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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

CM NO: _____/2024

in
Appeal No. 1650/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17855

Dated 12-11-24

Mr. Muhammad Javed Ex-Constable No: 7369
FRP Bannu Range, Bannu.

APPELLANT

VERSUS

1. The Provincial Police officer, KP Peshawar.
2. Commandant Frontier Reserve Police, KP, Peshawar.
3. The Superintendent of police FRP Bannu.

RESPONDENTS

SUBJECT: **APPLICATION FOR DISPOSAL OF INSTANT APPEAL IN LIGHT OF JUDGMENT DATED 22/07/2024 DELIVERED IN SERVICE APPEAL NO: 6342/2020 BEING INVOLVED SIMILAR POINT OF LAW.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed the above mentioned Service Appeal against the order of respondent no. 2 dated 24/10/2022 whereby, the departmental appeal of the appellant rejected and held that the appellant stood automatically terminated/removed from service under Fr-18 which is unlawful.
2. That due process of law and rules was not followed nor were explicit orders of penalty of removal passed by the appropriate Competent Authority. It is thus clear that the appellant was not properly proceeded against by conducting of formal enquiry hence the impugned order of rejection of departmental appeal vide order dated 24.10.2022 even after reaching the appellant at the age of superannuation suffered from legal infirmity. It is pertinent o mentioned here that FR-18 is not now in the field hence disposal of departmental appeal of the appellant on the strength of the old provisions of rules is ultra vires of rules. The similar law point was involved in appeal no 6342/2020 and the Hon'ble Tribunal accepted the appeal of the appellant on the point that Fr-18 is no more in field. Copy of notification and judgment is attached as annexure-A & B.

- 3. That as per judgment of Supreme court of Pakistan cited 2023 SCMR page 8, any point of law decided by the Hon'able Service Tribunal by dint of his judgment shall be consider as judgment in rem not in personam.
- 4. That the appellatant being on similar footing, so, the appellatant needs the same treatment. So, in light of Supreme Court judgment cited as 1996 SCMR 1185, 2009 SCMR 1, 2018 SCMR 380 and 2021 SCMR 1313.

It is, therefore, most humbly prayed that on acceptance of this application the instant appeal of the appellatant may be accepted in in light of judgment delivered in appeal no: 6342/2020 being similar law point involved. Any other remedy which the august court deems appropriate that may also be awarded din the favor of appellatant.

Muhammad Javed
APPELLANT
 Muhammad Javed

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
 ADVOCATE HIGH COURT

AFFADAVIT

I, Appellant, do hereby affirm that the contents of this application are true and correct and nothing has been concealed from the Hon'ble Court.

Muhammad Javed
 Deponent



Service Appeal No.6342/2020 titled "Dost Muhammad Vs. Health Department"

ORDER
22nd July, 2024

Kalim Arshad Khan, Chairman: Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney present.

2. Appellant's case in brief is that he was initially appointed as Chowkidar vide order dated 18.08.1989; that he was charged in FIR No.94 dated 23.03.2003 U/S 302/324/34 was lodged against him; after acquittal in the said case, he approached the department through departmental appeal for his adjustment but the same was rejected on 08.06.2020, hence, the instant service appeal.


3. At the very outset, learned counsel for the appellant as well as learned District Attorney referred to a judgment dated 06.01.2016 passed in Service Appeal No. 1418/2011 titled "Wahid Gul-vs-Executive District Officer Health, Kohat and others" and stated that instant service appeal might also be decided in terms of the said judgment. Relevant para of the said judgment is reproduced as under:

"From perusal of the record, it transpired, ~~that due process of law and rules was not followed nor were explicit orders of penalty of removal passed by the appropriate Competent Authority.~~ It is thus clear that the appellant was not properly proceeded against by conducting of formal enquiry hence the impugned order of rejection of departmental appeal vide order dated 20.07.2011 suffered from legal infirmity. In view of the foregoing, the Tribunal is of the considered view that in order to meet the ends of justice proper disciplinary proceedings are required to be conducted against the appellant providing him full opportunity of defence and opportunity of personal hearing. ~~The Tribunal is also of the view that FR 18 is not now in the field hence disposal of~~

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departmental appeal of the appellant on the strength of the said provisions of rules is ultra vires of rules. The impugned order dated 20.07.2011 is set aside, the appellant is reinstated and the case is remitted to the respondent-department to conduct de-novo enquiry strictly in accordance with law/rules within a period of 60 days of the receipt of this judgment. The intervening period will be decided on the basis of outcome of the fresh proceedings. Parties are left to bear their own costs. File be consigned to the record."

4. The case in hand is no different than the above.
5. Therefore, instant service appeal is accepted, appellant is reinstated into service and the matter is remitted to the department for de-novo inquiry to be conducted within 60 days of the receipt of this order. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.
6. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 22nd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)


(Kalim Arshad Khan)
Chairman

P-75-311
FRSR Bank. det

BS

GOVERNMENT OF NWFP,
FINANCE DEPARTMENT

NO. FD(SR.V)2-151/93.

Dated Peshawar the 26-2-1997.

From: The Secretary to Government of
N.W.F.P., Finance Department,
Peshawar.

To


1. All Administrative Secretaries to Government of N.W.F.P., Peshawar.
2. All Commissioners of Divisions in N.W.F.P.
3. All Heads of Attached Departments in N.W.F.P.
4. All Deputy Commissioners/Political Agents/District and Session Judges in N.W.F.P.
5. The Registrar, Peshawar High Court, Peshawar.
6. The Secretary to Governor, N.W.F.P., Peshawar.
7. The Secretary to Chief Minister, N.W.F.P., Peshawar.
8. The Registrar, Service Tribunal, NWFP, Peshawar.
9. The Secretary, NWFP Public Service Commission, Peshawar.

SUBJECT: OMISSION OF FR-18.

Sir,

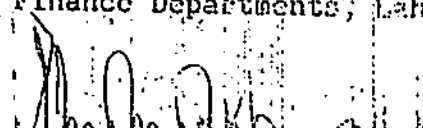
I am directed to refer to the subject noted above and to enclose a copy of Finance Division letter No.F.1(11)R.4/89 dated 3.11.92 relating to the omission of FR-18, in their application to the N.W.F.P. Civil Servants for information and necessary action.

Your obedient servant,


(SULTAN MEHMOOD KHATTAK)
DEPUTY SECRETARY (REGULATION)

Endst: No. FD(SR.V)2-151/93. Dated Peshawar, the 26-2-1997.

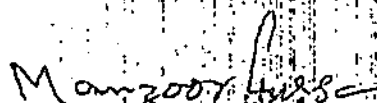
Copy forwarded to the Secretaries to Government of the Punjab, Sindh and Balochistan, Finance Departments, Lahore, Karachi and Quetta.


(SULTAN MEHMOOD KHATTAK)
DEPUTY SECRETARY (REGULATION)

Endst: No. & date as above.

Copy forwarded to the:-

1. Private Secretary to Finance Secretary, Government of NWFP, Peshawar.
2. All P.As to Addl./Deputy Secretaries in Finance Department, Government of NWFP, Peshawar.
3. All Budget/Section Officers in Finance Department, Government of N.W.F.P., Peshawar.


(MANZOOR HUSSAIN)
SECTION OFFICER (SR.V)

(6)

GOVERNMENT OF PAKISTAN
FINANCE DIVISION
(REGULATION WING)

MS F.R. 4/183
Islamabad, the 3rd Nov., 1991

NOTIFICATION

The exercise of the powers conferred by sub-section (1) of Section 25 of the Civil Servants Act, 1973 (LXXI of 1973) the President is pleased to direct that the following further amendment shall be made in the Fundamental Rules, namely:-

In the aforesaid Rules, in Section 1, in Chapter II the F.R.-18 shall be omitted.

Sd/-
(TAHIR SAJJID)
Deputy Secretary (R. II)

All Ministries and Divisions etc.

Copy forwarded to the Establishment Division (Mr. Manzur Hussain, Additional Secretary) with reference to correspondence resting with their D.O. No. 3/8/91-R.2, dated 2nd November, 1991.

Sd/-
(TAHIR SAJJID)
Deputy Secretary (R. II)