same.

6. Perusal of record reveals that appellant was appointed as SPO vide order dated 13.05.2019 as a result of compromise arrived at among respondent/department and legal heirs of one Shehzad S/o Ali Khan R/o Daverian Phula in case FIR No.208 dated 06.11.2018 registered U/S 302 PPC at Police Station Phulra, because name of the appellant was given to the respondent by the Ali Khan father of deceased Shehzad for appointment. It is not out of place to mention here that earlier Mr. Ali Khan father of the deceased Shehzad had given name of one Khursheed S/o Behram Khan who appointed as SPO by the respondent on 25.03.2019 but later on, on 13.05.2019 father of the deceased Shehzad gave name of appellant for appointment with request to withdraw appointment order of said Khursheed upon which order of appointment of Khursheed was withdrawn on 13.05.2019 and appellant was appointed vide OB No.90 dated 13.05.2019 at the strength of Khyber Pakhtunkhwa Special Police Officer (Regularization of Service) October 2019 Act.

7. Appellant was performing his duties to entire satisfaction of his high ups when all of sudden appeal was discharged from service vide impugned order dated 24.09.2020, which was passed in compliance of the Judgment & order delivered in criminal case bearing FIR No.208 U/S 302 PPC of Police Station Phulri delivered on 07.09.2020, in the said order trial Judge observed



that government Jobs are not public franchise and cannot be awarded to the people of different pretext, jobs given in ..... of compromise are illegal, therefore, DPO concern was directed to deal it, in accordance with law being competent authority. Admittedly, appellant was appointed as a result of compromise as his name was suggested by the father of the deceased, Shehzad being his nephew and not on merit


8. It is also established rule of law that public jobs and services are not property of any individual person or authority, who distribute or award it to any person to settle his/their private score. Only eligible & competent citizen can be appointed after fulfilling and going thorough prescribed procedure, exams, test and interview as well as physical test , but in case of appellant no such settled procedure was followed which is against the rules i.e. Rule 10 of APTs Rules, 1989.


9. Learned Counsel for the appellant had taken the plea of rule of consistency by arguing that similar placed constable Khurshid was re-instated by this Tribunal vide order & dated 25.01.2024. Therefore, appellant is also to be treated like constable Khurshid, who too was appointed as a result of compromise. In our humble view, case of the present appellant is not falls within the definition of similarity placed employees with that of Khurshid, because said Khurshid appointment order in lieu of compromise was withdrawn upon application of father of the deceased Shehzad and appellant was appointed in his place, which fact is evident from judgment dated 25.01.2024, wherein it was held that Khurshid was later on appointed on merit vide order dated 21.05.2019.



10. For what has been discussed above, we find no merit in the appeal in hand hence dismissed. Costs shall follow the event. Consign.

*11. Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of July, 2024.*

  
(FAREEHA PAUL)  
Member (M)  
Camp Court, Abbottabad

  
(RASHIDA BANO)  
Member (J)  
Camp Court, Abbottabad

**ORDER**


23.07.20241

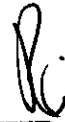
Learned counsel for the appellant present. Mr. Syed Asif Masood

Ali Shah, learned Deputy District Attorney for respondents present.

2. For what has been discussed above, we find no merit in the appeal in hand hence dismissed. Costs shall follow the event. Consign.

*11. Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of July, 2024.*


  
(FAREEHA PAUL)  
Member (M)  
Camp Court, Abbottabad


  
(RASHIDA BANO)  
Member (J)  
Camp Court, Abbottabad

\*Kaleemullah

27<sup>th</sup> May, 2024

1. Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Junior to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Abbottabad Bench. Last opportunity is granted to the appellant to argue the case on the next date positively, failing which the case will be decided on the basis of available record without arguments. To come up for arguments on 23.07.2024 before D.B at camp court Abbottabd. P.P given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court A/Abad

\*Kamranullah\*