

1 Mst. Shazia Israr, (Ex-English Teacher in BS-15), Vs. Chief Executive Officer (District Education Authority) Bahawalnagar & another.

25.10.2023

PRESENT

1. Mr. Allah Nawaz Khosa Advocate,
2. Malik Muhammad Riaz Awan Advocate, Counsel for the appellant
3. Ms. Saima Nawaz, D.D.A.
4. Ms. Shahida Hafeez, CEO (Edu), Bahawalnagar.

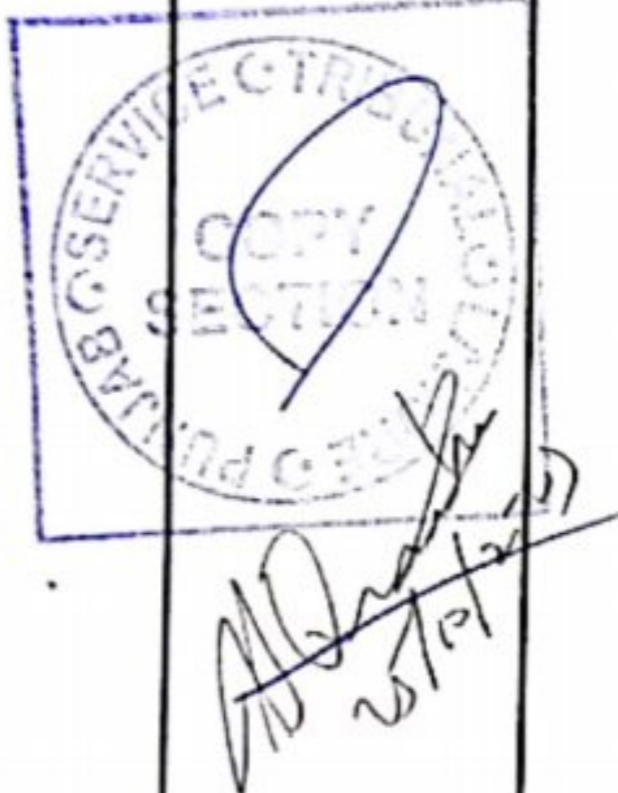
Through the instant appeal filed under Section 4 of the Punjab Service Tribunals Act, 1974 the appellant has assailed the vires of the order dated 30.05.2018 and 16.02.2023 whereby major penalty of "compulsory retirement from service" was awarded to her. She filed departmental appeal which was rejected.

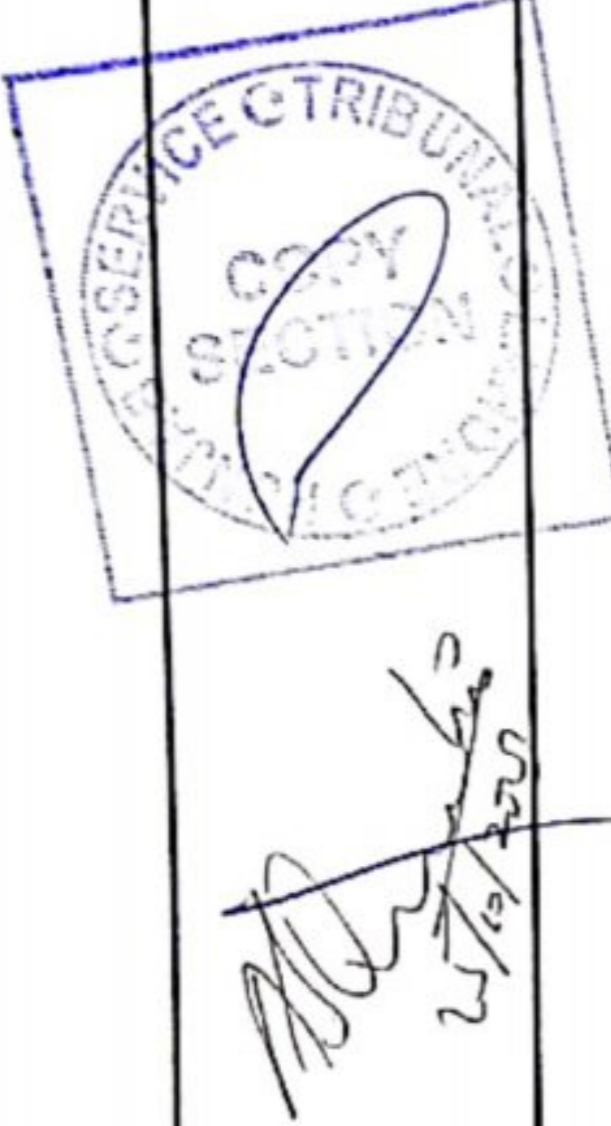
2. Brief facts of the case are that the appellant was serving as Ex-EST (English), Government Girls Elementary School, Chobara, Tehsil Minchinabad, District Bahawalnagar. She was proceeded under the provisions of PEEDA Act, 2006 on the following charges:

1. "Misconduct. (Leave station without prior approval of the department).
2. Willful absence from duty w.e.f. 01.02.2017 to 30.04.2017.
3. Non interest in the performance of obligatory resultantly the assigned classes are suffering badly."

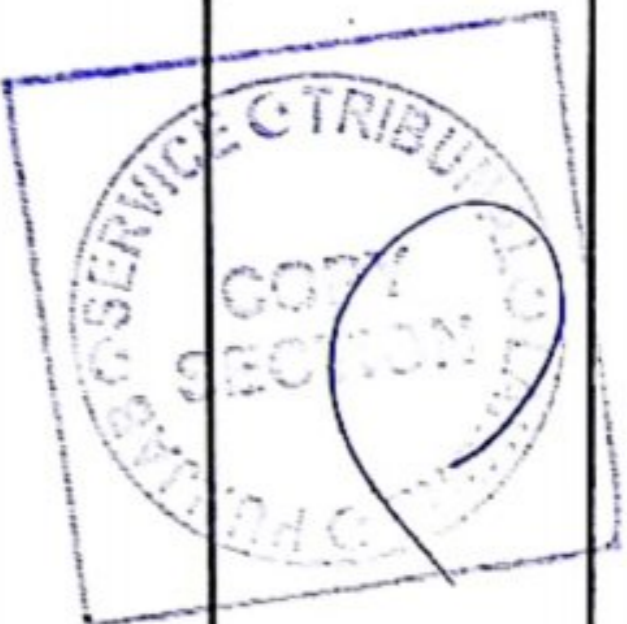
The disciplinary/departmental proceedings were conducted against the appellant. The appellant submitted her written reply and refuted the aforesaid allegations leveled against her. Meanwhile, a personal hearing notice dated 22.01.2018 vide No.1198/Admn-II, dated 18.01.2018 was issued to her but she did not join the proceedings. She was again summoned for personal hearing vide notice dated 23.01.2018, which she availed accordingly. After the notice dated 23.01.2018, a fact

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		<p>finding inquiry was conducted and on the outcome of the inquiry, the competent authority, vide order dated 30.05.2018, imposed upon the appellant the major penalty of "compulsory retirement". Feeling aggrieved, the appellant filed departmental appeal, before appellate authority against the order dated 30.05.2018 passed by the respondent No.2 but the same was not decided in due course of time. Feeling injustice, the appellant filed a Writ Petition No.3595/2019 BWP before the Hon'ble Lahore High Court, Bahawalpur Bench, Bahawalpur seeking direction to the appellate authority to decide her representation against the orders of the District Education Officer (We-EE), Bahawalnagar. The Hon'ble Bahawalpur Bench issued direction to the appellate authority for deciding the departmental appeal which was rejected on 16.02.2023. Hence, this appeal.</p> <p>3. Learned counsel for the appellant maintained that the department had not placed on record anything to indicate that the application for leave of the appellant was ever disallowed and the order was conveyed to her, so, in the absence of such documents, no adverse presumption or inference could be drawn against the appellant's conduct particularly in view of the fact that the appellant submitted applications through proper channel, hence allegations of inefficiency and not knowing her job were based on conjectures and were not based on any adverse entry in ACRs or backed by any impartial inquiry carried out by the department that appellant was willfully absent from duty because no regular</p>

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	 <p><i>[Handwritten signature]</i></p>	<p>inquiry was conducted and neither any rejection the of leave application order/ evidence of record was available against the appellant, nor the same was put to her during the course of inquiry. The learned counsel for the appellant further stated that she was also not provided an opportunity to produce her defense and no opportunity of cross-examination was allowed and on the basis of inadmissible evidence, she had been fixed. Learned counsel for the appellant further maintained that the appellant has served the department for a long period with honesty and due diligence and that she remained an active highly qualified (English) Teacher but the department had ignored the performance of the appellant and on the basis of false and fabricated evidence, major penalty had been imposed upon her. Learned counsel for the appellant also stated that the absence was of a period of more than two months only but major penalty was awarded illegally to her. Learned counsel for the appellant relied on case law: <u>Asif Yousaf Vs. Secretary, Revenue Division and another, reported as 2014 SCMR 147</u>, wherein it had been held that "there is no cavil to the proposition that the Competent Authority is not bound by the recommendation of Inquiry Officer qua the award of penalty to the accused officer. However, while disagreeing and awarding higher penalty than recommended by the Inquiry Officer, he has to firstly provide opportunity of hearing to the accused officer and secondly, he has to pass a reasoned order with conscious application of mind". Learned counsel for the appellant also relied upon case law: <u>Secretary, Government of</u></p>

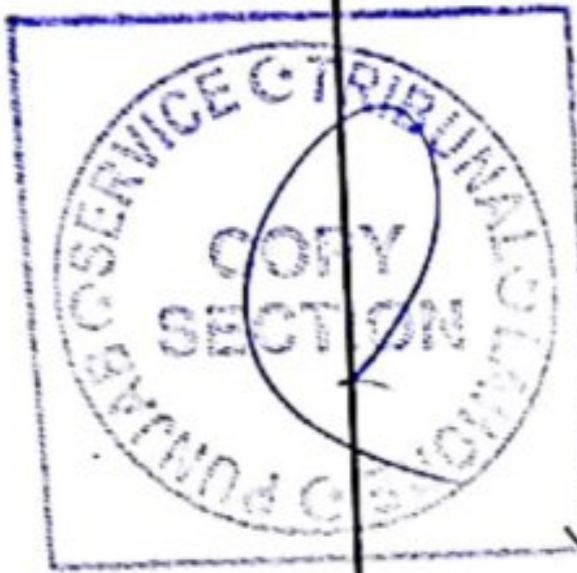
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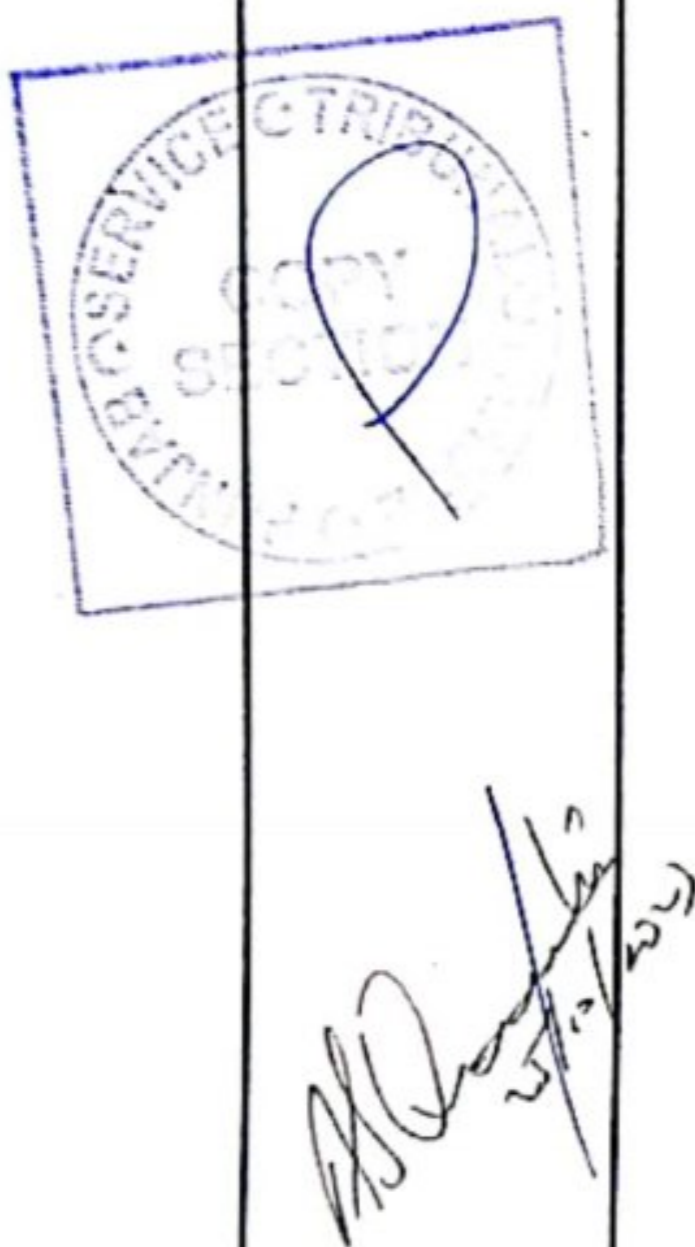
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Punjab (C&W) and others Vs. Ikram Ullah and five others, reported as 2013 PLC (C.S) 801, wherein it had been held that: "The competent authority without assigning any reason to disagree with the findings of the Committee with reference to the evidence collected enhanced the penalty and converted the same into major penalties as indicated in column No.4 of the chart referred to in para 3 above. There is no cavil to the proposition that the competent authority on receipt of the report from the inquiry officer of the inquiry committee can proceed in any of the options available to him in terms of subsections (2) to (8) to section 13 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006. However, while doing so, it has to follow the procedure laid down therein and if it proposes to enhance the penalty it has to give reasons germane to the charges leveled and the evidence collected during inquiry and that too with reference to the liability of each of the officers who were inquired into". Learned counsel for the appellant further relied upon case law: Mr. Rehmat and others Vs. Mst. Zubaida Begum and others, reported as 2021 SCMR 1534, wherein^m it had been held that: "It is an established principle of law that facts admitted need not be proved". The learned counsel for the appellant also relied upon letter No.SOR-I (S&GAD)-1-25/2001 dated 09.09.2013 whereby it had been instructed that:-

"All applications for long leave shall be decided within thirty days and any delay in sanction or refusal and communication to the applicant will be the responsibility of the leave sanctioning authority".



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		<p>4. On the other hand, learned Deputy District Attorney maintained that after availing last leave from 01.11.2016 to 29.01.2017, the appellant joined on 30.01.2017. On the very next day, she again applied for a leave from 01.05.2017 to 03.06.2017 on which she was directed to join with a warning of initiation of proceedings under PEEDA Act, 2006 in case of further educational loss of students but she remained absent from her duties and Dy. DEO (W) reported her absence from duty on 09.10.2017, on which the competent authority initiated an inquiry under PEEDA Act, 2006 dated 12.10.2017. Due to her domestic matter, she applied for earned leave without pay to the concerned authority through proper channel. Her leave was not sanctioned and she was informed. Her guilt was established in the inquiry and the competent authority of the appellant had already taken a lenient view and imposed upon her a penalty of "compulsory retirement from service" which could be awarded, as per law, even if the absence was for a period of less than a year. With these submissions, learned Deputy District Attorney prayed for dismissal of the appeal.</p> <p>5. Arguments heard and record perused.</p> <p>6. The allegation against the appellant was that the department had not placed on record anything to indicate that the application for leave of the appellant was ever disallowed and the order was conveyed to her and in the absence of such documents no adverse presumption or inference could be drawn against the appellant's conduct, particularly in view of</p>

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the fact that appellant submitted applications through proper channel hence allegations of inefficiency and not knowing her job were based on conjectures and were not based on any adverse entry in ACRs or backed by impartial inquiry carried out by the department and that appellant was not willfully absent from duty while no regular inquiry was conducted, whereas neither any rejection of leave application evidence of record was available against the appellant, nor the same was put to her during the course of inquiry. According to Section 13(5)(ii) of the PEEDA Act, 2006, where charge of absence from duty for a period of more than one year was proved against the accused, the penalty of "compulsory retirement from service or removal, or dismissal from service" shall be imposed upon the accused but in the case in hand, the total period of absence comes to 89 days, therefore, the punishment imposed upon the appellant under the circumstances is not sustainable in the eyes of law.

7. Therefore, the appeal in hand is **partially allowed**, the impugned orders are set aside and the appellant is reinstated into service from the date of her dismissal ^{in compulsory retirement in} from service and while maintaining the proceedings against the appellant, the impugned orders are modified so as to convert the major penalty of "compulsory retirement from service" into "stoppage of three increments for three years". The intervening period during which the appellant remained out of service is treated as leave without pay on the principle of "no work no pay".



CERTIFIED TRUE COPY
Punjab Service Tribunal
Lahore

ANNOUNCED

(Signature)
ASIM SADIQ QURESHI
MEMBER

BEFORE THE PUNJAB SERVICE TRIBUNAL, LAHORE

Very kindly fix this
service appeal for Lahore

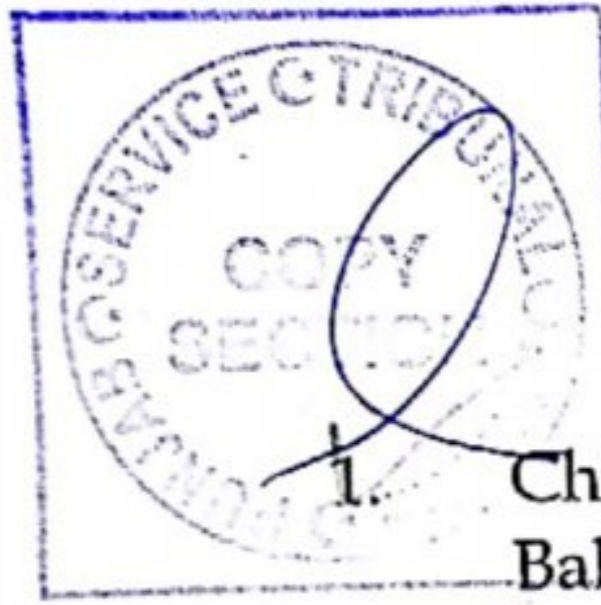
PST LAHORE.
Dairy No. 939
Date: 2-3-2023

Service Appeal No. _____/2023

Mst. Shazia Israr (Ex-EST) D/o Ward No.04 Mohallah Parchan
Wala Tehsil Minchinabad District Bahawalnagar.

...APPELLANT

VERSUS



1. Chief Executive Officer (District Education Authority)
Bahawalnagar.

2. District Education Officer (W-EE) Bahawalnagar .

...RESPONDENTS

APPEAL UNDER SECTION 4 OF THE PUNJAB SERVICE
TRIBUNALS ACT, 1974 READ WITH ALL OTHER
ENABLING PROVISIONS OF LAW

Respectfully Sheweth:-

1. That the addresses of the parties have rightly been incorporated in the title / instant appeal for effective service of summons and notices upon the parties.
2. That briefly stated the facts of the case are that the appellant was appointed as English Teacher in B5-14 vide order dated 17.03.1996 of the competent authority

after the fulfillment of all codal formalities and requisite qualification on merit.

3. That Consequent upon appointment, the appellant submitted his joining report to appropriate authority in due course of time by accepting the terms and conditions as recorded in appointment order..

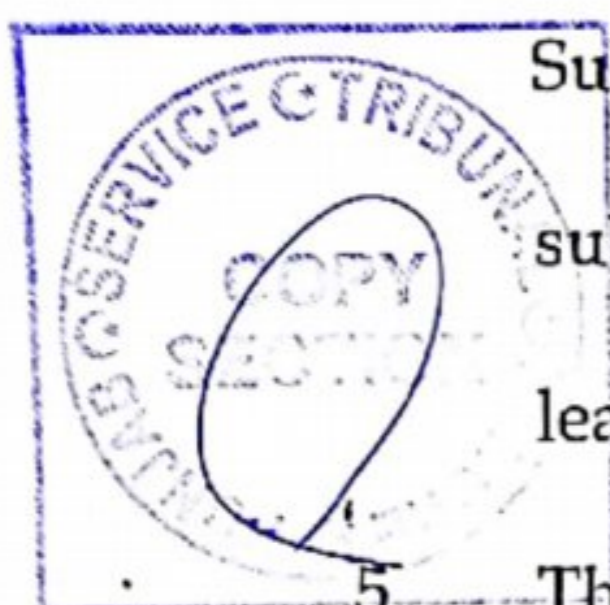
4. That the appellant while working posted as EST

Submitted Leave applications on domestic reasons and submitted the same through proper channel .Copy of leave applications are hereby enclosed as **Annexure-A**

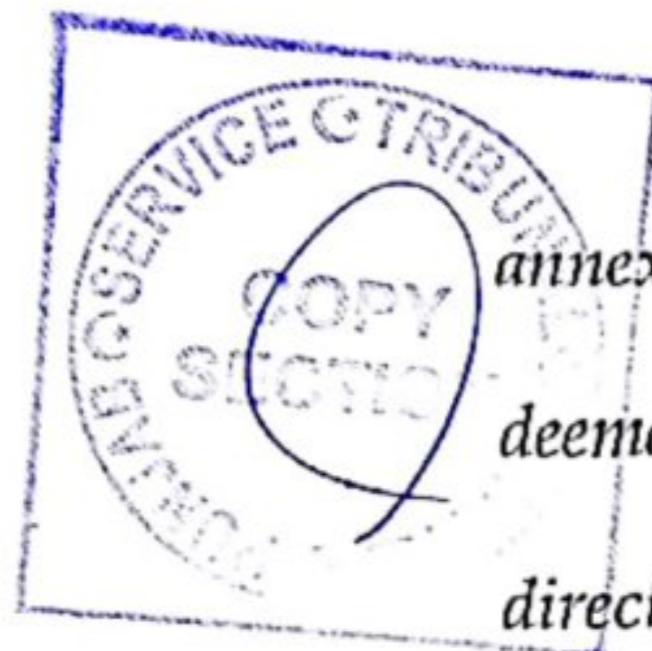
5. That department without deciding the pending leave applications initiated disciplinary proceedings against the appellant and subsequently awarded major penalty of compulsory retirement from service vide impugned order dated 30-05-2018. Copy of impugned order is hereby enclosed as **Annexure-B**

6. That the appellant filed appeal and review against the impugned order before the respondent No.01, review of the appellant was not decided by the authority .Copy of review Petition /Representation is hereby enclosed as **Annexure-C**

7. That representation of the appellant was not decided by the authority hence the appellant filed writ



petition No.9930/2021/BWP with pray for seeking direction to respondent No.2 (CEO (DEA) Bahawalnagar) to decide the subject application of Petitioner in accordance with law The case of the appellant was taken up By the Lahore High Court Bahawalpur Bench Bahawalpur and was heard and decided on 26.11.2021 with the conclusive part as under:



" In view of the above, this petition alongwith its annexure is converted into a representation which shall be deemed to be pending before a respondent No.2, who is directed to decide the same and appeal/ review appended thereto through a speaking and well reasoned order, after hearing the petitioner and all other concerned persons, strictly in accordance with law within a reasonable period preferably within thirty (30) days after the date of receipt of certified copy of this order under intimation to Deputy Registrar (Judicial), of this court. In order to regulate further proceeding the petitioner shall appear before the said respondent on 02.12.2021 at 11:00 A.M. learned Law Officer shall convey this order to quarter concerned. Dispose of."

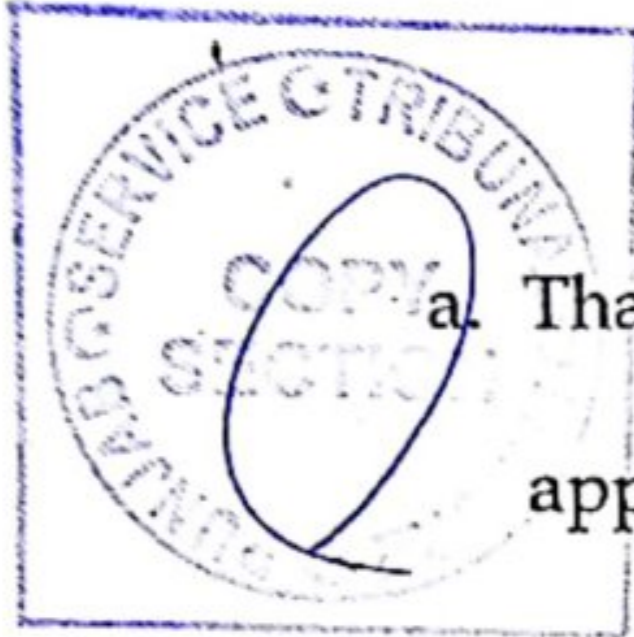
8. That in compliance of the order dated 26/11/2021 passed by the Honorable Lahore high court the respondent No.01 decided the representation of the appellant and rejected

the same in an arbitrary manner vide impugned order dated 16/02/2023. Copy of impugned order dated 16/02/2023 is hereby enclosed as **Annexure-D**

9. That the impugned orders are void, illegal, malafide, against the law and facts and liable to be set aside inter alia on the following amongst others: -

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GROUND



- a. That the respondents while deciding the case of the appellant did not apply their mind to the facts of the case and law applicable thereto. The respondent in an arbitrary manner decided the case of the appellant, hence this appeal before this Honorable Tribunal.
- b. That Department had not placed on record anything to indicate that the application for leave of the appellant was ever disallowed and the order was conveyed to her, In the absence of such document no adverse presumption or inference could be drawn against the appellant's conduct particularly in view of the fact that appellant submitted applications through proper channel hence Allegations of inefficiency and not knowing his job were based on conjectures and were not based on any adverse entry in the Annual

Confidential Report or backed by impartial inquiry carried out by the Department

c. That the appellant was not willful absence as the appellant already explained reasons in leave application hence absence of the appellant could not be saddled with penalty entailing "willfulness"

d. That it is further pertinent to mentioned here respondents in characterizing the absence of the

appellant from duty as "willful" appear to have not considered the meaning of the word "willful" as it occurs in ordinary use which **Shorter Oxford English Dictionary (Oxford University Press - Edition 2007)**

defines as "asserting or disposed to assert ones own will contrary to persuasion, instructions or command; headstrong; obstinate; determined to have ones own way".

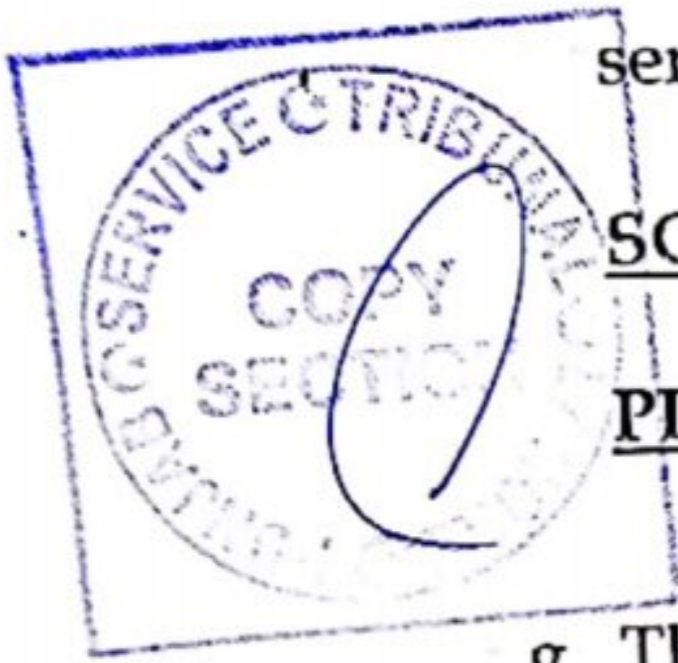
Notwithstanding the factual aspect of the explanation offered, the reasoning adopted by the respondents in arriving at the conclusion that his absence was wilful, is inherently defective.

e. That no regular inquiry was conducted and the appellant was awarded major punishment mere on the basis of fact finding inquiry, however it is settled law



that fact finding inquiry cannot be substituted of regular inquiry Reliance is Placed on 2004 SCMR 294, 2012 TD Service 391

f. That the honorable Supreme Court in various judgments held that major penalty could not be awarded by adopting summary procedure and inquiry also couldn't be conducted in absence of the civil servant. Reliance is placed on 2003 SCMR 681, 2004 SCMR 316, 2008 SCMR 1369, 2007 PLC (CS) 215, 2010 PLC (C.S) 1143.



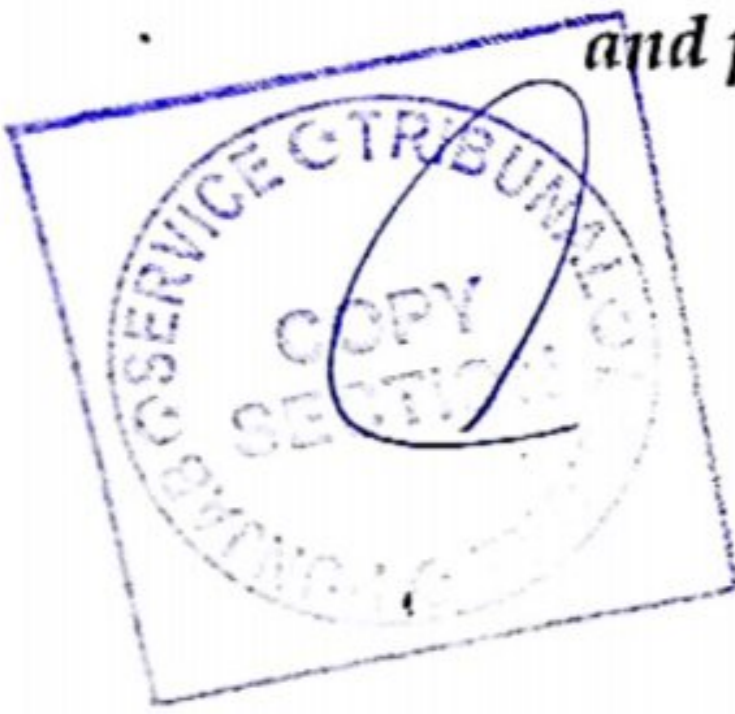
g. That the Apex Supreme Court of Pakistan in various citations declared that before awarding major punishment regular enquiry is mandatory. The punishment awarded without regular enquiry is not only in violation of directions of Supreme Court of Pakistan but against the natural justice. Following citations of Apex court of Supreme Court are relied upon:-

1. 1986 PLC 639
2. 2000 PLC (CS) 270
3. 2000 PLC (CS) 1196
4. 1984 PLC 639
5. 2004 PLC (CS) 1293

PRAYER: -

In the light of above submissions, it is therefore, most respectfully prayed that impugned orders may very kindly be set aside by declaring as illegal, unlawful, void ab initio, malafide, having no value in the eyes of law and appellant may very kindly be re-instated into service w.e.f 01.02.2017 alongwith all back benefits, and as such the service appeal of the appellant may very kindly be accepted in the best interest of justice, equity and fair play.

Any other relief, which this Honorable Court deems fit and proper, may also be awarded.



Through

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...APPELLANT

Da

ALLAH NAWAZ KHOSA
Advocate High Court,
33/A, Queens Road Lahore.

CERTIFICATE:

As per instructions, this is the first appeal in this Hon'ble Punjab Service Tribunal, Lahore.

Da
ADVOCATE

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Punjab Service Tribunal
Lahore

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17/11/23