BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA PESHAWAR

Service Appeal No. 456 /2022

Qaisar Khan, **VERSUS** D & S J, Peshawar.

=======

I N D E X

S.No	Particulars		Annexure	Pages
1	Memo of Petition			1-4
2	Affidavit			5
3	Order	dated 17-02-2022	"A"	6-9
4	Departmental Appeal	dated 03-03-2022	"B"	10-12
5	Order	dated 22-03-2022	"C"	13-14
6	Letter	dated 06-04-2021	"D"	15
7	Inquiry	dated 06-07-2021	"E"	16-19
8	Charge Sheet	dated 02-10-2021	"F"	20
9	Statement of Allegation	dated 02-10-2021	"G"	21
10	Order	dated 02-10-2021	"H"	22
11	Inquiry Report	dated 03-01-2022	"I"	23-37
12	Final Show Cause	dated 06-01-2022	"J"	38
13	Reply to show Cause	dated 15-01-2022	"K"	39-41
14	Vakalatnama			42

Peshawar, dated
30th March-2022

(MUHAMMAD ZAFAR TAHIRKHELI)
ASC

(Ansar Ullah Khan)
Advocate

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA PESHAWAR

Service Appeal No. 456 /2022

Qaisar Khan,
Ex-Naib Nazir / Muharrar, District Courts Peshawar.
(present) Village Musazai, Tehsil & District, Peshawar. .....Appellant

VERSUS

1. District & Session Judge, Peshawar.
2. Senior Civil Judge (Admin), Peshawar.

.....Respondents

==========

SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED REMOVAL ORDER DATED 17-02-2022, (COPY ANNEXED "A"), WHEREIN THE APPELLANT'S DEPARTMENTAL APPEAL DATED 03-03-2022 (ANNEXED "B") WAS REFUSED BY HON'BLE D&SJ, PESHAWAR VIDE ORDER DATED 23-03-2022. (COPY ANNEXED "C")

==========

PRAYER: Allowing the appeal and directing the respondent to set aside the impugned order dated 17-02-2022 & 22-03-2022 and reinstate the appellant in a service with all the benefits of continuous service.

==========

RESPECTFULLY SHEWETH,

1. The appellant was selected and appointed as Process Server in the year 2000. He was further promoted to the post of Bailiff (BPS-4) in the year 2006 and Naib Nazir (BPS-8) in the year 2008. The appellant has been serving the department honestly diligently to the utmost satisfaction of his superiors during his entire 22 years of continuous service.

2. That while serving as Muharrar attached to the court of Civil Judge XVII, Peshawar, a complaint was filed by Assistant Director Land, DHA to the Hon'ble High Court against a court decree, which was allegedly passed on Sunday being a public holiday.

3. That on the directions of the august High Court, the learned D&SJ Peshawar, appointed Mr. Muhammad Sajid, AD&SJ-XIII, Peshawar as an Inquiry Officer vide office order dated 09-04-2021. **(Copy Annexed "D")**

4. The worthy Inquiry Officer submitted his report dated 06-07-2021 followed by Charge Sheet and Statement of Allegations dated 02-10-2021.

That Mr. Fazal Nasir Shah learned SCJ (Judicial) was appointed as an Inquiry Officer in the instant matter vide order dated 02-10-2021 of the Learned SCJ (Admin) Peshawar. The appellant submitted his reply dated 08-10-2021 to the worthy Inquiry Officer. The Inquiry report was submitted on 03-01-2022.

(Copies Annexed "E" "F" "G" "H" & "I")

5. Consequent upon the findings of Inquiry report, the petitioner was served with the impugned final show cause notice dated 06-01-2022. The appellant submitted his reply to the show cause notice dated 15-01-2022, which was not taken into consideration and the worthy Senior Civil Judge Admin passed the dismissal order dated 17-02-2022, followed by office order on the same day.

(Copies Annexed "J" & "K")

6. The appellant submitted his departmental appeal dated 03-03-2022, which was refused vide impugned order dated 22-03-2022.

Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Khyber Pakhtunkhwa Service Tribunal for the redress of his grievance, inter-alia, on the following,

Grounds;

a. That the worthy authority has ignored the appellant's departmental appeal without any plausible explanation, which needs immediate attention of the Hon'ble Service Tribunal for the just conclusion of the matter in question.

b. That prior to the present disciplinary proceedings, the appellant was neither served with any charge sheet or statement of allegation nor was associated with any disciplinary proceedings during entire period of his 22 years of service.

c. It is worth mentioning that the fresh institution is made before the court of Senior Civil Judge, which then marked to any other Civil Court by the SCJ. The reader attached to the court of Civil Judge receives the case file, wherein entries are made in the Dak Book (SCJ) duly signed by the reader in person. The Hon'ble Civil court makes necessary order regarding registration and reader of the Court enters in the fresh case into his daily diary register. Thereafter the case is received by Muharrar and the case is registered in civil register.

d. The appellant received the suit file in question from the court of learned CJ-XVII through the Peon and necessary entries were made in the relevant civil register along with 11 others freshly instituted cases on the same day.

e. The suit was disposed off by the Hon'ble Civil court VIII, Peshawar, thereafter the case file was sent to the appellant as Civil Muharrar for consigning the same to record room after its necessary completion. The appellant followed the procedure in compliance with the order of the Learned Civil Judge.

f. It is necessary to mention that the suit file contained printed decree sheet, duly received from the Hon'ble court, wherein just small necessary entries were made by the appellant and then the same was sent to the record room for its consignment. Thus the allegation of preparation of fake court decree is entirely baseless and incorrect thus liable to be rescinded as such.

g. Needless to mention that the entries of the disposal of the suit file exists in the register of **"Faisla Bahi"** retained by the reader to the court and signatures of the worthy presiding Officer over each order sheet which were never proved to be fake till date.

h. It is also worth mentioning that the worthy Inquiry Officer in his report dated 03-01-2022 has categorically stated that,

> **15. The person who has typed the plaint, the order sheets and the judgment dated 02-02-2020 on computer is not known as there is no direct evidence. Similarly the person who has written the evidence is also not known because of lack of direct evidence. It is also not proved through evidence that the accused / official has typed the judgment and the order sheets etc. or has written the evidence of the PWs. However the circumstantial evidence is so strong that the active involvement of the accused / official in the whole process cannot be ruled out. His admission of receiving the plaint on 02-05-2019 and consignment of the case to the Record Room is enough to prove the charges leveled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused / official.**

i. That the entire observation regarding the alleged involvement of the appellant has been based on assumptions, presumptions, conjunctures and surmises having no legal effect.

The findings of the worthy Inquiry Officer were not based on any substance or supported by any solid or cogent evidence. The Inquiry Officer while concluding his observations has admitted that,

"16.....The charges against the accused are fully proved through circumstantial evidence."

j. That neither the record was sent for forensic analysis nor were other witnesses called for including the parties and their Counsel. No detail of any proof or evidence was given, which makes the entire proceeding dubious and untrustworthy.

k. That the appellant has not committed anything wrong on his part, nor done any corrupt practice or violation of official duties, breach of trust and misconduct in official capacity, and had just followed the orders of the Hon'ble Court contained in the order sheet of the suit file.

l. That the worthy presiding officer was not associated for verification of her signatures over the order sheets, the KPO for forensic analysis of print-outs and parties to the suit along with their counsel were never called for and were completely ignored by the worthy Inquiry Officer. The appellant was specifically targeted in the whole proceedings while ignoring the other Moharrir attached to the Hon'ble Court performing similar duties.

m. That the show cause notice was based upon the Inquiry report, which is not only inconclusive but also a vague assertion based on whimsical approach of the worthy Inquiry Officer, which is liable to be struck down by this Hon'ble Tribunal.

n. That the reader of the court who was also associated in the instant disciplinary proceedings, has been awarded the punishment of compulsory retirement and none of the other staff was associated with the proceedings.

o. The appellant has 22 years of continuous service at his credit and neither any complaint was ever filed against him nor was any disciplinary proceedings initiated against him during entire period of his service.

In utter disregard and in violation of the principles of equity and justice, the appellant has been subjected to arbitrary and discriminatory treatment.

p. Thus the impugned action is thus not only arbitrary but also discriminatory and is against the principles of equity, law, justice and propriety calling for interference by the Hon'ble Tribunal.

Appellant seeks leave of the Hon'ble Tribunal to take additional grounds at the time of arguments.

Prayer:

In view of the above, it is requested that by accepting this appeal, the impugned dismissal order dated 17-02-2022 and rejection order dated 22-03-2022, may kindly be set aside and recalled while exonerating the appellant of all the charges leveled against him and reinstating him in service with all the benefits of service due.

Any other relief deemed appropriate may also be granted.

Appellant

Through,

Peshawar, dated
30th March-2022

(MUHAMMAD ZAFAR TAHIRKHELI)
ASC

(Ansar Ullah Khan)
Advocate

Verification

I, the appellant, do hereby verify that no appeal on the subject matter has been filed before the Hon'ble Tribunal before the instant appeal.

Appellant

(5)

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA PESHAWAR

Service Appeal No. _____/2022

Qaisar Khan, **VERSUS** D & S J, Peshawar.

=====

I N D E X

Affidavit

I, the appellant, Qaisar Khan, Ex-Naib Nazir / Muharrir, District Courts Peshawar, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED

30/3/2022

DEPONENT
CNIC No. 17301-5830524-3

Date:- 30th March, 2022

ANNEXURE A

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Phone: 091-9213534
eMail: scjpeshawar@gmail.com
Web: www.SessionsCourtPeshawar.gov.pk

No. 15-19

Dated Peshawar 17-2-2022

OFFICE ORDER

Consequent upon disciplinary proceedings against accused/official, Qaiser Khan, Muharrar/Naib Nazir, major penalty of dismissal from service under rule-4(b)(iv) of the *Govt of Khyber Pakhtunkhwa Civil Servants (Efficiency & Disciplinary) Rules* 2011 is imposed upon him. Office is directed to do the needful in this regard.

MUHAMMAD SHER ALI KHAN,
Senior Civil Judge (Admn)
Peshawar

MUHAMMAD SHER ALI KHAN
Senior Civil Judge, (ADMN)
Peshawar

No. 15-19 *Peshawar Dated* 17/2/2022.

Copy forwarded for Information/Compliance to:

1. The Hon'ble District & Sessions Judge, Peshawar
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Clerk of Court, Senior Civil Judge, Peshawar.
4. Official concerned by name.
5. Office File.

Senior Civil Judge (Admn)
Peshawar

MUHAMMAD SHER ALI KHAN
Senior Civil Judge, (ADMN)
Peshawar

ATTESTED
21/2/2022
(Examiner)
District Court, Peshawar

ANNEXURE A (7)

Or...11.
17.02.2022

Accused/official, Qaiser Khan, Naib Nazir, present and he was heard in person.

The background of instant proceedings is that a civil suit No. 1411 of 2019 titled "Mst. Sabiha and others VS Assistant Director Land DHA and others" was allegedly shown instituted on 02-05-2019 in the court of learned Senior Civil Judge Peshawar, Mahjabeen Shabbir, and entrusted to the court of learned Civil Judge-XVII Peshawar, Ms. Nosheen Nisar. The entire proceedings in it were manipulated and orchestrated which culminated in the passing of forged ex-parte judgement and decree dated 02-02-2020 and execution petition was filed on its basis. The day, on which the alleged forged ex-parte judgement and decree has been contrived to obtain, is Sunday which is non-working day, hence, the matter was brought into the notice of Hon'ble Chief Justice Peshawar High Court Peshawar and per his kind directions vide letter No. 397/MIT dated 06-04-2021, an open inquiry was conducted by the learned Inquiry Officer, Muhammad Sajid, Additional District & Sessions Judge-XIII Peshawar.

17/02/2022
MUHAMMAD SHER ALI KHAN
Senior Civil Judge, (ADMN),
Peshawar

During the course of inquiry proceedings, statements of Qaiser Khan etc have been recorded. Similarly, comments have also been submitted by Ms. Nosheen Nisar, learned Civil Judge-XVII Peshawar.

In his inquiry report dated 06-07-2021, the learned Inquiry Officer, Muhammad Sajid, Additional District & Sessions Judge XIII Peshawar, has held accused/official, Qaiser Khan, Muharrar, responsible for perpetration of the entire scheme and his involvement in the matter. Similarly, the other co-accused official, Mujahid Khan, Reader, has also been termed guilty of negligence in the alleged institution of civil suit, passing of forged ex-parte judgement and decree dated 02-02-2020 and its consigning to record room.

ATTESTED
21/2/22
(Examiner)
District Court Peshawar

The inquiry report of the Inquiry Officer, Muhammad Sajjid, learned Additional District & Sessions Judge Peshawar, was submitted before the

(8)

august Peshawar High Court and it was pleased to direct the Hon'ble District & Sessions Judge Peshawar to proceed against the delinquent officials under the E&D Rules 2011 and initiate criminal proceedings against the beneficiaries of fake judgment and other accomplices.

As Qaiser Khan, Muharrar/Naib Nazir, falls in the establishment of undersigned, hence, he was charge sheeted and statement of allegations was also drafted against him.

Mr. Fazal Nasir Shah, learned Senior Civil Judge (Judicial) Peshawar was appointed as Inquiry Officer who conducted inquiry proceedings and submitted his report on 03-01-2022. The learned Inquiry Officer sums up the inquiry report as follow:

> *"The person who has typed the plaint, the order sheets and the judgment dated 02-02-2020 on computer is not known as there is no direct evidence. Similarly, the person who has written the evidence is also not known because of lack of direct evidence. It is also not proved through evidence that the accused/official has typed the judgment and the order sheets etc. or has written the evidence of the PWs. However, the circumstantial evidence is so strong that the active involvement of the accused/official in the whole process cannot be ruled out. His admission of receiving the plaint on 02-05-2019 and consignment of the case to the Record Room is enough to prove the charges levelled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused/official.*
>
> *The magnitude of the offence is so huge that it can raise questions on the working of the courts particularly in respect to the institution, disposal and consignment of the cases. The accused (some of whom are still unknown) have succeeded in sending a fake file to the Record Room (Civil) without being noticed by anyone. The accused/official not only is defending himself but is also trying to defend those who were involved with him in the whole process. He has not disclosed the name of*

17/02/2022
MUHAMMAD SHER ALI KHAN
Senior Civil Judge, (ADJ)/1,
Peshawar

ATTESTED
21 FEB 2022
(Examiner)
District Court Peshawar

(19)

any accomplice during the inquiry proceedings. The charges against the accused are fully proved through circumstantial evidence. He has sent a fake and fabricated decree (file) to the Record Room (Civil) District Courts, Peshawar after putting Index on the same."

As the accused official, Qaiser Khan, Muharrar/Naib Nazir, was held responsible by the learned Inquiry Officer for manipulating and helpful in making a fake and bogus case file tiled "Mst. Sahiba & others ...VS... Assistant Director Land, DHA & others", drafting a forged decree sheet in it and making on it the signature of Presiding Officer of the court, incorporating false entries in the relevant registers and consigning it to the record room, therefore, final show cause notice was issued to him to which he submitted reply. He was personally heard.

In reply to show cause notice and personal hearing, the accused/official, Qaiser Khan, Muharrar/Naib Nazir, could not show sufficient cause and give satisfactory explanation against imposing upon him one or more of the penalties as mentioned in rule 4 of the E&D Rules 2011, therefore, in exercise of powers conferred upon the undersigned under rule 4 (b)(iv) of the Govt of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, the delinquent official i.e. Qaiser Khan, Muharrar/Naib Nazir, of this establishment, is hereby dismissed from service, with immediate effect.

COC is directed to do needful in this regard. Mr. Shoukat, Muharrir, is directed to keep the record in safe custody.

ANNOUNCED
04-09-2021.

MUHAMMAD SHER ALI SHAH,
Senior Civil Judge (Admn)
Peshawar

ATTESTED
21 FEB 2022
(Examiner)
District Court Peshawar

ANNEXURE B

BEFORE THE HON'BLE DISTRICT AND SESSION JUDGE
PESHAWAR

APPEAL / REPRESENTATION AGAINST THE IMPUGNED OFFICE ORDER DATED 17-02-2022 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT

Respectfully Sheweth:

Qaisar Khan, Ex. Naib Nazir / Muharrar, District Courts Peshawar, the appellant submits most respectfully the following departmental appeal / representation for your kind consideration and favour of acceptance.

1) The appellant was selected and appointed as Process Server in the year 2000. He was further promoted to the post of Bailiff (BPS-4) in the year 2006 and Naib Nazir (BPS-8) in the year 2008. The appellant has been serving the department honestly diligently to the utmost satisfaction of his superiors during his entire 22 years of continuous service.

2) That the appellant was neither served with any charge sheet or statement of allegation nor was associated with any disciplinary proceedings during entire period of his service.

3) That while serving as Muharrar attached to the court of Civil Judge XVII, Peshawar, a complaint was filed on behalf of Assistant Director Land, DHA against a decree allegedly passed on Sunday being a public holiday.

4) That on the directions of the august High Court, the learned D&SJ Peshawar, appointed Mr. Muhammad Sajid, AD&SJ-XIII, Peshawar as an Inquiry Officer vide office order dated 09-04-2021.

5) The worthy Inquiry Officer submitted his report dated 06-07-2021 followed by Charge Sheet and Statement of Allegations dated 02-10-2021, wherein charge against him is mentioned as under;

   a. **Prepared and issued a Fake Court Decree titled "Mst: Sahiba & others ..vs.. Assistant Director Land, DHA & others" by making false entries in the relevant registers, and forged signatures of the Presiding Officers.**

6) That Mr. Fazal Nasir Shah learned SCJ (Judicial) was appointed as an Inquiry Officer in the instant matter vide order dated 02-10-2021 of the Learned SCJ (Admin) Peshawar. The appellant submitted his reply dated 08-10-2021 to the worthy Inquiry Officer. The Inquiry report was submitted on 03-01-2022.

7) Consequent upon the findings of Inquiry report, the petitioner was served with the impugned final show cause notice dated 06-01-2022. The appellant submitted his reply to the show cause notice dated 15-01-2022, which was not taken into consideration and the worthy Senior Civil Judge Admin passed the dismissal order dated 17-02-2022, followed by office order on the same day.

8) That before going in to the detail of the merits of the case, the procedure for institution of fresh suit as followed by the courts all over the province in the similar fashion is detailed as under;

TRUE COPY

(11)

The fresh institution is made before the court of Senior Civil Judge, which then marked to any other Civil Court by the SCJ. The reader attached to the court of Civil Judge receives the case file, wherein entries are made in the Dak Book (SCJ) duly signed by the reader in person. The Hon'ble Civil court makes necessary order regarding registration and reader of the Court enters in the fresh case into his daily diary register. Thereafter the case is received by Muharrar and the case is registered in civil register.

9) The appellant received the suit file in question from the court of learned CJ-XVII through the Peon and necessary entries were made in the relevant civil register along with 11 others freshly instituted cases on the same day.

10) The suit was disposed off by the Hon'ble court, wherein the case file was sent to the appellant as Civil Muharrar for consigning the same to record room after necessary completion. The appellant followed the procedure in compliance with the order of the Learned Civil Judge.

11) It is necessary to mention that the suit file contained printed decree sheet, duly received from the Hon'ble court, wherein just small necessary entries were made by the appellant and then the same was sent to the record room for its consignment. Thus the allegation of preparation of fake court decree is entirely baseless and incorrect thus liable to be rescinded as such.

12) Needless to mention that the entries of the disposal of the suit file exists in the register of **"Faisla Bahi"** retained by the reader to the court and signatures of the worthy presiding Officer over each order sheet which were never proved to be fake till date.

13) It is worth mentioning that the worthy Inquiry Officer in his report dated 03-01-2022 has categorically stated that,

> **15. The person who has typed the plaint, the order sheets and the judgment dated 02-02-2020 on computer is not known as there is no direct evidence. Similarly the person who has written the evidence is also not known because of lack of direct evidence. It is also not proved through evidence that the accused / official has typed the judgment and the order sheets etc. or has written the evidence of the PWs. However the circumstantial evidence is so strong that the active involvement of the accused / official in the whole process cannot be ruled out. His admission of receiving the plaint on 02-05-2019 and consignment of the case to the Record Room is enough to prove the charges leveled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused / official.**

14) That the entire observation regarding the alleged involvement of the appellant has been based on assumptions, presumptions, conjunctures and surmises having no legal effect.

The findings of the worthy Inquiry Officer were not based on any substance or supported by any solid or cogent evidence. The Inquiry Officer while concluding his observations has admitted that,

"16.....The charges against the accused are fully proved through circumstantial evidence."

TRUE COPY

However neither the record was sent for forensic analysis nor were other witnesses called for including the parties and their Counsel. No detail of any proof or evidence was given, which makes the entire proceeding dubious and untrustworthy.

15) That the appellant has not committed anything wrong on his part, nor done any corrupt practice or violation of official duties, breach of trust and misconduct in official capacity, and had just followed the orders of the Hon'ble Court contained in the order sheet of the suit file.

16) That the worthy presiding officer was not associated for verification of her signatures over the order sheets, the KPO for forensic analysis of print outs and parties to the suit along with their counsel were never called for and were completely ignored by the worthy Inquiry Officer. The appellant was specifically targeted in the whole proceedings while ignoring the other Moharrir attached to the Hon'ble Court performing similar duties.

17) The appellant has 22 years of continuous service at his credit and neither any complaint was ever filed against him nor was any disciplinary proceedings initiated against him during entire period of his service.

18) That the impugned show cause notice has been based upon the Inquiry report, which is not only inconclusive but also a vague assertion based on whimsical approach of the worthy Inquiry Officer, which is liable to be struck down by the worthy authority.

19) That the reader of the court who was also associated in the instant disciplinary proceedings, has been awarded the punishment of compulsory retirement and none of the other staff was associated with the proceedings.

Thus the impugned action is thus not only arbitrary but also discriminatory and is against the principles of equity, law, justice and propriety calling for interference by the worthy authority.

In view of the above, it is requested that by accepting this appeal, the impugned dismissal order dated 17-02-2022, may kindly be set aside and recalled while exonerating the appellant of all the charges leveled against him and reinstating him in service with all the benefits of service due.

Qaisar Khan
Ex. Naib Nazir / Muharrar,
District Courts Peshawar

Peshawar, Dated
03 March, 2022

TRUE COPY

ORDER - 04
22/03/2022

2077 کیس 04 DA (13)

ANNEXIIRE "C"

Appellant/official present in person.

This departmental service appeal is directed against the order dated 17/02/2022, passed by learned Senior Civil Judge (Admn), Peshawar, in the capacity of competent authority.

A perusal of record reveals that on the information and directions of august Peshawar High Court, Peshawar, Mr Muhammad Sajid, the then learned Additional District & Sessions Judge-XIII, Peshawar conducted a fact-finding inquiry into the matter of alleged issuance of a Fake Court Decree titled "Mst: Sahiba & others ...vs... Assistant Director Land, DHA & others" from the Court of Ms. Nosheen Nisar, the then Civil Judge-XVII, Peshawar. The report of the fact-finding inquiry, submitted by Mr. Muhammad Sajid, the then learned Additional District & Sessions Judge-XIII, Peshawar, was forwarded to the august High Court for further order. After receiving further directions from the High Court, formal proceedings were initiated against the identified delinquent officials, under the Government of Khyber Pakhtunkhwa Civil Servant (Efficiency & Discipline) Rules, 2011, through Mr. Fazal Nasir Shah, learned Senior Civil Judge (Judicial), Peshawar. Upon the findings and recommendations of the Inquiry Officer, the appellant official i.e. Qaiser Khan Naib Nazir/Muharrar, was awarded a major penalty of dismissal from service, after fulfilling all codal formalities, by the learned Senior Civil Judge (Admn), Peshawar vide Order dated 17/02/2022. Hence, this appeal.

22/3/22

The inquiry officer had rendered the following findings in his report:

TRUE COPY

Contd...
ORDER - 04
22/03/2022

"....However, the circumstantial evidence is so strong that the active involvement of the accused official in the whole process cannot be ruled out. His admission of receiving the plaint on 02/05/2019 and consignment of the case to the Record Room is enough to prove the charges levelled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused official..."

The appellant official was the lawful custodian of all the registers and in his presence, all the entries were made and even the fake decree was consigned to the record room. He was directly involved and held responsible for the issuance of a fake decree concerning huge property.

Since fraud was perpetrated against the Court of law and a bogus/forged decree was created and issued by the appellant official, along with his accomplices, obviously for the benefit of those who had identified in the inquiries conducted. Since all the codal formalities have been complied with and the appellant official was afforded proper opportunity throughout the proceedings but he neither produced any evidence in his defense nor could rebut the allegations levelled against him. Even during the course of the appeal in hand as well as the personal hearing of the appellant official, he could not plead his innocence, nor could produce anything to disprove his involvement in the instant crime.

For what has gone above, the departmental appeal in hand being devoid of merit is hereby dismissed.

TRUE COPY

[ASHFAQUE TAJ]
District & Sessions Judge,
Peshawar.

ANNEXURE D (15)

The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58
Off: 9210135
Faxi 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

No. 397 /MIT Dated Peshawar the 06/04/2021

To

The District & Sessions Judge,
Peshawar.

CONFIDENTIAL

SUBJECT:- JUDGMENT DATED 02.02.2019 IN CIVIL SUIT # 141/A OF 2019 TITLED "MST. SAHIBA & OTHERS VERSUS ASSISTANT DIRECTOR LAND, DHA AND OTHERS" PERTAINING TO THE COURT OF MS. NOSHEEN NISAR CIVIL JUDGE-XVII, PESHAWAR

The matter of the subject judgment having been pass d on the date falling on non-working day i.e. Sunday was brought into kind notice of Hon'ble the Chief Justice and his lordship was directed to look into the matter. After preliminary discreet probe and scrutiny of orders sheet as well as judgment, there is sufficient material to believe that not only the subject judgment but proceedings in the case resulting into the judgment seemingly suffer from intended variation necessitating an open inquiry. You are requested to get an open inquiry conducted in the following lines:-

a. Comments of Ms. Nosheen Nisar, Civil Judge-XVII, Peshawar (wherever she is posted) may be obtained as to her knowledge of the proceedings and authenticity of her signatures on orders sheet particularly No. 09 onward and on the judgment and decree.
b. Who were the Reader, Steno typist, Computer Operator and Moharrir attached with the Court of Civil Judge-XVII, Peshawar in the eventful period and their statements may be recorded about the matter.
c. The statement of Process Sever entrusted with the process of the case be recorded in light of his report on record, if available.
d. Mr. Fazal-e-Mola Tehsildar at DHA named as representative of defendants and shown present in various orders be examined as to authority of his attendance leading to ex-parte proceedings.
e. Any other statement as may be deemed appropriate for logical conclusion as to affixing of responsibility, it becomes expedient.

(AHMAD SULTAN TAREEN)
Member Inspection Team

ATTESTED
21 FEB 2021
(Examiner)
District Court Peshawar

ANNEXURE E (16)

INQUIRY REPORT

Order.....
06/07/2021

1. This is a fact finding inquiry about the genuineness of conduct of proceedings and judgment in civil suit No.141/1 of 2019 titled "Mst: Sabiha and others Vs Assistant Director Land, DHA and others". The inquiry in hand was entrusted to undersigned as inquiry officer by the order of Hon'ble District & Sessions Judge, Peshawar vide office order No.2525-26 dated 09.04.2021.
2. Brief facts are that a civil suit bearing No.141/1 of 2019 titled "Mst: Sabiha and others Vs Assistant Director Land, DHA and others" was shown instituted in the Court of learned Senior Civil Judge, Peshawar and the same was entrusted to the court of learned civil judge-XVII, Peshawar vide order dated 02.05.2019. After completion of trial, the subject case was decreed ex-parte vide judgment and decree dated 02.02.2020. The date of subject judgment was a non working day and the matter of subject judgment having been passed on the date falling on non working day i.e Sunday, was brought into the kind notice of Hon'ble Chief Justice of Peshawar High Court, Peshawar and his lordship had directed to look into the matter through an open inquiry.
3. Statements of following official were recorded:-
   I. Mr. Qaiser Khan reader attached to the court of learned Senior Civil Judge(Judicial), Peshawar.
   II. Mr. Fazal-e-Maula (Qanoongo DHA, Peshawar) representative of defendants.
   III. Miss Hina Murtaza (Process server).
   IV. Waqas Ahmad (process server).

06/07/2021

TRUE COPY

(87)

V. Sultan Ul Arifeen (Naib Nazir) attached to the court of Senior Civil Judge, Peshawar.

VI. Muhammad Masood Khan (Computer Operator) attached to the court of learned Judge Family Court-IV, Peshawar.

VII. Muhammad Amir (Naib Qasid) attached to the court of learned Civil Judge-VIII, Peshawar.

VIII. Qaiser Khan (Moharrir) attached to the court of learned Civil Judge-XVII, Peshawar.

IX. Mujahid Ali (Senior Clerk/Reader) attached to the court of learned Civil Judge-XVII, Peshawar.

X. Muhammad Sareer Incharge Record Room District Courts, Peshawar.

XI. Comments were also called from Miss Nosheen Nisar, Civil Judge-XVII, Peshawar presently posted as Civil Judge at District Mardan and placed on file alongwith statement of above mentioned officials.

06/07/2021

4. No doubt, the subject judgment was passed on non working day i.e Sunday but during the course of inquiry it came into the notice of undersigned that the institution and proceedings as well as the order sheets in the subject case file were forged, fake and fabricated on the grounds:-

I. The order sheet bearing No.1 dated 02.05.2019 containing the signatures of learned Senior Civil Judge, Peshawar vide which the subject case was entrusted to the Court of learned Civil Judge-XVII, Peshawar was scanned and not original.

II. The register of institution/marking of suits etc of the year 2019 did not contain any entry regarding the institution of case file of subject suit.

TRUE COPY

(18)

III. The record of Naib Nazir i.e register No.23 is silent about the receiving of summons in respect of subject case from the court of learned Civil Judge-XVII, Peshawar.

IV. Representative of defendants was shown present during proceedings of the subject case vide order sheets dated 11.06.2019, 27.06.2019, 03.07.2019 and 26.07.2019 but said representative of defendants namely Fazl-e-Maula has totally denied his appearance before the court concerned coupled with the fact that no authority letter in the name of above named representative is available on the record of the case.

V. Two order sheets were shown written on single date of 21.12.2019 bearing two different numbers i.e Or.....13 & Or.....14.

VI. The subject judgment was shown passed on 02.02.2020 but no short order of the same date was available on the record of the case.

VII. There is no reference of the dates of subject case file in cause lists as well as in register Peshi.

VIII. The margin on paper of order sheet No.3 to last one is in sequence, which in ordinary course, is not possible.

IX. Visible and apparent variations in the signatures of presiding officer of the court on order sheets, which are not matching each other.

X. Process server concerned has shown ignorance and denied service of summons in the subject case.

XI. There is entry of subject case file in register Faisla Bahi without bearing any specific number.

06/07/2021

TRUE COPY

5. The subject case file has been entered by Moharrir Qaiser Khan in register No.1, register Faisla Bahi, challan book and he also admitted receiving of subject case file as well as its consignment to the record room, therefore, it could be held that Moharrir of the court namely Qaiser Khan, being custodian of record as well as aware of the forged entry of subject case file in the record, seems to be prima facie involved in the matter. Secondly, the reader of the court namely Mujahid Khan was the custodian of register faisla bahi wherein reference of subject case file has been given but without any serial number. If the stance of the reader namely Mujahid Khan regarding his ignorance be taken to be true, even then he is guilty of negligence. The report, so compiled is submitted, please.

(Muhammad Sajid)
Addl: District & Sessions Judge-XIII,
Peshawar/Inquiry Officer

TRUE COPY

ANNEXURE F (20)

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR
Ph#091-9210099 Fax#091-9212419
eMail: scPeshawar@yahoo.com
web: SessionsCourtPeshawar.gov.pk

No. 1189
Dated Peshawar 2/10/2021

OFFICE OF THE SENIOR CIVIL JUDGE (ADMN) PESHAWAR

CHARGE SHEET

I, **Muhammad Sher Ali Khan,** Senior Civil Judge (Admn), Peshawar, as competent authority, hereby charge you, Qaiser Khan, Naib Nazir/Muharrar as follow:

1. That you, while posted as Muharrar to the Court of the Ms. Nosheen Nisar, the then Civil Judge-XVII Peshawar, committed the following irregularities:

    a. Prepared and issued a Fake Court Decree titled "Mst: Sahiba & others ..vs.. Assistant Director Land, DHA & others" by making false entries in the relevant registers, and forged signatures of the Presiding Officers.

2. By reason of the above, you appear to be guilty of **misconduct** and **corruption** under Rules-3(b) & (c) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.

3. You are, therefore, required to submit your written defense within **seven** days of the receipt of this Charge Sheet to the Inquiry Officer.

4. Your written defense, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

[Muhammad Sher Ali Khan]
Senior Civil Judge (Admn)/
Competent Authority
Peshawar 02/10/2021

TRUE COPY

(21)

ANNEXURE G

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR
Ph#091 9210099 Fax#091-9212419
eMail: scPesh .. hoo.com
web. Ses .urtPeshawar.g v.p

1126

OFFICE OF THE SENIOR CIVIL JUDGE (ADMN) PESHAWAR

DISCIPLINARY ACTION

I, **Muhammad Sher Ali Khan**, Senior Civil Judge (Admn), Peshawar, as competent authority, am of the opinion that Qaiser Khan, Naib Nazir/Moharrar has rendered himself liable to be proceeded against, as he committed the following act/omission, within the meaning of Rules-3(b) & (c) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 20..

STATEMENT OF ALLEGATION(S)

a. Prepared and issued a Fake Court Decree titled "Mst: Sahiba & others ..vs.. Assistant Director Land, DHA & others" by making false entries in the relevant registers, and forged signatures of the Presiding Officers.

2. For the purpose of inquiry against the said accused, with reference to the above allegations, Mr. Fazal Nasir Shah, learned Senior Civil Judge (Judicial), Peshawar is appointed under Rule 10(1)(a) of the rules ibid.

3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record his findings and make, within **thirty** days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and Mr. Amjad Khan Shinwari, Senior Clerk representative of this office, shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

ATTESTED
2 FEB 2022

[Muhammad Sher Ali Khan]
Senior Civil Judge (Admn)
Competent Authority,
Peshawar.
02/10/2021

Senior Civil Judge (Admn)
Peshawar

22

ANNEXURE H

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR
Ph#091-9210099 Fax#091-9212419
eMail scPeshawar@yahoo.com
web: SessionsCourtPeshawar.gov.pk

No 1184-87
Dated Peshawar 02-10-2021

OFFICE OF THE SENIOR CIVIL JUDGE (ADMN) PESHAWAR

ORDER

In compliance with the directions of Hon'ble District & Sessions Judge, Peshawar, conveyed through letter No. 5604-5607 dated 01/10/2021; Mr. Fazal Nasir Shah, learned Senior Civil Judge (Judicial), Peshawar is appointed as Inquiry Officer to proceed against the delinquent official i.e. Qaiser Khan, Naib Nazir/Muharrar, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, as well as to identify the beneficiaries of said fake degree and their accomplices, and report to this Office at the earliest.

Mr. Amjad Khan Shinwari, Senior Clerk shall represent this Office during the inquiry proceedings.

[Muhammad Sher Ali Khan]
Senior Civil Judge (Admn),
Peshawar.
Senior Civil Judge (Admn)
Peshawar.
02/10/2021

Endorsement No. 1184 - 87 Dated Peshawar, the 02 / 10 /2021

Copy forwarded to:

1. The Hon'ble Member Inspection Team, Peshawar High Court, Peshawar, for information, please.
2. The Hon'ble District & Sessions Judge, Peshawar, for information, please.
3. The Senior Civil Judge (Judicial), Peshawar/Inquiry Officer, along with complete Inquiry file, in original, and copies of Charge Sheets and Statement of Allegations served upon the delinquent official Qaiser Khan, Naib Nazir.
4. The officials concerned.

ATTESTED
21 FEB 2022
(Examiner)
District Court Peshawar

Senior Civil Judge (Admn),
Peshawar.
Senior Civil Judge (Admn)
Peshawar.
02/10/2021

ANNEXURE I

(23)

IN THE COURT OF FAZAL NASIR SHAH SENIOR CIVIL JUDGE (JUDL:), PESHAWAR

The State ...Vs... Qaisar Khan
Case No. 14/6 of 2021

INQUIRY REPORT

1. Mst: Sabeeha & 04 others (hereinafter referred to as beneficiaries of the fake decree) filed execution petition on 11.12.2020 through their counsel Danishmand Advocate which was marked to the learned Civil Judge-XVII, Peshawar as the decree pertained to the said Court. The execution petition was filed on the strength of judgment and decree dated 02.02.2020 passed in case No. 141/1 of 2019 instituted on 02.5.2019 titled "Mst: Sabeeha & others ...Vs... Assistant Director DHA & others". The petition was entered as case No. 11/10 of 2020 the same day i.e. on 11.12.2020 by the then learned Civil Judge-XVII, Peshawar and notice was issued to Defence Housing Authority, Peshawar (hereinafter referred to as DHA).

2. The representative of DHA attended the Court of the then learned Civil Judge-XVII, Peshawar on 24.02.2021. After the attendance of the representative the case was fixed for further proceedings. On 03.4.2021 learned counsel Muhammad Adnan Awan Advocate

TRUE COPY

submitted Vakalatnama on behalf of the beneficiaries of the fake decree. Learned counsel also filed application for the grant of temporary injunction and the then learned Civil Judge-VIII, Peshawar, being Judge on Duty, passed the following order:

> *"The Court seems it appropriate to issue notices of the status quo petition to the judgment debtor instead of granting ad-interim relief. Thus, notices of status quo petition be issued to judgment debtor for already date fixed."*

3. The beneficiaries of the fake decree filed appeal against the interim order dated 03.4.2021 of the then learned Civil Judge-VIII, Peshawar/JOD through learned counsel Danishmand Advocate which was decided by the learned Additional District & Sessions Judge-IX, Peshawar on 05.4.2021 in case No. 50/14 of 2021 instituted on 05.4.2021 titled "Mst: Sabeeha & others ...Vs... Assistant Director DHA & others". The following order was passed:

> *"The appellant stated at the bar that the Respondent has not filed any appeal against judgment and decree dated 02/02/2020 in case titled "Sabeeha and others vs DHA". In the light of above circumstances, affidavit of appellant and ex-parte record coupled*

TRUE COPY

(25)

with 56 (d) of specific relief Act, the Respondents are not restrained from developmental work at the spot however they are directed to preserve 67 files till date fixed before learned trial court, subject to notice to the Respondent. Any subsequent transfer to this extent if not preserved will have no effect against the rights of appellant subject to notice to Respondent and till date fixed before the learned trial court. Appeal disposed of." (sic)

4. On 07.9.2021 the then learned Civil Judge-XVII, Peshawar sine die adjourned the execution petition. The following order was passed:

"Record transpires that the instant execution is fixed for further proceedings due to the reason that an application u/s 12(2) CPC (which is separately registered, regarding case file no. 1411 of 2019, dated 02.02.2020 is yet pending for decision. This Court is of the view that till decision 12(2) CPC no proceedings could be initiated in the instant execution petition. Therefore, same is adjourned sine die till decision of 12(2) CPC."

5. This was one side of the story. The other side is somewhat dramatic. On receipt of notice in the execution petition the DHA found that the decree in the case has been

TRUE COPY

(26)

passed on 02.02.2020 which date is a public holiday i.e. Sunday, so they reported the matter. The matter was brought into the kind notice of Hon'ble the Chief Justice Peshawar High Court, Peshawar and his lordship was pleased to direct that the matter should be looked into. After preliminary discreet probe it was found that the judgment and the order sheets etc. suffered from intended variations. An open inquiry was ordered to be conducted in the matter vide letter No. 397/MIT dated Peshawar the 06.1.2021 of the office of the worthy Member Inspection Team, Peshawar High Court, Peshawar. The learned Additional District & Sessions Judge-XIII, Peshawar was appointed as Inquiry Officer vide Office Order No. 2525-26 dated 09.4.2021 of the worthy District & Sessions Judge, Peshawar. The learned Judge submitted the inquiry report on 06.7.2021 which was forwarded by the worthy District & Sessions Judge, Peshawar to the Hon'ble Peshawar High Court, Peshawar for further orders. The following findings were given by the learned Additional District & Sessions Judge-XIII, Peshawar in para-5 of the inquiry report:

> *"The subject case file has been entered by Moharrir Qaisar Khan in register No.1, register Faisla Bahi, challan book and he also admitted receiving of*

TRUE COPY

subject case file as well as its consignment to the record room, therefore, it could be held that Moharrir of the court namely Qaiser Khan, being custodian of record as well as aware of the forged entry of subject case file in the record, seems to be prima facie involved in the matter. Secondly, the reader of the court namely Mujahid Khan was the custodian of register faisla bahi wherein reference of subject case file has been given but without any serial number. If the stance of the reader namely Mujahid Khan regarding his ignorance be taken to be true, even then he is guilty of negligence."

6. The Hon'ble Peshawar High Court, Peshawar was pleased to direct vide letter No. 735/MIT dated 22.9.2021 to proceed against the identified delinquent officials under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (hereinafter referred to as the E&D Rules) and to initiate criminal proceedings against the beneficiaries of the fake judgment and their accomplices. It is in this background that the undersigned was appointed as Inquiry Officer and to submit report within 30 days.

TRUE COPY

(28)

7. The learned Senior Civil Judge (Admn), Peshawar served Statement of Allegation(s) on Qaisar Khan Naib Nazir/Moharrir (hereinafter referred to as the accused/official) vide Office Order No. 1188 dated Peshawar 02.10.2021. He was charge sheeted by the learned Senior Civil Judge (Admn), Peshawar vide Office Order No. 1189 dated Peshawar 02.10.2021 and was directed to submit written defence to the Inquiry Officer within 07 days. The Charge Sheet reads thus:

> *"a Prepared and issued a Fake Court Decree titled "Mst: Sahiba & others ..vs.. Assistant Director Land, DH.I & others" by making false entries in the relevant registers, and forged signatures of the Presiding Officers."*

8. The undersigned was appointed as Inquiry Officer vide Office Order No. 1184-87 dated Peshawar 02.10.2021 of the learned Senior Civil Judge (Admn), Peshawar to proceed against the accused/official under the E&D Rules, 2011 and to identify the beneficiaries of the fake decree and their accomplices. Mr. Amjad Khan Shinwari Senior Clerk was appointed as representative of the department. Regarding the same incident another inquiry (case No. 13/6 of 2021) was also marked to the undersigned

(29)

by the worthy District & Sessions Judge, Peshawar against Mujahid Ali Senior Clerk/Reader which inquiry will also be finalized today.

9. The accused/official submitted written reply to the Charge Sheet and Statement of Allegation(s) on 08.10.2021, where after evidence was recorded. The representative of the department examined 07 witnesses. Qaisar Khan Reader Senior Civil Judge (Judl:), Peshawar was examined as PW-01. Zakir Ullah Moharrir/Junior Clerk Civil Judge-XVII, Peshawar was examined as PW-02. Muhammad Sareer Khan Incharge Record Room (Civil) District Courts, Peshawar was examined as PW-03. Muhammad Masood Computer Operator Judge Family Court-IV, Peshawar was examined as PW-04. Amir Nadeem Senior Clerk Record Room (Sessions) was examined as PW-05. Fazal Maula Assistant Legal Officer DHA Peshawar was examined as PW-06. Amjad Khan Shinwari Assistant Clerk/Representative of the department examined himself as PW-07.

Qiasar Khan accused/official examined himself sole witness as DW-01.

TRUE COPY

7

(30)

10. The file of the fake decree dated 02.02.2020 is available on file as Ex:PW-2/9. The beneficiaries of the fake decree are so adamant that they still consider the decree to be genuine. In this respect their reply to the application u/s 12(2) CPC is important wherein they have stressed on the dismissal of the application on the grounds mentioned therein. The application u/s 12(2) CPC filed by DHA is available on file as Ex:PW-2/1 and the written reply of the beneficiaries of the fake decree is Ex:PW- 2/3. In view of the written reply a little bit of discussion is necessary regarding the genuineness or otherwise of the decree.

11. Qaisar Khan (PW-01) has produced the Marking Register of Fresh Suits for the year 2019 of the Court of the learned Senior Civil Judge (Judl:), Peshawar wherein there is no entry regarding the marking of the case (Mst: Sabeeha etc. ...Vs... DHA etc.) on 02.5.2019 to the Court of the learned Civil Judge-XVII, Peshawar. The relevant pages are available on file as Ex:PW-1/1. Mujahid Ali (the then Reader of the Court of the learned Civil Judge-XVII, Peshawar who is also accused in the other inquiry and has recorded his statement as DW-01 in case No. 13/6 of 2021) has categorically denied receipt of any file/plaint from

(31)

the Court of the learned Senior Civil Judge (Judl:), Peshawar on 02.5.2019. There is no entry in the Register Peshi (Attendance Register) for the year 2019 of the Court of the learned Civil Judge-XVII, Peshawar regarding the case "Mst: Sabeeha etc. ...Vs... DHA Peshawar" on 02.5.2019 and afterwards. The Process Servers (Hina Murtaza and Waqas Ahmed) have categorically denied receipt and service of summons on the defendants in their statements recorded as CW-03 and CW-04 respectively in the preliminary inquiry conducted by the learned Additional District & Sessions Judge-XIII, Peshawar which inquiry is available on file as Ex:PW- 7/3. Fazal e Maula Representative of DHA is shown to have attended the Court on certain dates but he has denied any attendance in Court in his statement recorded as PW-06 in the present inquiry. Last but not the least the then learned Civil Judge-XVII Peshawar (Ms. Nosheen Nisar) has categorically denied the issuance of the decree from her Court. In this respect letter No. 44/Civil Judge dated the Mardan 21.5.2021 from Ms. Nosheen Nisar, the learned Civil Judge, Mardan addressed to the learned Additional District & Sessions Judge-XIII,

TRUE COPY

(32)

Peshawar is important wherein the following three points have been mentioned:

> *"1. The proceedings and signatures in the subject case on order sheets/judgment and decree are not mine.*
>
> *2. The signatures and proceedings in the subject case are not authentic rather factitious.*
>
> *3. I have no knowledge of any proceeding in the subject case, as I have not conducted the trial of the subject case."*

The above facts clearly show that the whole file of case No. 141/1 of 2019 instituted on 02.5.2019 decided on 02.02.2020 titled "Mst: Sabeeha & others ...Vs... Assistant Director Land DHA Peshawar & others" is fake, bogus and criminally manipulated. The only page which is real in the whole file is the Index prepared by the Moharrir (accused/official).

12. The statements of all the PWs are consistent on the point that no such case was ever instituted in any Court (the Court of the learned Senior Civil Judge (Judl:), Peshawar and the Court of the learned Civil Judge-XVII, Peshawar). The other accused (Mujahid Ali) has also denied receipt of the file in his statement recorded as DW-01 in case

TRUE COPY

No. 13/6 of 2021. The stance of the accused/official (Qaisar Khan) is different and unique. In his reply to the Charge Sheet and Statement of Allegation(s) he has admitted receipt of the file at the time of its institution. He has also admitted consignment of the case to the Record Room. Paras 6 & 7 of the reply are important and are hereby reproduced here:

> *"6) The petitioner received the court file from the court of learned CJ-XVII through the Peon and necessary entries were made in the relevant civil register along with 11 others freshly instituted cases on the same day.*
>
> *7) The suit was disposed off by the Hon'ble court, wherein the case file was sent to the petitioner as Civil Muharrar for consigning the same to record room after necessary completion. The petitioner obliged according to the order accordingly."*

03.01.22

The same stance was narrated by the accused/official in his statement recorded as DW-01.

13. The accused/official has produced no other witness except himself to prove his stance regarding the receipt of the file from the Court. The name of the peon (whom he has mentioned in para 6 of the reply) is not disclosed at any stage of the proceedings. Similarly he has

(34)

not examined the said peon. The Register Peshi of the Moharrir Civil Judge-XVII, Peshawar was examined in which there is no entry regarding the next date of hearing which was 23.5.2019. It was observed that there is no entry of any case in the said register after 26.3.2019 till 14.6.2019. Even after 14.6.2019 there is no entry in the register regarding the next date of hearing (in case titled "Mst: Sabeeha etc. ...Vs... DHA").

14. Accused/official has produced no Cause List in which there is entry of the said case i.e. case No. 141/1 of 2019. It seems that accused/official has taken a stance which has no footing at all. The decree is fake, bogus and fraudulent. The stance of the accused/official that the case was duly instituted and decided by the Court is totally wrong and misleading. When the Reader and even the Presiding Officer of the Court are denying the institution and the disposal of the case, how the Moharrir of the Court can say that he has received the file and has consigned it to the Record Room.

23.01.22

TRUE COPY

15. The person who has typed the plaint, the order sheets and the judgment dated 02.02.2020 on computer is not known as there is no direct evidence. Similarly the

person who has written the evidence is also not known because of lack of direct evidence. It is also not proved through evidence that the accused/official has typed the judgment and the order sheets etc. or has written the evidence of the PWs. However the circumstantial evidence is so strong that the active involvement of the accused/official in the whole process cannot be ruled out. His admission of receiving the plaint on 02.05.2019 and consignment of the case to the Record Room is enough to prove the charges levelled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused/official.

16. The magnitude of the offence is so huge that it can raise questions on the working of the courts particularly in respect to the institution, disposal and consignment of the cases. The accused (some of whom are still unknown) have succeeded in sending a fake file to the Record Room (Civil) without being noticed by anyone. The accused/official not only is defending himself but is also trying to defend those who were involved with him in the whole process. He has not disclosed the name of any accomplice during the inquiry

(36)

proceedings. The charges against the accused are fully proved through circumstantial evidence. He has sent a fake and fabricated decree (file) to the Record Room (Civil) District Courts, Peshawar after putting Index on the same.

17. The beneficiaries of the fake decree are the plaintiffs in the case (No. 141/1 of 2019) and their attorney. The plaintiffs are:

- Mst: Sabeeha w/o Muhammad Saeed.
- Mst: Faiqa Huma w/o Muhammad Shoaib.
- Mst: Shah Room Abdur Razzaq.
- Mst: Falak Naz w/o Muhammad Rafiq.
- Mst: Nasreen w/o Qasim Jan all rs/o Shahi Bala, Peshawar.

The attorney is:

- Muhammad Shafi s/o Muhammad Saeed r/o Shahi Bala, Peshawar.

The learned counsel who have appeared in the cases are:

- Asad Khan Advocate (Civil Suit No. 141/1 of 2019 instituted on 02.5.2019 decided on 02.02.2020 titled "Mst: Sabeeha etc. ...Vs... DHA etc." decided by the learned Civil Judge-XVII, Peshawar i.e. fake decree).
- Muhammad Adnan (Malik) Awan Advocate (Execution Petition No. 11/10 of 2020 instituted on 11.12.2020 decided on 07.9.2021 titled "Mst: Sabeeha etc. ...Vs... DHA etc." decided by the learned Civil Judge-XVII, Peshawar).

02.01.22

TRUE COPY

(37)

- Muhammad Adnan (Malik) Awan Advocate & Mohsin Ali Khan Advocate (Application u/s 12(2) CPC No. 3/12(2) of 2021 instituted on 24.02.2021 titled "DHA Peshawar ...Vs... Mst: Sabeeha etc." pending adjudication in the Court of the learned Civil Judge-XVII, Peshawar).
- Danishmand Advocate (Civil Appeal No. 50/14 of 2021 instituted on 05.4.2021 decided on 05.4.2021 titled "Mst: Sabeeha ...Vs.. DHA" decided by the learned Additional District & Sessions Judge-IX, Peshawar).

The inquiry report is hereby submitted for further orders/necessary action.

Fazal Nasir Shah
Senior Civil Judge (Judl:)
Peshawar.

CERTIFICATE

Certified that this inquiry report consists of fifteen (15) pages. Each page has been read over, corrected and signed by me wherever was necessary.

Fazal Nasir Shah
Senior Civil Judge (Judl:)
Peshawar.

TRUE COPY

ANNEXURE "J" (38)

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR
Phone: 091-9213534
eMail: scjpeshawar@gmail.com
Web: www.SessionsCourtPeshawar.gov.pk

No. 03/SCJ (Admn)
Dated Peshawar 06-1-2022

OFFICE OF THE SENIOR CIVIL JUDGE (ADMN), PESHAWAR

FINAL SHOW CAUSE NOTICE

I, **Muhammad Sher Ali Khan, Senior Civil Judge (Admn),** Peshawar, as competent authority, under the Khyber Pakhtunkhwa Government servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, **Qaiser Khan, Naib Nazir,** as follow:

1. That vide inquiry report dated 03-01-2022 of the learned Inquiry Officer/Senior Civil Judge (Judicial) Peshawar, you have been held guilty of "manipulating and helpful in making a fake and bogus case file tiled "Mst. Sahiba & others ...VS... Assistant Director Land, DHA & others", drafting a forged decree sheet in it and making on it the signature of Presiding Officer of the court, incorporating false entries in the relevant registers and consigning it to the record room", therefore, you are asked to show cause why one or more of the penalties as mentioned in rule 4 of the E&D Rules 2011 not be imposed on you.

2. You are, therefore, required to furnish reply to this notice within **ten** days from the date of its receipt failing which it shall be presumed that you have nothing in your defense and in that case, ex-parte proceedings/action shall be taken against you.

3. You are also asked to state in your reply whether you desire to be heard in person.

Muhammad Sher Ali Khan,
Senior Civil Judge (Admn),
Peshawar.

MUHAMMAD SHER ALI KHAN
Senior Civil Judge, (ADMIN)
Peshawar

ANNEXURE K

(39)

BEFORE THE HON BLE MR. SHER ALI KHAN, LEARNED SCJ
(Admin) PESHAWAR, THE WORTHY INQUIRY
OFFICER

REPLY TO THE SHOW CAUSE DATED 06-01-2022

Respectfully Sheweth:

Qaisar Khan, Naib Nazir / Muharrar, District Courts Peshawar, the petitioner submits most respectfully the following statement / reply in respect of the show cause dated 06-01-2022 for your kind consideration and favour of acceptance.

Para Wise Reply

1) That while serving as Muharrar attached to the court of Civil Judge XVII, Peshawar, a complaint was filed on behalf of Assistant Director Land, DHA against a decree allegedly passed on Sunday being a public holiday.

2) That on the directions of the august High Court, the learned D&SJ Peshawar, appointed Mr. Muhammad Sajid, AD&SJ-XIII, Peshawar as an Inquiry Officer vide office order dated 09-04-2021.

3) The worthy Inquiry Officer submitted his report dated 06-07-2021 followed by Charge Sheet and Statement of Allegations dated 02-10-2021, wherein charge against him is mentioned as under;

   a. **Prepared and issued a Fake Court Decree titled "Mst: Sahiba & others ..vs.. Assistant Director Land, DHA & others" by making false entries in the relevant registers, and forged signatures of the Presiding Officers.**

4) That Mr. Fazal Nasir Shah learned SCJ (Judicial) was appointed as an Inquiry Officer in the instant matter vide order dated 02-10-2021 of the Learned SCJ (Admin) Peshawar. The petitioner submitted his reply dated 08-10-2021 to the worthy Inquiry Officer. The Inquiry report was submitted on 03-01-2022

5) Consequent upon the findings of Inquiry report, the petitioner was served with the impugned final show cause notice dated 06-01-2022

6) To begin with it is respectfully submitted that the procedure for institution of fresh suit is clearly described and followed by the courts all over the province in the similar fashion.

The fresh institution is made before the court of Senior Civil Judge, which then marked to any other Civil Court by the SCJ. The reader attached to the

ATTESTED

(Examiner)
District Court Peshawar

(40)

court of Civil Judge receives the case file, wherein entries are made in the Dak Book (SCJ) duly signed by the reader in person. The Hon'ble Civil court makes necessary order regarding registration and reader of the Court enters in the fresh case into his daily diary register Thereafter the case is received by Muharrar and the case is registered in civil register.

7) The petitioner received the court file from the court of learned CJ-XVII through the Peon and necessary entries were made in the relevant civil register along with 11 others freshly instituted cases on the same day.

8) The suit was disposed off by the Hon'ble court, wherein the case file was sent to the petitioner as Civil Muharrar for consigning the same to record room after necessary completion. The petitioner obliged according to the order accordingly

9) It is necessary to mention that the suit file contained printed decree sheet, duly received from the Hon'ble court, wherein just small necessary entries were made by the petitioner and then the same was sent to the record room for its consignment. Thus the allegation of preparation of fake court decree is entirely incorrect and liable to be rescinded as such.

10) Needless to mention that the entries of the disposal of the suit file exists in the register of Faisla Bahi retained by the reader to the court and signatures of the worthy presiding Officer over each order sheet which were never proved to be fake till date.

11) It is worth mentioning that the worthy Inquiry Officer in his report dated 03-01-2022 has categorically stated that,

Senior Civil Judge (Admn)
Peshawar.

> **15. The person who has typed the plaint, the order sheets and the judgment dated 02-02-2020 on computer is not known as there is no direct evidence. Similarly the person who has written the evidence is also not known because of lack of direct evidence. It is also not proved through evidence that the accused / official has typed the judgment and the order sheets etc. or has written the evidence of the PWs. However the circumstantial evidence is so strong that the active involvement of the accused / official in the whole process cannot be ruled out. His admission of receiving the plaint on 02-05-2019 and consignment of the case to the Record Room is enough to prove the charges leveled against him. Whoever may be involved in the criminal offence but the execution of the commission of the act was not possible without the active support of the accused / official.**

ATTESTED
21 FEB 2022
(Examiner)
District Court Peshawar

12) That the entire observation regarding the alleged involvement of the petitioner has been based on assumptions, presumptions, conjunctures and surmises having no legal effect.

The findings of the worthy Inquiry Officer were not based on any substance or supported by any solid or cogent evidence. The Inquiry Officer

(41)

while concluding his observations has admitted that, **"16..... The charges against the accused are fully proved through circumstantial evidence."** However no detail of such evidence was given, which makes the entire proceeding dubious and untrustworthy.

13) That the petitioner has not committed anything wrong on his part, nor done any corrupt practice or violation of official duties, breach of trust and misconduct in official capacity, and had just followed the order contained in the order sheet of the suit file.

14) The petitioner has 20 years of long service at his credit and that neither any complaint was ever filed against him nor was any disciplinary proceedings initiated against him during entire period of his service.

15) That the impugned show cause notice has been based upon the Inquiry report, which is not only inconclusive but also a vague assertion based on whimsical approach of the worthy Inquiry Officer, which is liable to be struck down by the worthy authority.

Senior Civil Judge (Admn)
Peshawar.

16) The impugned action is thus not only arbitrary but also discriminatory and is against the principles of equity, law, justice and propriety calling for interference by the worthy authority.

In view of the above, it is requested that by accepting this reply, the impugned show cause notice, may kindly be set aside while exonerating the appellant of all the charges leveled against him.

Note:

Further I requested to be heard in person.

Qaisar Khan
Naib Nazir / Muharrar,
District Courts Peshawar

Peshawar, Dated
15th / January, 2022

ATTESTED
21 FEB 2022
(Examiner)
District Court Peshawar

BEFORE THE ADDITIONAL DISTRICT JUDGE, PESHAWAR

In re:

Muhammad Usman etc .....Versus.....SNGPL etc

REPLY TO THE APPLICATION FOR DISMISSALS OF CONTEMPT OF COURT PETITION BY & ON BEHALF OF RESPONDENT/ PETITIONERS.

Respectfully Sheweth:

PRELIMINARY OBJECTION

1. That the petitioners/ respondents have got no cause of action to file the instant application.
2. That the said application is frivolous against the law and facts.
3. That the application is bad and not maintainable in the present circumstances.
4. That the application is misconceived and not based upon true facts.

REPLY ON FACTS

1. That Para-1 of the application needs no reply.
2. That Para-2 of the application is incorrect, hence denied. In response, it is, submitted that this Hon'ble Court vide Order dated 03.02.2020 observed that the Contempt of Court Application is maintainable and parties are directed to lead their evidence, therefore, the instant application is filed just to waste the precious time of this Hon'ble Court.

It is, therefore, humbly prayed that application for dismissal of contempt of Court petition may graciously be dismissed.

Dated:30.03.2022

Respondents/ Petitioners

Through

Ibrahim Noor Mughal
Advocate High Court

42

V A K A L A T N A M A

In the Court of **Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. ____/2022

Petitioner
Plaintiff
Applicant
Appellant
Complainant

Qaisar Khan Decree-Holder

VERSUS

Respondent
Defendant
Opponent
Accused

District & Session Judge, Peshawar etc. Judgment-Debtor

I / We **Qaisar Khan** the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court,** to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Client

M. Zafar Tahir

Attested & Accepted (Advocates)

Ansar Ullah Khan

Dated 30 /03/2022

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafartk.advocate@gmail.com

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

9.B

No.

APPEAL No. 458 of 20 22

Qaisar Khan

Apellant/Petitioner

Versus

Distt: & Session Judge Peshawar

RESPONDENT(S)

Notice to Appellant/Petitioner Respondent No. 2 Senior civil Judge (Admin) Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 20/7/22 at 9 a.m.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

(Copy Already Sent)

14/7/2022

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. S.B

No.

APPEAL No. 456 of 20 22

Qaisar Khan

Apellant/Petitioner

Versus

Distt. & Session Judge Peshawar

RESPONDENT(S)

Notice to ~~Appellant/Petitioner~~ Respondent No. 1 Distt: & Session Judge Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 20/7/22 at 9 a.m.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

Copy Already Sent

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

GS&PD-444/1-RST-12,000 Forms-22.09.21/PHC Jobs/Form A&B Ser. Tribunal/P2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. 813

Appeal No. 456 *of 20* 22

Qaisar Khan *Appellant/Petitioner*

Versus

District & Session Judge Peshawar *Respondent*

Respondent No. (2)

Notice to: — Senior Civil Judge (Admin) Peshawar

12/5/2022

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 20.05.2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Clerk of Court
Senior Civil Judge
Peshawar

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of.....May.....20 22

For Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

SB

No.

Appeal No. 456 *of 20* 22.

Qaisar Khan
.....*Appellant/Petitioner*

Versus

District & Session Judge Peshawar
.....*Respondent*

Respondent No. (1)

Notice to: — District & Session Judge Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 20/05/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this.....

Day of.....May.....20 22

11/5

Office Of The District & Sessions Judge
Receipt No.
Dated
Peshawar
12/5/22

For Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 456 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	30/03/2022	The appeal of Mr. Qaiser Khan presented today by Mr. Muhammad Zafar Tahirkheli Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put up there on 08-04-2022 Notice be issued to the appellant as well as his Counsel. CHAIRMAN
	Noted Qaisar Khan	

08.04.2021 Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant while arguing the case in preliminary hearing contended that the appellant is aggrieved of the impugned order dated 17.02.2022 whereby he was awarded major penalty of dismissal from service. The appellant exhausted his right of appeal on 03.03.2022. However, his departmental appeal did not have a favorable response and was dismissed by the appellate authority vide order dated 22.03.222. Thereafter service appeal was instituted invoking Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 on 30.03.2022.

The appeal is admitted to regular hearing subject to all just legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 20.05.2022 before S.B.

Rs-500/-
Appellant Deposited
Security & Process Fee
08/4/22

(Mian Muhammad)
Member(E)

20.05.2022 Appellant in person present and requested for adjournment as his counsel is not available today. Adjourned. To come up for preliminary hearing on 20.06.2022 before S.B.

(Mian Muhammad)
Member (E)

20.06.2022 Appellant present in person. Mr. Muhammad Adeel Butt, Additional Advocate General present.

No one present on behalf of respondents. Therefore, fresh notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments on 20.07.2022 before S.B.

(Fareeha Paul)
Member (E)