

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

SA. Appeal No. 587/2024

Shahzad Khan S/O Amar Khan.....Appellant

VERSUS

1. Director Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Conservator of Forests, Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.

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Through:


Mr. Zahid Iqbal Khan
Deputy Director, I&HRD&M
Peshawar.

30-09-24

①

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

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VERSUS

1. Director Institutional & Human Resource Development & Management,
Forest Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Conservator of Forests, Central Southern Forest Region-I, Khyber
Pakhtunkhwa, Peshawar.

Respectfully Sheweth

Para wise comments on behalf of Respondent's No. 01 to 03 are as under:-

Preliminary objections

1. That the appeal is barred by Law.
2. That the appellant has neither cause of action nor locus standi.
3. That the appeal is not maintainable.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 16169

Dated 30-09-24

*Slip not
possible.*

On Facts

1. Pertains to record, hence no comments.
2. Pertains to record.
3. Pertains to record, hence no comments.
4. Correct. The Chowkidar was re-instated vide office order No. 33 dated 11-09-2023 in light of the recommendations of the Inquiry Committee.
5. Under Rule – 6 (5) of Khyber Pakhtunkhwa Civil Servant Rules, 2011, FR-17 of Chapter – III of General Condition of Service, Judgement of Peshawar High Court dated 19/06/2013 in Writ Petition No. 1180/2012 and Judgement of Supreme Court of Pakistan, 2003 SCMR-228, the period from 30/04/2021 to 11/9/2023 was treated as leave without pay as the appellant has not served the deptt; for the said period. (Annex-I, II, III & IV).
6. The appellant was not entitled of back benefits, therefore his appeal was rightly rejected by appellate authority as explained in Para – 5 above.

On Grounds

- A. Incorrect. The Appellant was treated as per rules mentioned in Para-5 above.
- B. Incorrect. The order was passed as per rules in the light of the recommendations of inquiry report of inquiry committee and explanation available in Para – 5 and 6 above.
- C. Incorrect. The Appellant was treated without pay from 30-04-2021 to 11-09-2023 as per rules 6(5) of E&D Rules 2011 & FR 17, which are reproduced as below:-
 - i. Rule 6(5) of E&D Rules 2011 & FR 17:- If a Government servant is absent from official duty during the disciplinary proceedings under these rules such period may be treated as extra ordinary leave without pay with the approval of competent authority.

ii. FR-17- (I) of Fundamental Rules:- Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

D. Incorrect. As mentioned in Para C of grounds.

E. Incorrect. Opportunity of personal hearing was afforded to the appellant by the inquiry committee during inquiry proceedings and his present case was decided on merit as per explanations available in above paras.

Prayer

Keeping in view the above exposition, it is therefore requested that the appeal being devoid of legal footing may be dismissed, please.

Respondent 01



(Hazrat Mir)

Director

I & Human Resource Dev: & Mgt
Peshawar

Respondent 02



(Kifayat Ullah Baloch)

Chief Conservator of Forests
Central Southern Forest Region-I
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 587/2024

- 1. Director Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar.
- 2. Chief Conservator of Forests, Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.

.....**Respondent**

VERSUS

Shahzad Khan S/O Amar Khan.....**Appellant**

I, **Hazrat Mir**, Director Institutional & Human Resource Development & Management Directorate, Forest Department, Peshawar (**Respondent No. 1**) do hereby solemnly affirm and declare that the contents of the accompanying comments / reply are true and correct to best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Identified by:



Deponent
CNIC: 17101-8573214-9
Cell No: 0345-9197251



EAD 2071

Annex - I

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promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

(iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

(i) reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on a restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;

- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.—(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

(a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary

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evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. Suspension.—A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. Procedure where inquiry is dispensed with.—If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;
- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period:

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the recovery, if any.

8. Action in case of conviction or plea bargain under any law.—Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily:

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Attest
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Annex-3 6
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GOVERNMENT OF PAKISTAN

FINANCE DIVISION



COMPILATION
OF THE
FUNDAMENTAL RULES
AND
SUPPLEMENTARY RULES

MADE BY

The President including Orders etc.

issued by the Federal Government, Auditor General, etc.

VOLUME I

UPDATED EDITION

2018

Attest
[Signature]

(7) 7

Government decision.—Permanent transfers from a higher to a lower scale in anticipation of the abolition of a post are not transfers within the meaning of F. R. 15.

(G.I., F.D., letter No.F-452-R.I/27, dated the 1st February, 1928.)

F. R. 16. A Government servant may be required to subscribe to a provident fund, a family pension fund or other similar fund in accordance with such rules as the²¹President may by order prescribe.

F. R. 17. (1) Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.²² [:]

²³[Provided that the ²⁴[appointing authority] may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority.]

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

[For Administrative Instructions issued by the ²⁵President, regarding "CHARGE OF OFFICE" and "LEAVING JURISDICTION", See Part II of Appendix No. 3 in Volume II of this Compilation.]

Orders issued by the ²⁶President under Fundamental Rule 17(2).—With reference to clause (2) of this rule, the ²⁷President has decided that the pay of officers recruited overseas who are entitled to a first class passage to Pakistan, shall commence from the date of disembarkation, subject to their proceeding to take up their duties without avoidable

²¹Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²²In sub-rule (1) at the end full stop subs, by colon & thereafter proviso added by S.R.O. 1092 (1)/95 [No.F.3(1)R.II/94], dated 6th November, 1995, Gaz. of Pak., Extr., Pt. II, Page No.2521, dated Nov. 13, 1995.

²³In sub-rule (1) at the end full stop subs, by colon & thereafter proviso added by S.R.O. 1092 (1)/95 [No.F.3(1)R.II/94], dated 6th November, 1995, Gaz. of Pak., Extr., Pt. II, Page No.2521, dated Nov. 13, 1995.

²⁴In the proviso substituted for "President" by the S.R.O.106 (1) /2001 [No.F.3(1)R.2/94], dated 13-02-2001, Gaz. of Pak., Extr., Pt. II, Page No.375, dated 17th Feb. 2001.

²⁵Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²⁶Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

²⁷Substituted by Ministry of Law Notification No.F.13(1)/59-D&L, dated 24-1-1961, Gaz. Of Pak., Extra., Pp.102-103, as issued vide their Notification No.F.2(18)/60-Legis., dated 24-1-1961, Gaz. Of Pak., Pp.71-72.

Attached
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Annex-III

PESHAWAR HIGH COURT, PESHAWAR

JUDICIAL DEPARTMENT

WP No. 1180/2012.

JUDGMENT

Date of hearing..... 19.06.2013.....

Petitioners. (Syed Tahir Abbas) *By Mr. M. Zafer Tahir Khedi, Advocate*

Respondents. (Government of Khyber Pakhtunkhwa etc) *By Mr. Malik Mujtaba Khan, A.A.G. & Mr. Mansoor Tariq, Advocate, Islamabad.*

WAQAR AHMED SETH .J. Petitioner Tahir Abbas,

Ex-Assistant Director, seeks the constitutional jurisdiction of this

court praying for that:-

"A. for a declaration to the effect that the petitioner being an ex-retrenched Assistant Director (B-17) of PUDB is entitled to be reinstated readjusted/absorbed against the available vacancy as other similarly retrenched Assistant Directors (B-17, who have been reinstated/absorbed in compliance with the

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dated 30.9.1999, as well as the decision in his WP
No. 322/2009 dated 06.10.2011 and those of the
August Supreme Court of Pakistan on the subject,
without discrimination; and

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(9)

- b. For an order, directing respondents to do
the needful.
- c. Any other relief deemed appropriate may
also be granted."

2. In essence, the grievance of the petitioner is that he was
selected as Assistant Director (Civil) and appointed in the Provincial
Urban Development Board by the Managing Director vide
appointment order dated 18.10.1993 on contract basis for a period of
one year. Having served for a period of seven years, without any
break his services were terminated along-with 17 others Assistant
Directors on 30.5.1998 without prior notice or reason. Petitioner filed
a writ petition No. 978/1998 and petitioner was allowed to continue in
service pending adjudication of the main writ petition. Several other
employees, whose services were terminated also filed writ petitions
and subsequently vide consolidated judgment dated 30.9.1999, all the
writ petitions were disposed of directing the respondents to refrain
from fresh recruitment without considering the petitioner for
appointment on available vacancies on merits and in accordance with

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their cases on the basis of last come first go. Thereafter, petitioner moved the Supreme Court of Pakistan through civil petition No. 1241 of 2002, which was heard by the full bench and disposed of as under:-

"Date of hearing: 16.3.2005: ORDER

At the conclusion of the arguments, it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Any how it is stated at the bar that even after his retrenchment the Government has appointed other persons like Ghulam, Sadiq. In the circumstances the petitioner is advised to resort to the Government which, in turn, should consider the case of the petitioner being a previous employee of the Board in accordance with law.

With these remarks the petition is disposed accordingly."

3. Accordingly, petitioner approached the respondent department through application dated 22.12.2005 but the department failed to make any positive response and, as such, petitioner once again filed writ petition No. 322/2009. The said petition came up for hearing before the Division Bench on 6.10.2011 and the Bench was pleased to direct the Secretary Local Government to consider the case of the petitioner fairly, honestly, justly and in accordance with law and the rules on the subject and also to keep in mind the miseries, which the petitioner has faced during the long chain of litigation, moreso, when he has not yet get the fruit of the same and even if his

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shown to him on humanitarian grounds while considering the case of petitioner from all angles. Finally, the departmental authority passed order dated 5.23.2012 refusing to adjust the petitioner, hence, this writ petition.

4. The case of respondent/department is that petitioner being a project employee and upon winding up of the said project his services was terminated and that all the writ petitions of project employees have been dismissed up-to the apex court including the petitioner hence, he has got no fresh cause of action.

5. Arguments heard and record perused.

6. Petitioner was appointed as Assistant Director (Civil) in BPS-17 by the competent authority i.e. Managing Director PUDB but in a project called Management Unit vide letter of appointment dated 18.10.1993. In earlier round of litigation, it was held that the petitioner was employed purely on contract basis till the life of project but again in the year 2009 petitioner filed writ petition No. 322/2009 in which it was held as under, vide order dated 06.1.2011-

"DOST MUHAMMAD KHAN J. After arguing this case at some length, learned counsel for the parties agreed that the petitioner namely Syed Tahir Abbas, is entitled and deserved to be fairly & properly reconsidered according to the prayer he has made in this petition but the Departmental Authority also keep in kind the judgment of this court dated 30.5.2002 and that of the Hon'ble apex court dated 16.3.2005. The learned Additional

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the petitioner would be strictly considered on merits according to the law, rules on the subject and guidance given in the two judgments of this court and the Hon'ble Apex Court and he will not be discriminated in any manner.

Accordingly, this petition is sent in original to the Secretary Local Government (respondent No. 1) with the direction to consider the case of the petitioner fairly, honestly, justly and in accordance with law and rules on the subject and also be kept in kind the miseries, the petitioner has confronted during the long chain of litigation, moreso, when he has not yet got the fruit of the same and even if his case is not coming within the scheme of the rules then, some mercy be shown to him on humanitarian grounds while considering the case from all angles. The Secretary Local Government shall decide the same positively within one month from the date of receiving the case file. In case, respondent No. 1 passed any adverse order against the petitioner then he shall have to give elaborate judgment, giving strong reasons therefor.

Petition disposed of accordingly while a set of photocopies of the instant petition be retained by the office for record."

7- Likewise in earlier round of litigation the Hon'ble Apex Court in CP No. 1241 of 2002 titled "Syed Tahir Abbas versus Government of NWFP etc" dated 16.3.2005 ordered:-

ORDER

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"At the conclusion of the arguments it was observed that the petitioner being a junior most, his service was rightly terminated due to retrenchment.

Anyhow, it is stated at the bar that even after this retrenchment the government has appointed other persons like Ghulam Sadiq. In the circumstances, the petitioner is advised to resort to the government which, in turn, should considered the case of the petitioner being a previous employee of the board in accordance with law.

With these remarks the petition is disposed of accordingly."

8. The record of the department reveals that out of 27 terminated Assistant Directors, 15 were reinstated in various developmental authorities, two (02) were adjusted in provincial Inspection Team and Workers Welfare Board. Three Assistant Directors were adjusted in Community Infrastructure Project, Peshawar. However, 07 Assistant Directors including petitioner were kept waiting for their posting in spite of the fact that number of posts were lying vacant right from 2003.

9. According to document dated 02.10.203 (Annexure 'D-1) page-49 of the writ petition, there were 20 vacant posts of Assistant Directors PBS-17 in CD & MD and due to the absence of these Assistant Directors, the efficiencies of the CD& MD

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Directors were urgently required to supervise the ongoing project in Rally Model Town, Hayat Abad township and other projects of the city. In spite of all this, petitioner was engaged in litigation during this period.

10. Instead of adjusting the petitioner a number of fresh appointments were made and colleagues of the petitioner were adjusted but petitioner was ignored under mala fide intention. Few such appointments are "*Miss Vagma Gul & Tabinda Nosheen*" were appointed vide order No. SO (LG-1) 4-3/Das/09 dated 19.9.2009. In addition to these fresh appointments, one Abdul Ghafoor who has also been readjusted in the light of judgment of the Supreme Court of Pakistan vide Notification No. SO (LG-1) 3-507/PHC/2009 dated 24.3.2010. In addition to this, vide office order 17.3.2003 one Javed Iqbal has been adjusted on the directive of the Hon'ble Chief Minister KPK and Ghulam Sadiq has been reinstated / regularized vide order dated 22.7.2003. Moreover, one Muhammad Tariq Kundi of Project Management Unit has been reappointed vide order dated 10.1.2011, Annexure 'K') page 77 of the writ petition is referred.

11. The record is suggestive of the fact that after the decision of Supreme Court, a joint seniority list was prepared and the said Abdul Ghafoor, whose case has been found at par with the petitioner

has been adjusted on Juxta-position with other 10 Assistant Directors

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but the petitioner has been discriminated.

12. Today, at the time of arguments the office produced two writ petitions i.e. "*No 1547/2011 Maqbool Ahmed versus Secretary etc and WP No. 1552/2011 Tariq Mahmood versus Government etc*" which were dismissed on 27.2.2013, on perusal whereof, these are found quite different in characteristics and not relevant. Nothing is on the record that both these petitioners approached the court of law or were considered by the department against the vacant posts whereas petitioners attached documents showing that he remained in picture, throughout, hence this writ petition has its own merits.

13. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 which reads as under:-

"Equality of Citizens: 1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex (xxx).

(3) Nothing in this Article shall prevent the state from making any special provision for the protection of women and children."

Whereas Article 38 (b) says that-

(b) "Provide for all citizens, within the available resources of the country, facilities for work

and adequate livelihood with reasonable rest
and leisure."

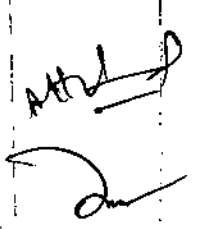
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14. Whereas, the record is suggestive of the fact that the petitioner has been discriminated time and again and in view of the above, while allowing the instant writ petition, the respondents are directed to adjust the petitioner, immediately with all consequential benefits except wages. The reasons for not allowing the wages for the intervening period is that petitioner has not worked during this period and as principle no work no pay. Order accordingly.

Announced
Dated: 19.6.2013


JUDGE


JUDGE



office
6/7/13

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman,
OGDC Head Office, Islamabad---Respondent

Civil Petition For: Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad,
in Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity--Civil servant had not performed his duties either at original place or at transferred place, thus was not entitled to salary---Period for which refund of salary was effected from civil servant was for period for which, he had not worked--When there was no work, there was no pay--Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan,
Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate ai-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

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SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal,, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974, and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him, as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK:1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty."

(19) 19

(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy. A.G. further pointed out that recovery was already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S/A K/N-100/S

Petition dismissed.

[Signature]

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Service Appeal No. 7882/2021

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Shahzad Khan S/O Aman Khan, R/O Moh. Ghari Jabbar Khan P.O Pabbi Dag Baisud, District Nowshera. (Appellant)

Versus

1. The Director Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Conservator of Forests, Central Southern Forest Region-1, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Institutional & Human Resource Development & Management, Forest Department, Khyber Pakhtunkhwa, Peshawar. (Respondents)

Akhunzada Syed Pervez,
Advocate

For appellant

Mr. Asad Ali Khan,
Assistant Advocate General

For respondents

Date of Institution..... 07.12.2021
 Date of Hearing..... 30.05.2023
 Date of Decision..... 30.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 30.04.2021 of respondent No. 1, whereby the appellant was terminated from service and against order dated 09.08.2021 of respondent No. 2, whereby the representation of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might

ATTESTED

EXAMINER,
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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be set aside and the appellant might be reinstated to his service with all back and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Watchman (Chowkidar) on fixed pay. Later on, vide order dated 02.05.2019, his services were regularized. On 30.04.2021, respondent No. 1 issued termination order of the appellant on the ground of absence from duty but the period of absence was not specifically shown in the termination order. Feeling aggrieved, the appellant filed representation before respondent No. 2 which was rejected on 09.08.2021 but he came into know about the rejection order when he received letter dated 25.11.2021; hence the instant appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and that perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant never remained absent from his duty and that the period of his absence was not specifically mentioned in the impugned order. According to him, neither charge sheet/statement of allegations was served upon him nor proper inquiry was conducted. He contended that no show cause notice was served upon the appellant and also opportunity of personal hearing was not provided to him, which was not a formality but mandatory under the law. He requested that the appeal might be accepted as prayed.

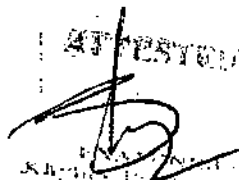
ATTESTED

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EXAMINED
& FOUND
CORRECT
(Service File)
Permanently

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was habitual absentee. He further contended that the appellant was under probation and under Section 11 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, there was no need of holding regular enquiry into the matter. He requested that the appeal might be dismissed.

6. Arguments and record presented before us indicate that the appellant was appointed as Chowkidar (BPS-3) on 02.05.2019 under the Khyber Pakhtunkhwa Civil Servants Act, 1973. According to the terms and conditions of his appointment he was on probation for a period of one year extendable for further one year under Section 6(2) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule 15(i) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Record further shows that the probation period after lapse of one year was not extended for another one year as per terms and conditions of his appointment, which indicates that his probation period ended on 02.05.2020.

7. Through the impugned order, services of the appellant were terminated on the grounds that he was in the habit of absenting himself from his duty. His services were terminated under clause 2 and 3 of terms and conditions of his appointment order and hence neither any inquiry was conducted nor any show cause notice was issued before passing the impugned order. As stated above, probation period of the appellant was not extended and therefore, it ended on 02.05.2020 and from that date onwards, he was a regular civil servant and any

ATTESTED

12/11/23




disciplinary action against him had to be taken under the Government Servants (Efficiency & Discipline) Rules, 2011. It is a well established norm that before awarding any major penalty, a formal inquiry is essential and before conducting such inquiry a properly drafted charge sheet and statement of allegations is necessarily served upon the accused. Then he has to be given a fair chance to present his case before the inquiry officer or committee alongwith an opportunity of personal hearing. In this case no procedure has been adopted; neither the charges have been fully defined nor the appellant has been given a chance of fair trial.

8. In view of the above, the impugned order is set aside. Respondents are directed to reinstate the appellant and conduct proper inquiry into the matter, strictly following the rules, and complete the procedure within 60 days of the receipt of this judgment. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30th day of May, 2023.


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)



Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

31/5/23
12/6/23
Date of Presentation of Application
Number of Words Page 7
Copying Fee 35/-
Urgent Yes
Total 40/-
Name of Copy Shahzad
Date of Copy 12/6/23
Date of Delivery of Copy 12/6/23

CHARGE SHEET

I, Hazrat Mir, Director I&HRD&M Directorate as competent authority, hereby charge you Mr. Shahzad Khan Chowkidar (BPS-03) I&HRD&M Directorate as follows:-

That while posted as Chowkidar (BPS-03) in I&HRD&M Directorate, you committed the following irregularities:-

- i). That you were found absent from official duty on 14th April 2021 at 1600 hours.
 - ii). That Mr. Jawad Usman PA to Director I&HRD&M called you telephonically to come to office but you didn't come to the office for official duty.
2. By reasons of the above, you appear to be guilty of mis-conduct and in-efficiency under Rule-5 of the Khyber Pakhtunkhwa Government Servant (E&D) Rules 2011, and have rendered yourself liable to all or any of the penalty specified in Rule-4 of the Rules, ibid.
 3. You are, therefore, required to submit your written defence within seven days after receipt of this charge sheet to the Enquiry Officer/Enquiry Committee, as the case may be.
 4. Your written defence, if any, should reach the enquiry officer/enquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-Parte action shall be taken against you.
 5. Intimate whether you desire to be heard in person.
 6. A statement of allegation is enclosed.


Director
I&HRD&M
(Competent Authority)

21/7/2023

24-7-23



DISCIPLINARY ACTION

I, Hazrat Mir, Director I&HRD&M Directorate as Competent Authority of the opinion that Mr. Shahzad Khan, I&HRD&M Directorate posted as Chowkidar (BPS-03) has rendered himself liable to be proceeded against as he committed the following act/commissions, within the meaning of Section-3 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011):-

STATEMENT OF ALLEGATIONS

- i). That he was found absent from official duty on 14th April 2021 at 1600 hours.
 - ii). That Mr. Jawad Usman PA to Director I&HRD&M called him telephonically to come to office but he didn't come to the office for official duty.
2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under rule 10(1) (a) of Rules ibid vide this office order No. 30 dated 21/07/2023:-
- i. Muhammad Sajid, Divisional Forest Officer, Patrol Squad, Peshawar.
 - ii. Mr. Dawood Afridi, Assistant Director (NMAs) I&HRD&M Directorate, Peshawar.
3. The enquiry officer/enquiry committee shall, in accordance with the provisions of the rules ibid, provide reasonable opportunity of hearing to the accused, record its findings and make enquiry report within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry officer/enquiry committee.


Director
I&HRD&M
(Competent Authority)




24.7.23



DIRECTORATE OF
INSTITUTIONAL & HUMAN RESOURCE DEVELOPMENT & MANAGEMENT
KHYBER PAKHTUNKHWA FOREST DEPARTMENT

Shami Road, Peshawar Phone No. (091)9212459 Fax (091) 5243301

Office order No. 33 I&HRD&M/Estt

Dated Peshawar the 11 /09/2023

26
-18-
Annex-VIII

Whereas the Khyber Pakhtunkhwa Service Tribunal passed an order in service Appeal No. 7882/2021. Wherein the respondents were directed to reinstate the appellant Mr. Shahzad Khan (Chowkidar BPS-03) and conduct proper inquiry against him.

And whereas an Enquiry Committee was constituted vide this office order No. 30 dated 21/07/2023 to conduct proper enquiry.

And whereas the Enquiry Committee finalized enquiry proceedings and submitted enquiry report vide letter No. 64/PS-23 dated 11/09/2023

And whereas the Enquiry Committee could not prove the allegations against him.

Now Mr. Shahzad Khan, Chowkidar is hereby reinstated with immediate effect in light of the judgment of Khyber Pakhtunkhwa Service Tribunal and recommendation of the Enquiry Committee.

The period from 30/04/2021 to 11/09/2023 shall be treated as leave without pay.

(Hazrat Mir)
Director

I & Human Resource Dev. & Mgt.
Peshawar

No. 217-20 I&HRD&M/Estt

Copy forwarded for information and necessary action to the:-

1. Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar.
2. Section Officer (Litigation), CCFE&WD, Peshawar.
3. Account Section I&HRD&M Directorate Peshawar.
4. Mr. Shahzad Khan, Chowkidar.

Director

I & Human Resource Dev. & Mgt.
Peshawar

Attended
Jm

CHIEF CONSERVATOR OF FORESTS
CENTRAL SOUTHERN FOREST REGION-I
KHYBER PAKHTUNKHWA
(HAD)




SHAMI ROAD PESHAWAR
Ph: +92 91 9212177, Fax: +92 91 9211478
E-mail: ccfforests.pesh@gmail.com

No. 1560 /E,

Dated 30 /09/2024.

AUTHORITY LETTER

Mr. Zahid Iqbal, Deputy Director (BPS-18) I&HRD&M Directorate Peshawar is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of Chief Conservator of Forests Central Southern Forest Region-I, Khyber Pakhtunkhwa Peshawar and Director I&HRD&M Peshawar (Respondents No.01 & 02) in Service Appeal No.587/2024, Shahzad Khan Versus Director I&HRD&M Peshawar & others.


Chief Conservator of Forests
Central Southern Forest Region-I,
Khyber Pakhtunkhwa Peshawar

Chief Conservator of Forests
Central Southern Forest Region-I
Khyber Pakhtunkhwa Peshawar.