


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1360 /2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	11/11/2024	<p>The Review Petition in appeal no. 1891/2022 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Division Bench at Peshawar on 18.11.2024. Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The review petition of Mr. Usman Khan, submitted today on 31.10.2024 by Mr. Noor Muhammad Khattak, Advocate, is incomplete for the following reasons and is being returned to the counsel for the petitioner for completion and resubmission within 15 days:

1. The review petition is filed under Section 7-A of the Khyber Pakhtunkhwa Service Tribunal Act, 1974; however the Act does not contain for 7-A. If such a provision exists, attach the authentic copy of the same with the petition.

No. 1012 /Inst./2024/KPST,

Dt. 31/10 /2024.

Noor Muhammad Khattak Adv.,
High Court Peshawar.

Amatilloh
ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

R/siv,

That the Govt of K.P. through new amendment Bill 2024 in the Khyber Pakhtunkhwa Service Tribunal Act, which is notified vide notification dated 05/11/24, and new Section 7/A inserted under which the Hon'ble K.P. Service Tribunal has the power to entertain Review Petition.

Re-submitted

N.
08/11/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Review NO. 1360 /2024

USMAN ICHAN

VS

GOVT OF KPK & OTHERS:

APPLICATION FOR FIXATION OF THE ABOVE TITLED CASE AT
PRINCIPAL SEAT, PESHAWAR.

Respectfully Sheweth:

1. That the above mentioned case is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble court.

It is therefore prayed that on acceptance of this application the case may please be fixed at principal seat Peshawar for the Convenience of parties and best interest of justice.

Applicant

Dated: - 30/10/2024

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

REVIEW PETITION No:- 1360 /2024
IN
SERVICE APPEAL No 1891/2022

MR. USMAN KHAN

V/S

SEC: FOOD & OTHERS

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Dated: 29-10-2024

PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

REVIEW PETITION NO:- 1360 /2024
IN
SERVICE APPEAL No 1891/2022

Mr. Usman Khan, Food Grain Supervisor (BPS-17),
District Food Controller office, District Upper Chitral .
.....**PETITIONER**

VERSUS

- 1- The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Director Food, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Food Controller, Chitral Lower & Upper
.....**RESPONDENTS**

REVIEW PETITION UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 OF CPC OF THE CODE OF CIVIL PROCEDURE, 1908 AND 7A OF THE KHYBER PAKHTUNKHWA ACT NO 1 OF 1974 AGAINST THE JUDGMENT & ORDER DATED 02/09/2024 PASSED BY THE LEARNED DIVISION BENCH OF THIS HONOURABLE TRIBUNAL IN SERVICE APPEAL NO 1891/2022.

Respectfully Sheweth:

Brief facts giving rise to the present petition are as under:

- 1) That the petitioner/appellant filed the above titled Service Appeal No 1891/2022 in this Honourable Tribunal for setting aside the impugned order dated 01/09/2022 whereby minor penalty of three annual increments was awarded to the appellant for a period of 03 years. Copy of Service appeal alongwith all relevant documents are attached as annexure.....**"A"**

2) That ibid Service Appeal was fixed for hearing on 02/09/2024 however, the appeal was dismissed vide order dated 09/09/2024. Copy of order/judgment dated 02/09/2024 is attached as annexure....."B"

3) That this Honourable Tribunal while dismissing the service appeal has concluded as under:-

"As the respondents have issued show cause notice to the appellant on 25-08-2022 and conducted de-novo inquiry, wherein, inquiry officer, after conducting inquiry, has given his recommendations for imposing the impugned penalty. Therefore, the impugned minor penalty of stoppage of three annual increments for three years and treating intervening period as extraordinary leave, suits to the circumstances of the case.

In view of the above, instant service appeal is dismissed with costs. Consign.

4) That the subject order/judgment dated 02/09/2024 of this Honourable Tribunal needs second look, and merits to be reviewed on the grounds inter alia as under:-

Grounds:-

- A) That the order/judgment dated 02/09/2024 is against the law and facts, hence the judgment/order of this Honourable Court needs to be reviewed.
- B) That the impugned order and judgment dated 02/09/2024 is the result of mis-appreciation and mis-interpretation of available evidence on record, which amounts to be an error, and is liable to be reviewed, may kindly be reviewed.
- C) That it is a settled principal of law that the authority issuing an order shall be competent to review the same and to avoid miscarriage of justice.
- D) That the said order and judgment dated 02/09/2024 is not passed by proper reflection of available record.
- E) That it will be in the best interest of justice that if the impugned order & judgment is set aside and the case is decided on merits.
- F) That there is a technical error in the impugned judgment that this Honourable Court while passing the impugned judgment in case in hand, ignored the facts and grounds taken by the petitioner in the petition, so on this score also the impugned judgment is liable to be reviewed.

- G) That unless and until the order/judgment dated 02/09/2024 is reviewed the purpose of law would be defeated and serious miscarriage of justice would be caused to the petitioner.
- H) That valuable rights of the petitioner are attached to the petition in question.
- I) That it is settled principle of natural justice that no one should be condemned unheard but the impugned order is totally against the principle of natural justice.
- J) That it will be in the interest of justice, if the impugned order is reviewed and the appeal is decided on merits in accordance with law.
- K) That the rights of petitioner guaranteed under the constitution, that every citizen shall be treated in accordance with law and their rights shall not be circumvented without any lawful justification.
- L) That any other grounds will be raised at the time of arguments with kind permission of this Honourable Court.

It is, therefore, most humbly prayed that on acceptance of this Review Petition, the order dated 02/09/2024 of this Honourable Tribunal may kindly be reviewed/ recalled in the light of above submissions in the larger interest of justice and the Service Appeal may please be restored and decided as per facts and circumstance taken by the petitioner.

PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN

&
KHANZAD GUL
ADVOCATES HIGH COURT

CERTIFICATE

-4-

It is hereby certified that the instant petition in hand is fit case for review.


Advocate

AFFIDAVIT

I, Mr. Usman Khan, Food Grain Supervisor (BPS-17), District Food Controller office, District Upper Chitral, do hereby solemnly affirm on oath that the contents of the above petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.


DEPONENT

"A"

①

-5-

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

APPEAL No. _____ / 2022

Khyber Pakhtunkhwa
Service Tribunal

Dist. No. 2185

Dated 07-12-2022

Mr. Usman Khan, Food Grain Supervisor (BPS-7),
District Food Controller Office, District Upper Chitral.

.....APPELLANT

VERSUS

- 1- The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Director Food, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Food Controller, Chitral Lower & Upper.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUNGED ORDER DATED 01.09.2022 WHEREBY MINOR PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENT FOR A PERIOD OF THREE YEARS WAS IMPOSED UPON THE APPELLANT & ALSO TREATED THE INTERVENING PERIOD AS LEAVE WITHOUT PAY AND AGAINST THE APPELLATE ORDER DATED 17.10.2022 (COMMUNICATED ON 07.11.2022) WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

PRAYER:

That on acceptance of this appeal the impugned order dated 01.09.2022 may kindly be set aside to the extent of stoppage of three annual increments & intervening period and the appellate order dated 17.10.2022 (communicated on 07.11.2022) may also be set aside. That the respondents may be directed to restore the three annual increments of the appellant with all back benefits. That the respondents may also further be directed to treat the intervening period i.e. w.e.f. 21.4.2015 till 1.9.2022 as period spent on duty. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

File day
Registrar
7/12/22

**R/SHEWETH:
ON FACTS:**

Brief facts giving rise to the present appeal are as under:

- 1- That the appellant was initially appointed as Food Grain Supervisor (BPS-6) vide order dated 24.11.2008 on the proper recommendation of departmental selection committee. Copy of the

Appointment Order dated 24.11.2008 is attached as annexureA.

7- That the respondent department through order dated 21.04.2015 removed the appellant from the service, the appellant feeling aggrieved from the said impugned order, filed service appeal No.1029/2016 before this Honorable Service Tribunal. That this honorable court through judgment dated 26.01.2022 reinstated the appellant for the purpose of de-novo Inquiry. Copies of the Order dated 21.04.2015 and Judgment dated 26.01.2022 are attached as AnnexureB & C.

8- That in compliance with the ibid judgment of this honorable tribunal the respondent department reinstated the appellant through order dated 14.03.2022 and the appellant submit his arrival report and started performing his duty quite efficiently and to the entire satisfaction of his superior at his concerned station. Copies of the Reinstatement Order dated 14.03.2022 and Arrival report are attached as AnnexureD & E.

9- That the appellant was performing his duty the respondent department initiated de-novo inquiry and issued show cause notice vide order dated 25.08.2022, the appellant submitted his reply to show cause notice whereby the allegations levelled against the appellant has been denied. Copies of the Show Cause Notice and Reply to Show Cause Notice are attached as AnnexureF & G.

10- That astonishingly and without conducting regular inquiry the respondent department issued impugned order dated 01.09.2022 whereby minor penalty of three annual increment for the period of three years was imposed upon the appellant without affording any chance of personal hearing or personal defense to the appellant. Copy of the Impugned Order dated 01.09.2022 is attached as Annexure..... H.

11- That the appellant feeling aggrieved from the ibid impugned order filed departmental appeal but the same has been rejected on no good grounds vide appellate order dated 17.10.2022 (communicated on 07.11.2022). Copies of the Departmental Appeal Appellate Order dated 17.10.2022 and Communication letter dated 07.11.2022 are attached as AnnexureI, J & K.

12- That appellant, having no other remedy, prefer the instant appeal on the following grounds amongst the others.

GROUND:

A- That the actions and inactions of the respondents by issuing the impugned order dated 01.09.2022 and appellate order dated 17.10.2022 (communicated on 07.11.2022) are against the law, facts, norms of

(7) -7-

natural justice and materials on the record, hence not tenable in the eye of law therefore are liable to be rectified/modified.

- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the enquiry officer has not recorded any statement of the appellant in respect of the removal of three increments for a period of three years.
- D- That the respondents acted in arbitrary and mala fide manner while issuing the impugned order dated 01.09.2022 and appellate order dated 17.10.2022 (communicated on 07.11.2022).
- E- That the appellant has been discriminated while issuing the impugned order dated 1.9.2022 whereby minor penalty of stoppage of three increments was imposed on the appellant and also treated the intervening period as leave without pay.
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Dated: 6.12.2022

Usman Khan
APPELLANT

THOROUGH
 USMAN KHAN
 NOOR MOHAMMAD KHATTAK
Waleed Adnan
 WALEED ADNAN
Umar Farooq Momand
 UMAR FAROOQ MOMAND
Muhammad Ayub
 MUHAMMAD AYUB
 & *Khanzad Gul*
 KHANZAD GUL
 ADVOCATES

AFFIDAVIT

I Usman Khan, Food Grain Supervisor (BPS-7), District Food Controller Office, District Upper Chitral. do hereby solemnly affirm that the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Usman Khan
DEPONENT



LT-542 Appointment offer Usman Khan as P.S. - 00-11-2008

DIRECTOR FOOD, N.W.F.P. PESHAWAR

The P.S. to Minister Food, NWFP for information of the Secretary Food, NWFP. The P.S. to Secretary Food, NWFP for information of the Secretary Food, NWFP. Usman Khan S/O Kamran Khan Mohallah Bhalai Korona V& Post Office Hachin Badkha Mardan for information & compliance.

DIRECTOR FOOD, N.W.F.P. PESHAWAR

E.No. 27127-24/ET-542

The appointment offer will be cancelled if no reply is received from the candidate failed to respond by the due date.

If he accepts the post on the above terms and conditions, he should convey his acceptance to writing to the undersigned by 14/11/2008 and produce original domicile and academic qualifications certificates as well as character certificate from two respectable persons not being his relatives who are well acquainted with him.

His employment in the Food Department shall be purely on temporary basis. His services will be subject to the Medical Department Government service. He should produce Medical Expenses Certificate from the Medical Superintendent/Civil Surgeon of Government Hospital. He will be governed by the Rules and Regulations issued by the Government from time to time for such category of Government servants to which he belongs. His services shall be subject to the provisions of the Government's policy. His employment will be subject to the provisions of Government Fund and contribution. He will join duty at his own expense. He shall produce domicile certificate of being a bonafide resident of NWFP. In case he wishes to resign at any time, one month notice will be necessary or one month pay in lieu thereof will have to be forfeited to Government.

On the recommendation of Departmental Selection Committee of Food Directorate NWFP Peshawar, Usman Khan S/O Kamran Khan Mohallah Bhalai Korona V& Post Office Hachin Badkha Mardan is hereby offered a temporary post of Food Grain Supervisor (BPS-06) on the following terms & conditions.

APPOINTMENT OFFER

Dated 11/11/2008

No. 27127-24/ET-542

DIRECTOR FOOD, N.W.F.P. PESHAWAR



BETTER COPY: P. 8

FOOD DIRECTORATE NWFP PESHAWAR
NO.26112/LT-542

Dated Peshawar, the 24.11.2008

APPOINTMENT OFFER.

On the recommendation of Departmental Selection Committee of Food Directorate NWFP Peshawar, Usman Khan S/o Kameen Khan Mohaliah Bhatal Korona V & Post Office Hathian Batkhela Mardan is hereby offered a temporary post of food grain Supervisor (BPS-05) on the following terms & conditions.

- i. His employment in the Food Department would be purely on temporary basis.
 - ii. His services will be subject to Medical fitness for Government service. He should produce Medical Fitness certificate from the Medical Superintendent/Civil Surgeon of a Government Hospital.
 - iii. He will be governed by the Rules and Regulations Issue by the Government from time to time for such category of Government servants to which he belongs.
 - iv. His service is not pension able and he will not claim any pension/gratuity for the service rendered by him.
 - v. His employment will be subject to deduction of Benevolent Fund and contributory Provident Fund as required under the policy.
 - vi. He will join duty at his own expenses.
 - vii. He shall produce domicile certificate of being a bonafide resident of NWFP.
 - viii. In case he wishes to resign at any time, one month notice will be necessary or one month pay in lieu thereof will have to be forfeited to Government.
2. If he accepts the post on the above terms and conditions, he should convey his acceptance in writing to the undersigned by 24/11/2008 and produce original domicile and academic qualifications certificates as well as character certificates from two respectable persons not being his relatives who are well acquainted with him.
3. The appointment offer will be cancelled if no reply is received or the candidate failed to respond by the due date.

E.No. 26112-24/ET-542

DIRECTORATE FOOD NWFP
PESHAWAR
Dated. 24/11/2008



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**DIRECTOR FOOD
KARNATAKA
BANGALORE**

Handwritten signature

**DIRECTOR FOOD
KARNATAKA
BANGALORE**

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Copy is forwarded to:

- 1 The Deputy Commissioner, Chital
- 2 The Director, Anti-Corruption Establishment, Kalyan, Palkurki, Palkurki
- 3 The District Accounts Officer, Chital
- 4 The District Revenue Officer, Chital
- 5 The Assistant Director, Food, Karnataka, Chital
- 6 The District Officer, Anti-Corruption Establishment, Chital
- 7 The District Food Controller, Chital
- 8 Mr. Uman Khan, PDS Chital
- 9 Personal File

Enclines referred to are:

1 After full consideration of the case, the said official is held responsible for misappropriation of 789 bags (78.9 Tons) wheat costing Rs. 2.033 Millions, in discipline and thereby awarded the major penalty of removal from service with immediate effect.

2 The misappropriation of 789 bags (78.9 Tons) wheat costing Rs. 2.033 Millions, in discipline and thereby awarded the major penalty of removal from service with immediate effect.

3 Mr. Uman Khan Foodgrain Inspector (incharge of PRC Booth & Kuisim Chital) was served with Show Cause Notice vide Food Directorate letter No. 6533/PP-1123 dated 05-11-2014, No. 6793/PP-1039 dated 21-11-2014 and No. 1258/PP-1039 dated 27-02-2015, for appearance before the competent authority along with reply to the Show Cause Notice for persons) hearing on 19-03-2015 to proceed further, but he not only failed to appear before the authority to be heard, depositing the outstanding amount but rather absconded himself from the office.

4 The District Food Controller, Chital has worked out the cost of wheat on the basis of issue price i.e. 3500 per bags however the landed cost of the embagged quantity comes out to be Rs. 2.353 Million out of which the assessed has deposited Rs. 0.25 Millions while Rs. 2.003 Millions are still outstanding against you.

5 When in the District Food Controller, Chital reported vide letters No. 1554-SR/Uman Khan dated 06-06-2014, No. 1561-65/Uman Khan dated 06-06-2014, No. 1591/Uman Khan FGS, dated 10-06-2014 and office order No. 2535-39/4/3-ET, dated 02-10-2014 (copy enclosed) that during physical verification a quantity of 789 bags (78.9) M. Tons wheat valuing Rs. 2.76 Million was short detected against Mr. Uman Khan Foodgrain Inspector incharge of PRC Booth and Kuisim. An amount of Rs. 250000/- on account of cost of wheat/ empty gunny bags has been recovered from the official and deposited into Government treasury through proper Chital leaving behind a balance of Rs. 2411500/- He was upon with notice by the DFC Chital to deposit the remaining balance into Government treasury and produce Original treasury Chital, but he have failed to deposit the outstanding amount.



**DIRECTOR FOOD
KARNATAKA
BANGALORE**

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FOOD DIRECTORATE NWFP PESHAWAR
NO.2037/PP-1123

Dated Peshawar, the 21.04.2015

OFFICE ORDER.

Whereas the District Food Controller, Chitral reported vide letters No.1554-SB Usman Khan dated 06.06.2014, and No.1561-65/Usman Khan dated 06.06.2014, No.1591/Usman Khan FGS, dated 10.06.2014 and office order No.2535-39/4/3-ET, dated 02.10.2014 (copy enclosed) that during physical verification a quantity of 789 bags (78.9) M. Tons wheat valuing Rs.2.76 Million was short detected against Mr. Usman Khan Food grain Supervisor Incharge Provincial Reserve Centers Booni and Kushum. An amount of Rs.350000/on account of cost of wheat/empty gunny bags has been recovered from the official and deposited into Government Treasury through proper Challan leaving behind, a balance of Rs.2411500/-. He was upon with notice by the DFC Chitral to deposit the remaining balance into Government Treasury and produce Original treasury challan, but he have failed to deposit the outstanding amount.

2. The District Food Controller Chitral has worked out the cost of wheat on the basis of issue price i.e. 3500 per bags however the landed cost of the embezzled quantity comes out to be Rs.3.33 Million out of which the accused has deposited Rs.0.35 Million while Rs.3.03 Millions are still outstanding against you.
3. Mr. Usman Khan Food grain Inspector (Incharge of PRC Booni & Kushum Chitral) was served with Show Cause Notice vide Food Directorate Letter No.6533/PF-1123 dated 06.11.2014, No.6793/PF-1039 dated 21.11.2014 and No.1258/PF-1039 dated 27.02.2015, for appearance before the competent authority along with reply to show cause notice for personal hearing on 19.03.2015 to proceed further but he not only failed to appear before the authority to be heard in person, depositing the outstanding amount but he rather absented himself from the office.
4. After full consideration of the case, the said official is held responsible for embezzlement/misappropriation of 789 bags (78.9 Tons Wheat costing Rs.3.03 Millions, ill discipline and hereby awarded the major penalty of removal from service with immediate effect.
5. The embezzlement/misappropriation quantity which are still outstanding against him will be recovered from his moveable/immovable property as per Rules.

DIRECTORATE FOOD NWFP
PESHAWAR

"A" -10-



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1029 /2016

1036
Date: 04-10-2016

Usman Khan S/o Kamin Khan R/o Mohallah Bhatai Korona
Village Hathain Batkhela, District Mardan.
.....(Appellant)

VERSUS

1. Secretary to Govt; of K.P.K Food Department, Civil Secretariat Peshawar.
 2. Director (Food) K.P.K Food Department Peshawar.
 3. Dy: Director (A&C).
K.P.K Food Department Peshawar.
 4. District Food Controller, District Chitral.
-(Respondents)

APPEAL U/S 4 OF K.P.K SERVICE TRIBUNAL ACT- 1974
AGIANST THE IMPUGNED ORDER NO. 2037-PP 1123
DATED 21/04/2015

PRAYERS:

ON ACCEPTANCE OF THE INSTANT APPEAL THE ORDER FOR SETTING ASIDE OF THE IMPUGNED ORDERS AND RE-INSTATMENT OF THE APPELLANT ON HIS SERVICES WITH ALL BACK BENEFITS MAY KINDLY BE PASSED.

[Handwritten signature]
4/10/16

RESPECTFULLY SHEWETH,

The appellant submits as under:-

ATTESTED
[Signature]
Secretary
Khyber Pakhtunkhwa Service Tribunal
Peshawar

[Handwritten signature]
5/10/16

1. That the appellant was appointed as Food, Grain-Supervisor (BPS-06) vide order No. 261122-2, ET-542 dated 24/11/2008, on the recommendation of Departmental Selection Committee. (Copy of appointment order is annexed as annexure- "A").

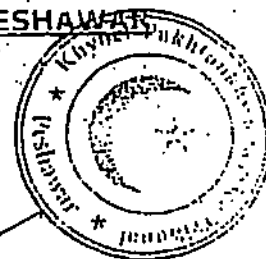
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(F)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1029/2016

Date of Institution ... 04.10.2016
Date of Decision ... 26.01.2022



Usman Khan S/O Kamin Khan, R/O Mohallah Bhatai Korona
Village Hathian Batkhela, District Mardan.

(Appellant)

VERSUS

Secretary to Government of Khyber Pakhtunkhwa Food
Department, Civil Secretariat Peshawar and three others.

(Respondents)

Noor Muhammad Khattak,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Ahmad Sultan Tareen
Rozina Rehman


... Chairman
... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the
prayer as copied below:

"On acceptance of this appeal, the order for
setting aside the impugned orders and
reinstatement of the appellant on his services
with all back benefits may kindly be passed".

ATTESTED


Secretary to Government
Civil Secretariat
Peshawar



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2. The relevant facts leading to filing of instant appeal are that appellant was appointed as Food Grain Supervisor (BS-06) on 24.11.2008 on the recommendation of Departmental Selection Committee. During service, the District Food Controller, Chitral reported the matter that during physical verification, quantity of 789 bags (78.9) M.Tons wheat was short detected against the appellant. A two Member Inspection Commission Team was constituted but respondent No.4 did not wait for the report of Inspection Commission rather imposed the responsibilities upon the appellant and directed him to deposit the Government dues and one Riaz Ahmad Food Grain Supervisor was directed to take the charge of PR Centers Booni and Kushum from appellant. Accordingly, show cause notice was issued, whereby, the appellant was charged for embezzlement and major penalty i.e. removal from service was tentatively imposed upon appellant without inquiry and lastly, he was removed from service without fulfilling the legal and codal formalities, he, therefore, preferred departmental appeal which was turned down, hence, the present service appeal

3. We have heard Noor Muhammad Khattak Advocate for appellant and Kabir Ullah Khattak, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Noor Muhammad Khattak Advocate, learned counsel appearing on behalf of appellant, inter-alia, contended that impugned order was

ATTESTED

CHIEF CLERK
District Tribunal
Chitral


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passed in haste and cursory manner without observing all the legal and codal formalities which order is, therefore, illegal and without lawful authority; that the impugned order is against the principles of natural justice because no opportunity of personal hearing was afforded to the appellant. Learned counsel further contended that the alleged damage caused was the result of poor storage system and rough weather which was properly reported to the respondent No.4 by the appellant while the allegation of embezzlement is wrong, baseless being concocted. It was further submitted that the impugned order was kept concealed and the appellant was kept in dark which order was not communicated to the appellant when he requested for his future posting time and again. Learned counsel further argued that no full-fledged inquiry was conducted before issuance of the impugned order and that the same was passed before the detailed report of the Inspection Commission. He, therefore, requested for setting aside of the impugned order.

5. Conversely learned AAG contended that District Food Controller Chitral reported that during physical verification, a quantity of 789 bags wheat valuing Rs.2.76 Million was short detected against appellant and an amount of Rs. 350000/- on account of cost of wheat/empty gunny Bags were recovered from the official/appellant and deposited into Government Treasury through proper Challan leaving behind a balance of Rs.2411500/-. He was, therefore, served with a notice by the DFC Chitral to deposit the remaining balance but

ATTESTED


 District Food Controller
 Chitral

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he failed. He contended that appellant was served with a show cause notice but he did not submit his reply and that an opportunity of personal hearing was also given but he failed to appear and he did not deposit the remaining outstanding amount rather absented himself from office. He submitted that after full consideration of the case, he was held responsible for embezzlement/misappropriation of 789 bags and violation of Service Rules, therefore, major penalty was imposed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He contended that the appellant was punished according to law which does commensurate with the gravity of guilt.

6. From the record, it is evident that appellant Usman Khan was appointed as Food Grain Supervisor (BS-06) vide Director Food Khyber Pakhtunkhwa office, order dated 24.11.2008 in Food Department and initially was posted in the office of District Food Controller, Chitral. The District Food Controller, Chitral reported vide letter dated 10.06.2014 reported the matter that during physical verification carried out in the current financial year, a quantity of 789 bags wheat valuing Rs.2761500/- was short detected against appellant and the Director Food was apprised by the District Food Controller, Chitral to forward the case to Director Anti-Corruption Establishment Khyber Pakhtunkhwa, Peshawar for further necessary action. The appellant was also directed vide letter No.1553 dated 06.06.2014 to deposit Government dues within a week time. It merits a mention here that in order to have the factual position of stock of

ATTORNEY

[Handwritten signature]
 ATTORNEY
 CHITRAL



wheat, Mr. Arshid Hussain, Assistant Food Controller, Mastuj and Mr. Riaz Ahmad, Food Grain Inspector were appointed to conduct physical verification of wheat at PR Centre Boni and Kushum with direction to submit authentic report regarding stock of wheat and other dead articles. One Riaz Ahmad, Food Grain Supervisor/Incharge PR Center Mulkoh was directed to take over the charge of PR Centers Booni and Kushum from appellant in addition to his own vide order dated 02.10.2014. The present appellant then submitted an application to the Director Food for further posting but to no avail and it was on 06.11.2014 when the competent authority dispensed with the inquiry and directly served him with a show cause notice. From the above, it is evident that the competent authority while invoking jurisdiction of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 dispensed with the inquiry and directly served him with a show cause notice dated 06.11.2014. Rule-5(1) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides that reasons are required to be recorded in writing in case the inquiry is dispensed with but the respondents while dispensing with the inquiry, failed to show any such reasons. The respondents have very candidly violated the set norms and rules and conducted the proceedings in an authoritarian manner. We have observed that the appellant was kept deprived of affording appropriate opportunity of defense. No regular inquiry was conducted as is required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It is a well settled legal

ATTESTED

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proposition duly supported by numerous judgments of the Apex Court that for imposition of major penalty, regular inquiry is a must. We smack malafide on the part of respondents as no inquiry was conducted, no charge sheet with statement of allegations were issued and no evidence was recorded. The case is still lying in the Anti-Corruption Court which has not been decided so far but this aspect of the issue was also not taken care of. The trial is still pending and the appellant's guilt has not yet been proved.

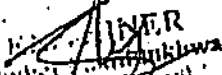
7. The preceding discussion vividly transpires that the appellant was not treated in accordance with law. As such, the instant service appeal is partially accepted. Appellant is reinstated into service. Case is remitted to the Department with direction to conduct de-novo inquiry within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
26.01.2022


(Ahmad Sultan Tareen)
Chairman


(Rozina Rehman)
Member (J)

Certified to be true copy.


Khyber Pakhtunkhwa
Service Tribunal
Peshawar



400-17-
Our faith, "Corruption free Pakistan"

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF FOOD, PESHAWAR

No: 916 /PF-1123


Dated: 14/03/2022

091-9225378 | fooddirectoratkpk@gmail.com | [@foodKPGovt](https://www.facebook.com/foodKPGovt) | [@foodkpgovt](https://www.instagram.com/foodkpgovt)

OFFICE ORDER

In compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 26-01-2022, in case of Service Appeal No. 1029/2016, wherein the Hon,able Service Tribunal partially accepted the Service Appeal that Mr. Usman Khan Foodgrain Supervisor office of District Food Controller, Chitral Upper

2 Therefore, he is re-instated into Government Service for the purpose of de-novo Enquiry with immediate effect.


DIRECTOR FOOD
KHYBER PAKHTUNKHWA,
PESHAWAR

Endstt: of even No & Date


Copy is forwarded to:-

- 1 The Accountant General, Khyber Pakhtunkhwa Peshawar.
- 2 The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to noted above.
- 3 The District Account Officer, Chitral Upper.
- 4 The Assistant Director Food, Malakand Division at Dargai.
- 5 The District Food Controllers, Chitral Upper.
- 6 PS to Minister Food Khyber Pakhtunkhwa.
- 7 PS to Secretary Food Khyber Pakhtunkhwa.
- 8 Personal File.


DIRECTOR FOOD
KHYBER PAKHTUNKHWA,
PESHAWAR

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To,

"E"


The District Food Controller,
Upper Chitral.

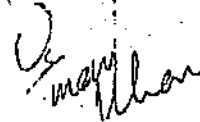
Subject: ARRIVAL REPORT

Memo:

In compliance with the Director Food, Khyber Pakhtunkhwa Peshawar, Office
Order No.916/PF-11235 dated 14-03-2022.

I beg to submit my arrival report today on 18-04-2022 (A.N)


Yours sincerely,



(Usman Khan)

FGS, DFC, Office Chitral Upper.

*Received arrival report
dated 18/4/2022.*


18/4/2022
District Food Controller
Upper Chitral



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF FOOD,
PESHAWAR

No: 3214/PF-

Dated 25/08/2022

091-6225378 | fooddirectoratkp@gmail.com | @fooddirectoratkp

SHOW CAUSE NOTICE

I, Kashif Iqbal Jilani, Director Food, Khyber Pakhtunkhwa, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Usman Khan Foodgrain Supervisor Chitral Lower now Food Directorate, Peshawar as follows:

- I. The District Food Controller, Chitral reported vide letters No.1554-58/Usman Khan dated 06-06-2014, No. No.1581-85/Usman Khan dated 08-06-2014, No.1591/Usman Khan FGS, dated 10-06-2014 and office order No.2535-39/43-ET, dated 02-10-2014 (copy enclosed) that during physical verification carried out in the current financial year a quantity of 789 bags (78.9) M. Tons wheat valuing Rs.2781500/- was short detected against you (Mr. Usman Khan Foodgrain Supervisor Incharge Provincial Reserve Centres Booni and Kushum). An amount of Rs.350000/- on account of cost of wheat/ empty gunny bags has been recovered from you and deposited into Government treasury through proper Challan leaving behind, a balance of Rs.2411500/- You were served last notice by the DFC Chitral with the direction to deposit the remaining balance into Government treasury and produce Original treasury Challan within one week time, but you have failed to deposit the outstanding amount.
- II. The District Food Controller, Chitral has worked out the cost of wheat on the basis of issue price i.e. 3500 per bags however the landed cost of the embezzled quantity at the present rate comes out to be Rs.3.353 Million out of which you have deposited Rs.0.35 Millions while Rs.3.003 Millions are still outstanding against you.

→ 2

After completion of all codal formalities the official was removed from service vide Office Order No. 2037/PF-1123 dated 21-04-2016. Now in compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 26-01-2022, in case of Service Appeal No. 1028/2016, wherein in the Hon.able Service Tribunal partially accepted the Service Appeal to re-instate the appellant and the Department is directed to conduct the de-novo inquiry within 90 days of the receipt of this Judgment. To ascertain the charges, proper formal de-novo inquiry was ordered vide Food Directorate letter No.1481/PF-1123 dated 06-04-2022. The Inquiry Officer in its report recommended that :-

- I. The accused official (Mr. Usman Khan) may be inflicted, any minor penalty for his negligence and carelessness as laid down under Rule 4(1)(b) of the KP Government Servant (E&D) Rules,2011.
- II. As the Director Food Khyber Pakhtunkhwa, Peshawar already forwarded the case of the accused official to Director Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar to investigate the matter for effecting complete recovery from the accused official vide letter No. 6817/PF-1123 dated 16-10-2014. FIR already launched and case is subjudice. Therefore, decision regarding recovery of any amount from the accused official shall be subject to the outcome of the criminal case.
- III. As regards the issue of back benefit, it is suggested that it is settled principle of Law, that where there is work, there is pay. Since the accused official (Mr. Usman Khan) has not rendered any duty, therefore, he is not entitled to back benefit in this regard and the intervening period may be converted into leave without pay.

3 As a result thereof, I, Kashif Iqbal Jilani, Director Food Khyber Pakhtunkhwa, as competent authority, have decided on the basis of the recommendation of Enquiry Officer to award the minor penalty of stoppage of 03 Annual increments for a period of 03 years with immediate effect under Rule-4 of E&D Rules-2011. Moreover, the intervening period shall treated as extra ordinary leave.

4 You are, therefore, required through this Show Cause Notice to explain as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5 If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case no ex-parte action shall be taken against you.

6 A copy of the inquiry report is enclosed.

DIRECTOR FOOD
KHYBER PAKHTUNKHWA,
PESHAWAR

Endorsement No. & Date Even

- Copy is forwarded to
- 1) The Deputy Director Food Malakand Division.
 - 2) The District Food Controller Chitral Lower and Upper.
 - 3) Official concerned / Personal File.

DIRECTOR FOOD
KHYBER PAKHTUNKHWA,
PESHAWAR

-20-

"B"

(B)

To

The Director Food,
Khyber Pakhtunkhwa, Peshawar.

Subject: REPLY TO THE SHOW CAUSE NOTICE DATED 25.8.2022.

Respected sir,

It is stated with great respect that the undersigned was performing his duties *Food Grain Supervisor at District Chital* in your good-self department quite efficiently and whole heartedly.

That while serving your good self department a one sided inquiry was initiated against the undersigned in the year 2014 for short detecting of 789 bags of Wheat valuing Rs. 2761500/ and on the basis of that allegations/ so called inquiry the undersigned was removed from service in the year 2015. That feeling aggrieved the undersigned challenged the same order before the August Khyber Pakhtunkhwa Service Tribunal, and the Service Tribunal while accepting the appeal of the undersigned directed your good self department to re-instate him for the purpose of de-novo inquiry. That the undersigned was re-instated vide order dated 14.03.2022.

That after re-instatement your good self has issued a charge sheet dated 05.04.2022 along with statement of allegations to the undersigned wherein an allegation of short detecting of 789 bags of wheat valuing Rs. 2761500/ in the financial year 2014 and the landed amount/ cost of embezzled quantity comes out as Rs. 3.353 Million has been leveled against the undersigned and this act of the undersigned liable him for any penalties specified in the Khyber Pakhtunkhwa (E&D) Rules, 2011.

That it is pertinent to mention here that the allegations mentioned in the show cause notice are baseless as the undersigned has never committed such illegal and unlawful acts. It is further important to mention here that the undersigned has never deposited the mentioned amount Rs. 350000/- as alleged recovery but the same was deposited through normal Challan of 100 bags of wheat and empty gunny bags and it is also important to mention here that the same were deposited prior to the Physical verification and were incorporated in the FG-3 register, so how could that amount be scribed on the recovery book against the undersigned.

That the undersigned has since his appointment never committed any illegality and the entire service history/ record is crystal clear.

That the undersigned has never committed any misconduct and whatever has been uttered before your Honor is a concocted and baseless allegations. That there is nothing on record which could connect the undersigned with the mentioned allegations.

That the undersigned had performed his duty satisfactorily and whole heartedly throughout in his service carrier.

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It is therefore requested with great respect that my this reply to the show cause notice dated 25.08.2022 may please be accepted and the undersigned be exonerated from all the charges and the show cause be filed accordingly.

Dated: 29.08.2022

Your sincerely,



USMAN KHAN
FOOD GRAIN SUPERVISOR,
O/O DISTRICT FOOD CONTROLLER,
DISTRICT UPPER CHITRAL.



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF FOOD,
PESHAWAR

No 328D /PF-1123

Dated Peshawar, the 1st September, 2022

☎ 091-9225378 ✉ fooddirectoratkpk@gmail.com 📠 @fooddirectoratkpk 📺 @fooddirectoratkpk

OFFICE ORDER

Whereas, The District Food Controller, Chitral reported vide letters No.1554-68/Usman Khan dated 06-06-2014, No. No.1561-65/Usman Khan dated 06-08-2014, No.1591/Usman Khan FGS, dated 10-06-2014 and office order No.2535-39/4/3-ET, dated 02-10-2014 that during physical verification carried out a quantity of 789 bags (78.9) M. Tons wheat valuing Rs.2781500/- was short detected against Mr. Usman Khan Foodgrain Supervisor Incharge PRC Booni and Kushum. An amount of Rs.350000/- on account of cost of wheat/ empty gunny bags was recovered from the accused and deposited into Government treasury through proper Challan leaving behind, a balance of Rs.2411500/- He was served last notice by the DFC Chitral with the direction to deposit the remaining balance into Government treasury and produce Original treasury Challan within one week time, but he has failed to deposit the outstanding amount.

And whereas, after completion of all codal formalities the official was removed from service vide Office Order No. 2037/PF-1123 dated 21-04-2015. In compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 26-01-2022, in case of Service Appeal No. 1028/2016, wherein in the Hon.able Service Tribunal partially accepted the Service Appeal to re-instate the appellant and the Department was directed to conduct the de-novo inquiry within 90 days of the receipt of this Judgment. To ascertain the charges, proper formal de-novo inquiry was ordered vide Food Directorate letter No.1461/PF-1123 dated 05-04-2022. The Inquiry Officer in its report recommended that :-

- i. The accused official (Mr. Usman Khan) may be inflicted any minor penalty for his negligence and carelessness as laid down under Rule 4(1)(b) of the KP Government Servant (E&D) Rules, 2011.
- ii. As the Director Food Khyber Pakhtunkhwa, Peshawar already forwarded the case of the accused official to Director Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar to investigate the matter for effecting complete recovery from the accused official vide letter No. 5817/PF-1123 dated 16-10-2014. FIR already launched and case is subjudice. Therefore, decision regarding recovery of any amount from the accused official shall be subject to the outcome of the criminal case.
- iii. As regards the issue of back benefit, it is suggested that it is settled principle of Law, that where there is work, there is pay. Since the accused official (Mr. Usman Khan) has not rendered any duty, therefore, he is not entitled to back benefit in this regard and the intervening period may be converted into leave without pay.

Therefore, I, Kashif Iqbal Jilani, Director Food, Khyber Pakhtunkhwa, exercise of the powers conferred upon me under the Rule 4 (a) (ii) of Khyber Pakhtunkhwa, Government Servants E&D, Rules, 2011 hereby impose upon the accused official the minor penalty of stoppage of 03 Annual Increments for a period of 03 years with immediate effect. Moreover, the intervening period shall be treated as extraordinary leave.

DIRECTOR FOOD
KHYBER PAKHTUNKHWA
PESHAWAR

Endorsement No & Date Even
Copy is forwarded to:

- 1) The Accountant General, Khyber Pakhtunkhwa Peshawar.
- 2) The District Accounts Officers, Chitral Lower and Upper.
- 3) The Deputy Directors Food, Malakand Division.
- 4) The District Food Controllers, Chitral Lower and Upper.
- 5) The Pay Bill Assistant Food Directorate, Peshawar.
- 6) PS to Secretary Food Khyber Pakhtunkhwa.
- 7) Official concerned/ Personal File.

DIRECTOR FOOD
KHYBER PAKHTUNKHWA
PESHAWAR

-23-

"K"
K

To

ok

The Secretary Food Department,
Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER DATED 01-09-2022 WHEREBY MINOR PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENT HAS BEEN IMPOSED AND THE INTERVENING PERIOD W-E-F 21-04-2015 TILL 14-03-2022 HAS BEEN TREATED AS LEAVE WITHOUT PAY.

30/9/2022
DINNO 1 2074
29.9.2022

Respected Sir,

It is most humbly stated that the appellant is the employee of your good self department and during service certain baseless allegations were leveled against the undersigned and he was charge sheeted but without following the due course of law he was stringed away removed from service vide order dated 21-04-2015. Feeling aggrieved the appellant filed departmental appeal followed by service appeal No. 1029/2016 which was accepted vide judgment dated 26.01.2022 whereby the appellant was re-instated in to service however your good self department was also directed to conduct de-novo inquiry.

That in de-novo inquiry the undersigned was charge-sheeted which was responded by the undersigned with sufficient justification but that justification was not honored by your good self and vide impugned order dated 01.09.2022 the undersigned was punished for three annual increment along with treating the intervening period as leave EOL (without pay).

That the impugned order is not sustainable prima face as it has categorically been mentioned in the para 2(i) of the recommendation that the undersigned has committed negligence, however, there is no such penalty for negligence under the service law.

That in Para 2(ii) the recovery has been subjected to the outcome of the competent court of law then the impugned order is also not sustainable on this score too.

That the appellant was removed from service vide an illegal order and the same has been set aside by the August Service tribunal which manifest that there was no fault on the part of the appellant therefore the undersigned is also entitled for the pay and back benefits of the intervening period.

- 24 -

It is, therefore, most humbly prayed that on acceptance of this departmental appeal the impugned office order dated 01-09-2022 may very kindly be set aside.

Dated: 29.09.2022



YOURS OBEDIENTLY



Mr. USMAN KHAN
Food Grain Supervisor (BPS-07)
District Food Controller Office
Upper Chitral.



Our faith, "Corruption free Pakistan"

GOVERNMENT OF KHYBER PAKHTUNKHWA

DIRECTORATE OF FOOD, PESHAWAR.

No. 3849/PF-1123

Dated: 17/10/2022

091-9228378 | fooddirector@kpk.gov.pk | [foodKPGovt](https://www.facebook.com/foodKPGovt) | [@foodkpgovt](https://www.instagram.com/foodkpgovt)

To,

The Secretary to
Government of Khyber Pakhtunkhwa
Food Department Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER DATED 01-08-2022

Dear Sir,

Reference Section Officer (Litigation) Government of Khyber Pakhtunkhwa, Food Department letter No. SO(LIT)/Food/7-4/2021/11844 dated 03-10-2022, on the subject noted above (copy enclosed).

2 Para wise comments on departmental appeal against the impugned office order dated 01-08-2022 in respect of Mr. Usman Khan Foodgrain Supervisor Office of District Food Controller Chitral Upper is as under:-

- 1) The District Food Controller, Chitral reported vide letters No.1554-58/Usman Khan dated 08-08-2014, No. No.1581-65/Usman Khan dated 08-08-2014, No.1581/Usman Khan FGS, dated 10-08-2014 and office order No.2535-39/4/3-ET, dated 02-10-2014 that during physical verification carried out a quantity of 789 bags (78.9) M. Tons wheat valuing Rs.2781500/- was short detected against Mr. Usman Khan Foodgrain Supervisor Incharge PRC Booni and Kushum. An amount of Rs.350000/- on account of cost of wheat/ empty gunny bags was recovered from the accused and deposited into Government treasury through proper Challan leaving behind, a balance of Rs.2411500/- He was served last notice by the DFC Chitral with the direction to deposit the remaining balance into Government treasury and produce Original treasury Challan within one week time, but he has failed to deposit the outstanding amount.

After completion of all codal formalities the official was removed from service vide Office Order No. 2037/PF-1123 dated 21-04-2015. In compliance with Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 28-01-2022, in case of Service Appeal No. 1029/2016, wherein in the Hon.able Service Tribunal partially accepted the Service Appeal to re-instate the appellant and the Department was directed to conduct the de-novo inquiry within 90 days of the receipt of this Judgment. To ascertain the charges, proper formal de-novo inquiry was ordered vide Food Directorate letter No.1461/PF-1123 dated 05-04-2022. The Inquiry Officer in his report recommended that :-

- 1) The accused official (Mr. Usman Khan) may be inflicted any minor penalty for his negligence and carelessness as laid down under Rule 4(1)(b) of the KP Government Servant (E&D) Rules, 2011.

Food Director Peshawar dated 06-10-2022

ii) As the Director Food Khyber Pakhtunkhwa, Peshawar already forwarded the case of the accused official to Director Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar to investigate the matter for effecting complete recovery from the accused official vide letter No. 6817/PF-1123 dated 18-10-2014. FIR already launched and case is subjudice. Therefore, decision regarding recovery of any amount from the accused official shall be subject to the outcome of the criminal case.



iii) As regards the issue of back benefit, it is suggested that it is settled principle of Law, that where there is work, there is pay. Since the accused official (Mr. Usman Khan) has not rendered any duty, therefore, he is not entitled to back benefit in this regard and the intervening period may be converted into leave without pay.

2) After completion of all codal formalities, the official was awarded the minor penalty of stoppage of 03 Annual Increments for a period of 03 years with immediate effect. Moreover, the intervening period has been treated as extra ordinary leave vide Food Directorate, Office Order No. 3280/PF-1123 dated 01-09-2022.

Yours Faithfully,

DIRECTOR FOOD
KHYBER PAKHUTNKHWA,
PESHAWAR.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FOOD DEPARTMENT

NO.SO(Lit)/FOOD/7-4/2021/1969
Dated: 26-10-2022

091-235473 fooddepartmentpk@gmail.com 07-08-09-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

To,

Dispatch No. 566 dated
07/11/2022

The Mr. Usman Khan,
Food Grain Supervisor (BPS-07),
District Food Controller, Upper Chitral

Subject:- DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER DATED 01.09.2022

M. Usman
District Food Controller
Upper Chitral

I am directed to refer to the subject noted above and to enclose herewith a copy of the letter No. 3849/PF-1123 dated 17.10.2022 received from Director Food, Khyber Pakhtunkhwa, which is self-explanatory for information.

Encl: as above.

Yours faithfully,

(Signature)
SECTION OFFICER (LITIGATION)

Copy for information to the:

1. The Director Food, Khyber Pakhtunkhwa w/r to his letter Cited above.
2. PS to Secretary Food, Khyber Pakhtunkhwa.

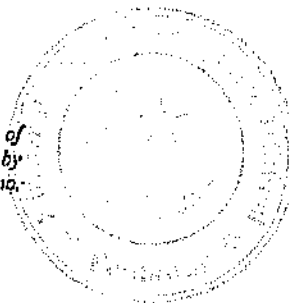
(Signature)
SECTION OFFICER (LITIGATION)

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for process RL

(Signature)

"B"

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Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

BEFORE: KALIM ARSHAD KHAN ...CHAIRMAN
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1891/2022

Date of presentation of appeal.....07.12.2022
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Mr. Usman Khan, Food Grain Supervisor (BPS-17), District Food Controller Office, District Upper Chitral.
.....(Appellant)

Versus

1. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
2. The Director Food, Khyber Pakhtunkhwa, Peshawar.
3. The District Food Controller, Chitral Lower and Upper
.....(Respondents)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 01.09.2022 WHEREBY MINOR PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENT FOR A PERIOD OF THREE YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO TREATED THE INTERVENING PERIOD AS LEAVE WITHOUT PAY AND AGAINST THE APPELLATE ORDER DATED 17.10.2022 (COMMUNICATED ON 07.11.2022) WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

ATTESTED

SECRETARY
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
02-09-2024

Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

JUDGMENT


KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was initially appointed as Food Grain Supervisor (BPS-06) vide order dated 24.11.2008; that vide order dated 21.04.2015, he was removed from service by the respondents; that feeling aggrieved filed departmental appeal followed by Service Appeal No.1029/2016; that this Tribunal vide judgment dated 26.01.2022, set aside the impugned order and reinstated the appellant for the purpose of de-novo inquiry; that after issuing show cause notice and conducting de-novo inquiry, vide impugned order dated 01.09.2022, minor penalty of stoppage of three annual increments for the period of three years; that feeling aggrieved of the impugned order, he filed departmental appeal but the same was rejected on 17.10.2022, therefore, he filed the instant service appeal.

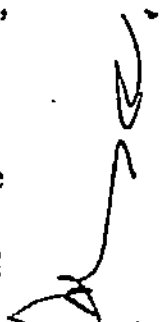
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned District Attorney for the 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 District Attorney, for respondents, controverted the same by supporting the impugned order.

5. Perusal of record reveals that appellant was serving in the Food Department as Food Grain Supervisor. Vide order dated


KALIM ARSHAD KHAN
Chairman
Khyber Pakhtunkhwa Service Tribunal
Peshawar



Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

21.04.2015, he was removed from service, however, he preferred a departmental appeal which was also turned. Therefore, the appellant approached this Tribunal by filing Service Appeal No.1029/2016. The Tribunal vide its judgment dated 26.01.2022, decided the case of the appellant in the following manner:

"6. From the record, it is evident that appellant Usman Khan was appointed as Food Grain Supervisor (BS-06) vide Director Food Khyber Pakhtunkhwa office order dated 24.11.2008 in Food Department and initially was posted in the office of District Food Controller, Chitral. The District Food Controller, Chitral reported vide letter dated 10.06.2014 reported the matter that during physical verification carried out in the current financial year, a quantity of 789 bags wheat valuing Rs.2761500/- was short detected against appellant and the Director Food was apprised by the District Food Controller, Chitral to forward the case to Director Anti-Corruption Establishment Khyber Pakhtunkhwa, Peshawar for further necessary action. The appellant was also directed vide letter No.1553 dated 06.06.2014 to deposit Government dues within a week time. It merits a mention here that in order to have the factual position of stock of

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

wheat, Mr. Arshid Hussain, Assistant Food Controller, Mastuj and Mr. Riaz Ahmad, Food Grain Inspector were appointed to conduct physical verification of wheat at PR Centre Boni and Kushum with direction to submit authentic report regarding stock of wheat and other dead articles. One Riaz Ahmad Food Grain Supervisor/Incharge PR Center Mulkoh was directed to take over the charge of PR Centers Booni and Kushum from appellant in addition to his own vide order dated 02.10.2014. The present appellant then submitted an application to the Director Food for further posting but to no avail and it was on 06.11.2014 when the competent authority dispensed with the inquiry and directly served him with a show cause notice. From the above, it is evident that the competent authority while invoking jurisdiction of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 dispensed with the inquiry and directly served him with a show cause notice dated 06.11.2014. Rule-5(1) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 provides that reasons are required to be recorded in writing in case the inquiry is dispensed with but the respondents while

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Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kulim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

dispensing with the inquiry, failed to show any such reasons. The respondents have very candidly violated the set norms and rules and conducted the proceedings in an authoritarian manner. We have observed that the appellant was kept deprived of affording appropriate opportunity of defense. No regular inquiry was conducted as is required under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It is a well settled legal proposition duly supported by numerous judgments of the Apex Court that for imposition of major penalty, regular inquiry is a must. We smack malafide on the part of respondents as no inquiry was conducted, no charge sheet with statement of allegations were issued and no evidence was recorded. The case is still lying in the Anti-Corruption Court which has not been decided so far but this aspect of the issue was also not taken care of. The trial is still pending and the appellant's guilt has not yet been proved.

7. The preceding discussion vividly transpires that the appellant was not treated in accordance with law. As such, the instant service appeal is partially accepted. Appellant is reinstated into service. Case is remitted to the Department with direction to

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PESHAWAR

Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

conduct de-novo inquiry within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room."

6. In the said judgment, the Tribunal had directed for conducting de-novo inquiry, as there were some lacunas in the order dated 21.04.2015. Accordingly, the respondents conducted de-novo inquiry by fulfilling the formalities, as directed by the Tribunal, issued the impugned order dated 01.09.2022 and converted major penalty into minor penalty of stoppage of three annual increments for a period of three years. During the inquiry, the appellant was not cross examined but he was provided ample opportunity of participation and defence. The inquiry proceedings do not suffer from any defect.

7. As the respondents have issued show cause notice to the appellant on 25.08.2022 and conducted de-novo inquiry, wherein, inquiry officer, after conducting inquiry, has given his recommendations for imposing the impugned penalty. Therefore, the impugned minor penalty of stoppage of three annual increments for three years and treating intervening period as extraordinary leave, suits to the circumstances of the case.

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Service Appeal No.1891/2022 titled "Usman Khan Vs. The Secretary Food, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

8. In view of the above, instant service appeal is dismissed with costs. Consign.

9. Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.



KALIM ARSHAD KHAN
Chairman
Camp Court, Swat



RASHIDA BANO
Member (Judicial)
Camp Court, Swat

Mutozem Shari


Date of Presentation: 09-09-2024

7-P
35/-

35/-

04-09-2024

02-10-2024



30-09-2024

- 35-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Review NO: _____ OF 2024

Usman Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Secretary FSO

(RESPONDENT)
(DEFENDANT)

I/we Usman Khan

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202

Usman Khan
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

KHANZAD GUL

&

Muhammad
MUJEEB UR REHMAN
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)