

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No. 189/2022

Date of presentation of Appeal.....21.01.2022
Date of Hearing.....05.11.2024
Date of Decision.....05.11.2024

Mr. Amjad Nawaz, S/o Shah Nawaz Khan R/o House No. 6114, Street No. 3, Sardar Ahmad Jan Colony, Peshawar, Ex-ASI, Police Line, Peshawar.....(*Appellant*)

Versus

1. The Capital City Police Officer, Peshawar.
2. The Provincial Police Officer, Peshawar.
.....(*Respondents*)

Present:

Mr. Saad Ullah Khan Marwat, Advocate.....For the appellant
Mr. Naseer ud Din Shah, Assistant Advocate General ..For respondents

JUDGMENT

RASHIDA BANO MEMBER JUDICIAL: The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“IT IS THEREFORE, MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 09.05.2013, 11.11.2016 AND 04.05.2017 OF THE RESPONDENTS BE SET ASIDE AND APPELLANT BE REINSTATED IN SERVICE WITH ALL CONSEQUENTIAL BENEFITS, WITH FURTHER PRAYER TO DIRECT RESPONDENTS TO HOLD ENQUIRY IN THE MATTER AGAINST LEGAL BENCH OR AS THE CASE MAY BE, AND TO PUNISH THE



DEFAULTERS BY ISSUING FAKE DISCHARGE ORDER, WITH SUCH OTHER RELIEF AS MAY BE DEEMED PROPER AND JUST IN CIRCUMSTANCES OF THE CASE."

02. Brief facts of the case, as per contents of the appeal, are that the appellant, Shah Nawaz Khan, applied for the position of Assistant Sub-Inspector (ASI) following the death of his father, a Sub-Inspector. His initial request was denied, leading him to file a Writ Petition on 20-01-2009. The Hon'ble High Court accepted the petition on 03-03-2010, directing his appointment as ASI under Sub Rule-4 of Rule-10 of the KP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Consequently, he was appointed on 29-09-2010 against the son's quota and completed training at the Police Training College, Hangu, on 02-04-2011. However, the department filed a CPLA against the High Court's ruling, which the Supreme Court heard on 29-11-2012, ultimately setting aside the previous judgment and emphasizing adherence to Rule 10. Misinterpreting this order, the department withdrew the appellant's appointment on 18-02-2013. Despite being already in service as ASI BPS-09, his representation for reinstatement was dismissed by the Law Department. The appellant's previous Service Appeal before the Hon'ble Tribunal was accepted on 23-08-2016, reinstating him and mandating a decision on his case within two months. Although he was reinstated on 01-11-2016, he was discharged from service on 11-11-2016. He raised concerns about a

conspiracy against him and submitted a representation that went unaddressed. Following a charge sheet on 23-01-2017, he filed another service appeal on 03-04-2017, which the Tribunal addressed on 12-11-2021, directing a decision on his representation within 30 days. The department rejected this representation on 22-12-2021, despite no prior record of such a decision, reaffirming that the ASI B-09 position falls under the KP Civil Servants Rules, not the Public Service Commission. Consequently, the appellant has filed the present service appeal.

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

04. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. The perusal of record reveals that this Tribunal, through its judgment dated 11.12.2021, directed the respondent to decide the representation of the appellant by issuing a speaking order within a period of 30 days from the receipt of a copy of this judgment.

Subsequently, the respondents, by a communication dated 28.12.2021, submitted compliance with the order dated 11.12.2021, indicating that a speaking order was passed on 22.12.2021.

07. A review of the order dated 22.12.2021 reveals that the respondent, Kashif Aftab Alam, PSP AIG Establishment for the Inspector General of Police Peshawar, stated that the representation of the appellant was examined by the appellate board, which heard the appellant in person on 12.04.2017. The board subsequently rejected the appellant's representation through speaking order No. S/2709-15/17, dated 15.04.2017.

08. It is pertinent to note that in the earlier round of litigation, this Tribunal directed the respondent to decide the representation within 30 days after decision of appeal on 11.12.2021. The appellant relied upon the order dated 15.04.2017, which was issued 12 days after the institution of Service Appeal No. 317/2017. This order was kept confidential from the Tribunal until the decision of the service appeal on 11.12.2021, rendering it devoid of legal effect. The respondents were required to decide the departmental representation in accordance with the judgment of this Tribunal, which mandated a speaking order within 30 days. By failing to do so, they neglected to comply with the directions of this Tribunal.



09. Therefore, in light of the absence of a speaking order, we are unable to proceed further. Consequently, we remit the matter back to the respondent department for a fresh decision on the representation of the appellant, in accordance with the directions provided by this Tribunal in its order dated 22.12.2021, to be completed within a period of 30 days positively. *Costs shall follow the event. Consign.*

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 05th day of November, 2024.*



KALIM ARSHAD KHAN
CHAIRMAN



RASHIDA BANO
Member (Judicial)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.189/2022

Date of presentation of Appeal 11.04.2022
Date of hearing 05.11.2024
Date of Decision 05.11.2024

Mr. Amjad Nawaz, S/o Shah Nawaz Khan R/o House No. 6114, Street No. 3, Sardar Ahmad Jan Colony, Peshawar, Ex-ASI, Police Line, Peshawar.

... (Appellant)

Versus

1. The Capital City Police Officer, Peshawar.
2. The Provincial Police Officer, Peshawar.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER NO. 7942/ECI, DATED 09.05.2013 OF RESPONDENT NO.1 WHEREBY APPOINTMENT ORDER OF APPELLANT AS ASI WAS WITHDRAWN OR OFFICE ORDER NO.19952-59/EC-II DATED 11.11.2016 OF THE SAID AUTHORITY R.NO.1 , WHEREBY APPELLANT WAS DISCHARGED FROM SERVICE OR OFFICE ORDER NO.2708/17 DATED 04.05.2017 OF R.NO.2 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED FOR NO LEGAL REASON.

PRESENT

1. Mr. Saad Ullah Khan Marwat, Advocate for the appellant
2. Mr. Naseer ud Din Shah, Assistant Advocate General for the respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 5th day of November, 2024.



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 189/2022

Amjad Nawaz

Versus

Govt. of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-23</u> 5th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Saad Ullah Khan Marwat, Advocate, for appellant present.2. Mr. Assistant Advocate General, for the respondents present.3. Vide our detailed judgment of today placed on file, in light of the absence of a speaking order, we are unable to proceed further. Consequently, we remit the matter back to the respondent department for a fresh decision on the representation of the appellant, in accordance with the directions provided by this Tribunal in its order dated 22.12.2021, to be completed within a period of 30 days positively.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 5th day of November, 2024.</i> <p> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p> (RASHIDA BANO) MEMBER (J)</p> <p>*M.KHAN*</p>