

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	14 <sup>th</sup> Oct, 2024	<p style="text-align: center;"><b><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u></b> <b><u>PESHAWAR.</u></b></p> <p style="text-align: center;"><b>Service Appeal No. 575/2023</b></p> <p>Abdul Hameed son of Shabeer Hussain (Naib Qasid) Peshawar High Court Peshawar, resident of Disal Tehsil &amp; District Abbottabad. .....(Appellant)</p> <p style="text-align: center;"><u>Versus</u></p> <p>1. The Registrar Peshawar High Court, Peshawar. 2. Chief Justice of Peshawar High Court, Peshawar. .....(Respondents)</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p style="text-align: center;"><b><u>KALIM ARSHAD KHAN CHAIRMAN:-</u></b> Learned Counsel for the appellant present and has been heard.</p> <p>02. This appeal has been filed against the impugned order bearing No. 2735 dated 20.02.2023, whereby major penalty of removal from service under Rule 4(1)(B)(III) of the E&amp;D Rules 2011 was imposed upon the appellant by the respondent No.1 through order dated 03.02.2023 and upheld by dismissing the departmental appeal through order ibid dated 20.02.2023 without fair trial and without due process.</p> <p>03. This Tribunal has passed an order in service appeal No. 607/2022 titled "Muhammad Kabir Vs Peshawar High Court, Peshawar through its Registrar and others" which is as under:</p> <p style="text-align: center;"><u>"At the very outset, the learned counsel for the appellant was confronted as to whether the</u></p>

appellant was a civil servant and whether further right of appeal against the judgment /order passed by the Hon'ble three Member Bench was available and/ or at least to this Tribunal, as according to Rule-16 the right of appeal was given to the member of the establishment of Peshawar High Court against an order effecting the terms and conditions of his service. Rule-16 provided right of appeal from the order of penalty imposed by the Registrar the Hon'ble Chief Justice, and where any such order was passed or any penalty is imposed by the Hon'ble Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie to a bench of three senior most judges of the Peshawar High Court, the learned counsel was unable to explain the above situation, he rather referred to Rule-17 of the above rules in which it was provided that in all other matters not expressly provided for in the rules or any other rules hereafter made, the rules made or deemed to have been made by Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act XVIII of 1973), shall *mutatis mutandis* apply to the holders of posts under these rules. It is in this respect observed that Rule-17 would come into play only when there is no express provision of appeal provided in the rules but in this case the provision of appeal has been given in Rule-16 and such remedy of appeal has been availed by the appellant before the Bench of Hon'ble three senior most Judges of the Peshawar High Court. There is nothing provided anywhere in the rules that decision made in appeal preferred under Rule-16, would be appealable before this Tribunal.

04. Therefore, this Tribunal cannot entertain this appeal. It is thus directed that this appeal, be returned to the appellant for its presentation before the proper forum. The Original memo and grounds of appeal alongwith copies of the accompaniments shall be returned to the appellant alongwith copy of this order against proper receipt while original order sheets, copy of the memo and grounds of the appeal as well as the accompaniments shall be retained on this file and it be consigned."

Handwritten signature and initials: *MC/12/11*

04. The above order of the Tribunal was challenged before the Hon'ble Supreme Court of Pakistan in CP. No. 2775 of 2022 which was dismissed on 21.03.2024 in the following manner:-

"In this case, the appellate order dated 21.03.2022, passed by three Honourable Judges of the Peshawar High Court, was challenged before learned Khyber Pakhtunkhwa Service Tribunal Peshawar ('Tribunal'), which was not entertained by the Tribunal and in paragraph No.4 of the impugned order, the original memo and ground of appeal alongwith copies of the accompaniments were ordered to be returned to the petitioner.

2. We have heard learned counsel for the petitioner and also gone through the impugned order and do not find any justification to interfere, learned counsel for the petitioner, however, submits that the petitioner will avail appropriate remedy, if any, available to him under the law. Be that as it may, this petition is dismissed and leave is accordingly declined.

05. In view of the above, the instant service appeal is also returned to the appellant for its presentation before the proper forum. The Original memo and grounds of appeal alongwith copies of the accompaniments shall be returned to the appellant alongwith copy of this order against proper receipt while original order sheets, copy of the memo and grounds of the appeal as well as the accompaniments shall be retained on this file and it be consigned.

06. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 14<sup>th</sup> day of October, 2024.*



**(KALIM ARSHAD KHAN)**  
**Chairman**