

S.A #.262/2023


**ORDER**

25<sup>th</sup> Sep. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Heard.

2. Vide our detailed judgment of today placed on file, instant service appeal is accepted. The matter is remitted to the appellate authority i.e. Commissioner Hazara Division, Abbottabad with the direction to render a decision within 60 days upon receipt of this judgment. The appellant is reinstated into service for the purpose of de-novo inquiry. The issue of back benefits is deferred pending the outcome of the appellate order. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 25<sup>th</sup> day of September, 2024.*

  
(Farzha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*


this judgment. The appellant is reinstated into service for the purpose of de-novo inquiry. The issue of back benefits is deferred pending the outcome of the appellate order. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 25<sup>th</sup> day of September, 2024.*



**KALIM ARSHAD KHAN**

Chairman



**FAREEHA PAUL**

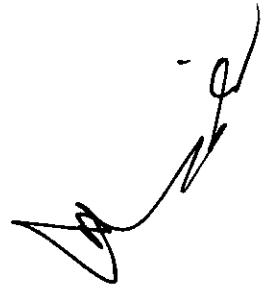
Member (Executive)

*\*Mutazem Shah\**

from service. In the said criminal case, his father namely Shaorain Bacha (Tehsildar) was also charged and was ousted from service who was also acquitted but he was reinstated into service and the present appellant was not. The appellant subsequently filed a departmental appeal to the Senior Member Board of Revenue (SMBR) and the office of the SMBR vide letter dated 02.11.2022 issued directions for the appellant's reinstatement to the Deputy Commissioner, Kohistan. The DC Kohistan in turn vide letter dated 28.03.2023 informed the SMBR that the appellant out to have filed departmental appeal to the appellate authority i.e. Commissioner Hazara to who he has not, rather to the SMBR who is not the appellate authority of the appellant. Stance of the appellant was that he also ought to have been reinstated into service like his father, who was charged in the same case as of the appellant.

6. The appellant's choice to appeal to the SMBR instead of the appropriate appellate authority (Commissioner Hazara) indicates a procedural error. However, this should not negate his right to challenge the removal from service, especially, given the circumstances surrounding his case.

7. In view of the above, instant service appeal is accepted. The matter is remitted to the appellate authority i.e. Commissioner Hazara Division, Abbottabad with the direction to render a decision within 60 days upon receipt of



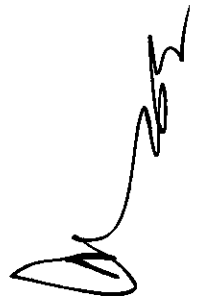
Charsadda was lodged against him; that he was arrested in the said case and vide order dated 21.03.2016, he was removed from service w.e.f. 21.08.2015; that after his acquittal in the criminal case, on 15.09.2022, he approached the department for duties, where he was informed regarding his removal order dated 21.03.2016; that feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant learned Deputy District Attorney for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney, controverted the same by supporting the impugned order(s).

5. Record reflects that the appellant was nominated in FIR No.501 under Section 302/34 PPC P.S Charsadda dated 17.08.2015. He was acquitted in the said case by the order of the learned Additional Sessions Judge-I, Charsadda on 15.09.2022. After registration of FIR, the respondents had issued the impugned order on 21.03.2016 removing him



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

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**FAREEHA PAUL** ... **MEMBER(Executive)**

***Service Appeal No.262/2023***

Date of presentation of Appeal.....01.02.2023  
Date of Hearing.....25.09.2024  
Date of Decision.....25.09.2024

**Syed Asim Shah** Ex-Kanungo (BPS-11), Mohallah Pareech Khel,  
Utmanzai, District Charsadda.....(**Appellant**)

Versus

1. **The Senior Member Board of Revenue**, Khyber Pakhtunkhwa, Peshawar.
2. **The Commissioner Hazara Division**, at Abbottabad.
3. **The Deputy Commissioner, Kohistan**.....(**Respondents**)

Present:

Mr. Muhammad Asjad Parvez Abbasi, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney...For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF  
THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED ORDER DATED 21.03.2016  
WHEREBY THE APPELLANT WAS  
REMOVED FROM SERVICE AND AGAINST  
THE INACTION OF THE RESPONDENT BY  
NOT DECIDING THE DEPARTMENTAL  
APPEAL WITHIN THE STATUTORY  
PERIOD OF NINETY DAYS.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was serving as Kanungo in the respondent department; that FIR No.501 dated 17.08.2015 under Section 302/34 PPC Police Station