

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 1234/2014**

Date of institution ... 25.09.2014

Date of judgment ... 26.08.2016

Tilawat Shah Ex-Patwari  
Halqa Passani, Peshawar.

... (Appellant)

**VERSUS**

1. The Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
2. The Commissioner Khyber Pakhtunkhwa Peshawar.
3. The Deputy Commissioner Khyber Pakhtunkhwa Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER  
DATED 29.08.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE  
APPELLANT AGAINST THE ORDER DATED 04.08.2014 HAS BEEN  
REJECTED FOR NO GROUNDS.

Mr. Muhammad Asif Yousafzai, Advocate.

.. For appellant.

Mr. Muhammad Adeel Butt, Additional Advocate General

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. MUHAMMAD AZIM KHAN AFRIDI

.. CHAIRMAN

**JUDGMENT**

**MUHAMMAD AAMIR NAZIR, MEMBER:-**

The appellant Tilawat Shah ex-

Patwari Halqa, Peshawar through instant appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 04.08.2014 vide which the appellant was awarded major penalty of dismissal from service. Against the impugned order referred above, the appellant filed a departmental appeal which was also regretted by the Appellate Authority vide order dated 29.08.2014.

2. Brief facts giving rise to the instant appeal according to the averments of the appeal are that the appellant joined the Revenue Department in the year 2001 and has got

*[Handwritten signature]*  
26.08.16

unblemished service record. That during service, the appellant was charge sheeted on the ground that he has approached the office of Deputy Commissioner Peshawar through a mobile phone by using the name of Chief Minister's Secretariat for getting posting of his choice fraudulently. The appellant submitted a detailed reply to the charges leveled against him, however, a one sided inquiry was conducted and the inquiry officer recommended the appellant for major penalty vide inquiry report available on file as annexure-D. That the appellant was subsequently served with the show-cause notice and finally he was awarded penalty of dismissal from service vide impugned order dated 04.08.2014. That against the impugned order, appellant filed a departmental appeal but of no avail and the competent authority regretted departmental appeal of the appellant vide his order dated 29.08.2014, hence the instant appeal.

3. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General for respondents and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that a one sided inquiry was conducted against the appellant with malafide intention and no witness was examined during the inquiry in support of charges leveled against him. That on the basis of defective inquiry report, the appellant was awarded major punishment which was not warranted under the law. Learned counsel for the appellant submitted before the Tribunal to accept this instant appeal and set-aside the impugned order by reinstating the appellant in service with back benefits.

5. On the contrary, learned Additional Advocate General argued before the Court since the appellant has committed misconduct, hence, he was rightly awarded major penalty of dismissal from service on the basis of inquiry report available on file. That the instant appeal is devoid of merits, hence, may be dismissed.

6. Perusal of the case file reveals that the appellant while serving as Patwari Halqa Passani, Peshawar was served with a charge sheet and statement of allegations by respondent No. 3 on the ground that he has approached this office through a Cell Number 0300-9840287 by using the name of Chief Minister's Secretariat for getting posting of his

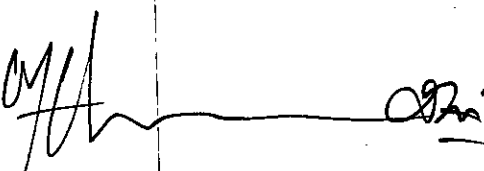
*Handwritten signature*  
26.08.16

own choice fraudulently which amounts to misconduct. Hence, on the basis of charge sheet and statement of allegations, an inquiry was conducted and the inquiry officer while hearing the appellant in person, recommended him major punishment under Government Servant (Efficiency and Disciplinary) Rules, 2011. Astonishingly, no evidence what so ever was collected in support of the charges level against the appellant, neither the owner of cell number mentioned in the charge sheet were contacted nor the person who received the fraudulent call was examined by the inquiry officer. Similarly, no opportunity what so ever was provided to the appellant to rebut the charges leveled against him. Above all, respondent No. 3 relied on the defective inquiry report and awarded major penalty of dismissal from service to the appellant vide impugned order dated 04.08.2014. Moreover, the departmental appeal filed by the appellant was also rejected vide impugned order dated 29.08.2014.

7. Since, the inquiry report is arbitrary and defective, hence we are left with no option but to accept the instant appeal, set-aside the impugned order dated 04.08.2014 and reinstate the appellant in service. The respondents are at liberty to conduct a fresh inquiry if they deem appropriate in the mood and manner prescribed by the rules. Inquiry must be concluded within a period of two months of the receipt of this judgment and there-after to pass an appropriate order in accordance with law. In case the competent authority failed to conduct the inquiry in the stipulated period referred above, it shall be deemed that the appellant has been reinstated in service from the date of his dismissal and the intervening period has been treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.08.2016

  
(MUHAMMAD AZIM KHAN AFIRDD)  
CHAIRMAN


  
(MUHAMMAD AAMIR NAZIR)  
MEMBER


26.08.2016

Appellant with counsel and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consist of three pages placed on file, since, the inquiry report is arbitrary and defective, hence we are left with no option but to accept the instant appeal, set-aside the impugned order dated 04.08.2014 and reinstate the appellant in service. The respondents are at liberty to conduct a fresh inquiry if they deem appropriate in the mood and manners prescribed by the rules. Inquiry must be concluded within a period of two months of the receipt of this judgment and there-after to pass an appropriate order in accordance with law. In case the competent authority failed to conduct the inquiry in the stipulated period referred above, it shall be deemed that the appellant has been reinstated in service from the date of his dismissal and the intervening period has been treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.08.2016

  
(MUHAMMAD AZIM KHAN AFRIDI)  
CHAIRMAN

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

7  
12.8.2015

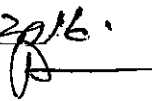
Counsel for the appellant, M/S Mukhtiar Ali, Supdt. and Zafarullah, Assistant alongwith Assistant A.G for respondents present. Written replies submitted. The appeal is assigned to D.B for rejoinder and final hearing for 1.12.2015.

  
Chairman

12.8.2015

01.12.2015

None present for the appellant and Mr. Muhammad Jan, GP for respondents present. To come up for arguments on


~~20.4.2016~~  


Member

  
Member

20.04.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted on behalf of the appellant copy of which is placed on file. To come up for arguments on 26.08.2016..

  
Member

  
Member

Appeal No. 1234/2014  
Mr. Tilmant Shah.

4. 16.01.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 04.08.2014, vide which the major penalty of dismissal from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 11.08.2014 which was rejected vide order dated 29.08.2014, hence the instant appeal on 25.09.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 23.02.2015.

Appellant Deposited  
Security & Process Fee  
Rs. 3000/- Bank  
Receipts Attached with File.



  
Member

23.02.2015

Counsel for the appellant and Mr. Mukhtiar Ali, Supdt. for respondents alongwith Addl: A.G present. Respondents requested for adjournment. To come up for written reply/comments before S.B on 14.05.2015.

  
Chairman

6 14.05.2015

Appellant with counsel and Mr. Mukhtiar Ali, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply on 12.8.2015 before S.B.

  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1234/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/10/2014	<p>The appeal of Mr. Tilawat Shah resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	21-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <del>26-12-2014</del></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3.	Reader Note 26-12-14	<p>appellant in person present since the Tribunal is incomplete, therefor, case is adjourned to 16-1-2015.</p> <p style="text-align: right;"><i>[Signature]</i> Reader.</p>

The appeal of Mr. Tilawat Shah Ex-Patwari received today i.e. on 25.09.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Annexures of the appeal may be attested.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1422 /S.T,

Dt. 25/9 /2014.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Sir,  
objection 1. Removed.  
objection 2. Removed  
objection 3. Removed  
objection 4. Removed:

Re-submitted  
Am - Jai  
adv.



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Appeal No. <sup>1234</sup> /2014

Tilawat Shah Ex-Patwari

**VS**

The Senior Member Board of Revenue KPK Peshawar and others

**INDEX**

S#	Description of Documents	Annexure	Page#
1.	Memo of Appeal		1-4
2.	Copy of Charge Sheet	A	5
3.	Copy of Statement of allegation	B	6
4.	Copy of reply to charge sheet	C	7
5.	Copy of Inquiry Report	D	8-9
6.	Copy of Show cause notice	E	10
7.	Copy of reply to show cause notice	F	11
8.	Copy of Dismissal Order	G	12
9.	Copy of Departmental Appeal	H	13-16
10.	Copy of Rejection Order	I,	17
11	Wakalat Nama		18

Appellant

Tilawat Shah

Through

  
**M. ASIF YOUSAFZAI**

&   
**TAIMUR ALI KHAN**

**ADVOCATES PESHAWAR**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 1234/2014**

Tilawat Shah Ex-Patwari  
Halqa Passani, Peshawar.

Appellant

**VERSUS**

1. The Senior Member Board of Revenue KPK Peshawar
2. The Commissioner KPK Peshawar
3. The Deputy Commissioner KPK Peshawar

**APPEAL**  
18/4  
25/9/14

Respondents

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 29-08-2014 WHEREBY THE DEPARTMENTAL <sup>APPEAL</sup> OF THE APPELLANT AGAINST THE ORDER DATED 04-08-2014 HAS BEEN REJECTED FOR NO GROUNDS.**

**PRAYER**

**THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 29-08-2014 & 04-08-2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE RE-INSTATED WITH ALL THE BENEFIT. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEM FEET AND APPROPRIATE THAT MAY ALSO BE AWARDED IN THE FAVOUR OF APPELLANT.**

**25/9/14**

re-submitted to  
and filed.

**15/10/14**

RESPECTFULLY SHEWETH:-

FACTS

1. That the appellant join the revenue department on 19-06-2001 and completed all his due trainings etc and also has good service record throughout.
2. That the appellant was served <sup>with</sup> charge sheet and statement of allegation and asked to file reply <sup>before</sup> the inquiry committee. The appellant submitted detail reply ~~to~~ the charge sheet and denied all allegation leveled against ~~him~~ (Copy of Charge Sheet and statement of allegation and reply are attached as Annexure "A, B & C").
3. That <sup>then</sup> one sided inquiry was conducted but non<sup>e</sup> of the statement was recorded or record examined in the presence of appellant. The inquiry committee consisting of the Assistant Commissioner Peshawar Sardar Asad Haroon recommended Major Penalty while Additional Assistant Commissioner Peshawar Muhammad Fawad Recommended Minor Penalty <sup>in initial inquiry</sup> ~~in initial inquiry~~ (Copy of inquiry report is attached as Annexure "D," ~~in initial inquiry~~).
4. That the appellant was served <sup>with</sup> show cause notice and he submitted detail reply the show cause notice and denied all allegation level against him. (Copy of Show cause notice and reply are attached as Annexure "E & F")
5. That on 04-08-2014 a Major Penalty dismissal from the service was imposed upon the appellant under the KPK government servant (E & D) rules 2011 without chance of personal hearing of the appellant. (copy of termination order is attached as Annexure G").

6. That against the order dated 04-08-2014 the appellant filed departmental appeal on 11-08-2014 which was also rejected on 29-08-2014 for no good ground. (Copy of departmental appeal and rejection order are attached as Annexure H & I)

### GROUNDS

- A. That the impugned order dated 29-08-2014 and 04-08-2014 are against the law facts norms of justice and material on record, therefore not tenable and liable to be set aside.
- B. That the appellant has been condemned unheard and has not been treated according to law and rules.
- C. That neither the appellant was associated with the enquiry proceedings nor any statement of witnesses has been recorded in the presence of appellant. Even a chance of cross examination was also not provided to the appellant which is violation of norms of justice.
- D. That the penalty is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- E. That the inquiry committee was bound to confirm the name of subscriber of **Cell Phone 0300-9840287** so as to prove the charge of misconduct against the appellant. But they failed to do so. Therefore, the impugned order has no sanctity under the law.

F. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

Appellant

  
Tilawat Shah

Through

  
M. ASIF YOUSAFZAI

&

  
TAIMUR ALI KHAN

ADVOCATES, PESHAWAR

CHARGE SHEET

A

5

I, S. Zaheer-ul-Islam, Deputy Commissioner, Peshawar as competent authority, hereby charge you, Mr. Tilawat Shah, Patwari Halqa Passani, Peshawar (Under suspension), as follows:-

That you were posted as Patwar Halqa Passani Peshawar committed the following irregularities:

- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.

2. By reasons of the above, you appear to be guilty of misconduct under rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and 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 Committee.

4. Your written defense, if any, should reach the Inquiry Committee, 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 follow against you.

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

6. A Statement of allegations is enclosed.

Attested  
Deputy Commissioner  
Peshawar

  
Deputy Commissioner  
Peshawar  
(COMPETENT AUTHORITY)

ATTESTED  


B 6

B (16)

DISCIPLINARY ACTION

I, S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, am of the opinion that Mr. Tilawat Shah, Patwari Halqa Passani, Peshawar (Under suspension), has rendered liable to be proceeded against, as he committed the following acts/omissions with in the meaning of rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS


- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

- i. Sardar Asad Haroon Ac (P)
- ii. Mr Suhail Aziz AAC

3. The inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its 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 a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/inquiry committee.

  
Deputy Commissioner  
Peshawar  
(COMPETENT AUTHORITY)

**ATTESTED**  


To,

The Hon'ble Additional Assistant Commissioner-VII,  
Peshawar.

Subject: ENQUIRY INTO THE MATTER OF MR. TILAWAT SHAH,  
PATWARI, PESHAWAR.

Worthy Sir,

With reference to the subject cited above, I hereby submit reply and explain my position. Before the order of the Hon'ble Deputy Commissioner, Peshawar dated: 10-10-2013, I was performing my duties as Patwari Halqa Mauza Passani, Peshawar as per rules and in accordance with the law.

Sir, I have never-ever even try to make a call to the Hon'ble Deputy Commissioner Peshawar for my transfer or for other matter, nor I know the owner of cell No. 0300-9840287. It may be possible that out of my bad-wishers any one for the purpose of achieving their nefarious desires have had made a call, but truly speaking I am a dutiful servant of this esteemed department and I have just concern with my duties and services, wherever my posting may be.

Sir, the said letter may be the result of mis-conception and mis-understanding and the present enquiry initiated on its basis is not justifiable, the notice issued to me merits withdrawal.

(In proof of my statement I also herewith annexed an affidavit duly signed and sealed from oath commissioner).

It is, therefore, in view of the above situation I humbly requests that the enquiry initiated against me may kindly be stopped/filed and the notice issued may kindly be withdrawn.

Yours obediently,

Dated: 12-11-2013

ATTESTED

TILAWAT SHAH,  
Patwari Tehsil, Peshawar.



D F 9  
5  
D (8)

INQUIRY REPORT AGAINST MR. TILAWAT SHAH, PATWARI  
HALQA PASSANI, PESHAWAR.

The undersigned were directed as members of Inquiry Committee to conduct inquiry against Mr. Tilawat Shah, Patwari Halqa Passani, who exerted Political pressure for getting choice posting which amounts to misconduct and thus he was suspended and an inquiry was conducted by Mr. Mohammad Fawad, who submitted his report to this effect.

It has been reported that the accused Patwari found approaching the Office of Deputy Commissioner for getting posting of his choice fraudulently through a caller from Cell No.0300-9840287, who was using the name of Chief Minister's Secretariat which fact amounts to misconduct unfair/fraudulent means, in subordination and violation of official discipline.

In order to proceed in this matter and give opportunity of defense to the accused official, he was summoned, heard in person, and who also submitted his written statement before Inquiry Committee.

In his written reply, he said that he has never approached the office of the Deputy Commissioner, Peshawar for getting choice posting and that he is a dutiful official.

Rules 34 of Government Servants (conduct Rules) 1987 under the head use of Political or other influence envisages that no Government Servant shall bring or attempt to bring Political or other outside influence directly or indirectly to bear on, Government or any other Government Servant in support of any claim arising in connection with his employment as such. The above circular also contain the direction of the Chief Minister for taking disciplinary action against the defaulters under the Govt. Servants (Efficiency & Disciplinary (Rules 2011).

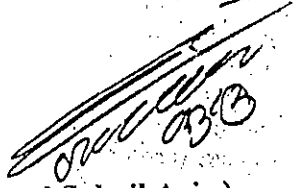
ATTEST  
R


*Attested*  
*Deputy Commissioner*  
*Peshawar*

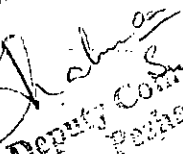
10 6 1  
9  
After thorough discussion of the committee members regarding this issue, the committee reached to the conclusion that official is guilty of misconduct, insubordination and indifference to the rules and instructions.

In the circumstances it is recommended that the accused Patwari may be awarded major punishment under the Govt. Servant (Efficiency & Disciplinary) Rules 2011 as has already been recommended by the Inquiry Officer Mr. Muhammad Fawad in his initial inquiry.

Inquiry report is submitted as desired please.

  
(Muhammad Sohail Aziz)  
Additional Assistant Commissioner-IV

  
(Sardar Asad Haroon)  
Assistant Commissioner Peshawar.

Attended  
  
Deputy Commissioner  
Peshawar

SHOW CAUSE NOTICE

6

E

10

S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby serve you Filawatshah, Patwari Halqa Passani (under suspension), as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Committee for which you were given opportunity of hearing vide office communication which was availed by you and
- (ii) On going through the findings and recommendations of the Inquiry Committee, the material on record and other connected papers.

I am satisfied that you have committed the following acts /omissions specified/falls under the purview of Section 3 of the said Ordinance:

- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.
- (e) That an inquiry committee comprising of M/s Sardar Asad Haroon AC Peshawar and Sohail Aziz AAC-IV Peshawar was constituted to thoroughly investigate the matter.
- (f) The Inquiry Committee in its report also recommended for imposing a major penalty under E & D Rules 2011.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you Major Penalty of Dismissal from service under section-4 of the said Rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within fifteen days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case an ex parte action shall be taken against you.

5. The copy of the findings of the Inquiry Committee is enclosed.

U.O.No. 6200/DC (P)/EA.  
Dated 02/08/2014.

*Attested*  
*Rahman*  
Deputy Commissioner  
Peshawar

*SO*  
Deputy Commissioner  
Peshawar  
(Competent Authority)

**ATTESTED**  
*[Signature]*

To

The Honorable,  
Deputy Commissioner, Peshawar.

Through: District Kanongo,  
Peshawar.

Subject: SHOW CAUSE NOTICE:

R/Sir,

With due respect it is submitted that: -

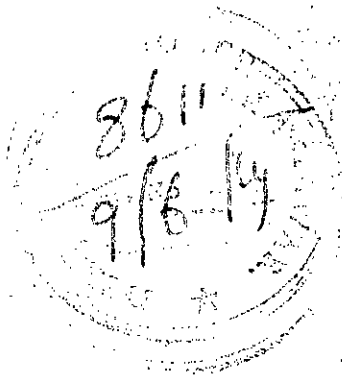
Before the order of the Honorable Deputy Commissioner, Peshawar dated 10-10-2013, I was performing my duties as Patwari Halqa Muza Passani, Peshawar as per rules & in accordance with the law.

Sir, I have never even try to make a call to the Honorable Deputy Commissioner, Peshawar for my transfer or for other matter, nor I know the owner of Cell # 0300-9840287 and it may be possible that out of my bad-wishers any one for the purpose of achieving their nefarious desires have had made a call, but truly speaking I am a dutiful servant of this esteemed department and I have just concern with my duties and services, wherever my posting may be.

Sir, the said letter may be the result of miss-conception and miss-understanding and the present inquiry initiated on its basis is not justifiable, the notice issued to me merits withdrawal.


(In proof of my statement I also herewith annexed a copy of an affidavit duly signed and sealed form oath commissioner).

In light of above facts, I humbly requested that the inquiry initiated against me may be stopped/filed and the show cause notice issued may kindly be withdrawn.



**ATTESTED**  
P

Yours obediently

  
Tilawat Shah  
Patwari Tehsil, Peshawar.



OFFICE OF THE 9  
DEPUTY COMMISSIONER  
PESHAWAR

Dated Pesh. the 04/08/2014

9  
(12)

OFFICE ORDER:

No. 8574 /DC(P)/EA.

WHEREAS, Mr. Tilawat Shah, Patwari (BPS-09), Patwar Halqa Passani Peshawar was proceeded against under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Disciplinary Rules 2011, for charges mentioned in Charge Sheet & Statement of Allegations.

AND WHEREAS, An inquiry committee comprising of M/S Sardar Asad Haroon AC Peshawar and Sohail Aziz AAC-IV Peshawar was constituted to conduct inquiry against the said Patwari.

AND WHEREAS, the inquiry committee after having examined the charges, evidence on record and explanation of the accused Patwari, submitted its report, whereby the charges leveled against the accused Patwari stand proved.

NOW THEREFORE, the undersigned being the competent authority after having considered the charges, evidence on record, the explanation of the accused Patwari and findings of the enquiry committee, and exercising the powers under section-4(b)(iv) read with section-14(5)(ii) of the Khyber Pakhtunkhwa Govt. Servants E&D Rules 2011 has been pleased to impose the major penalty of "Dismissal from service" upon the above named Patwari with immediate effect.

SO  
(S. Zaher-ul-Islam)  
Deputy Commissioner  
Peshawar

Endst: No. 8575-81 /DC(P)/EA.

Copy forwarded to the:

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Peshawar Division Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Additional Deputy Commissioner, Peshawar.
5. Accounts Officer of this office for further necessary action.
6. Tehsildar, Peshawar.
7. Mr. Tilawat Shah, Ex-Patwari, Peshawar.

Attested  
Rahman  
Supat  
Deputy Commissioner  
Peshawar

SO  
(S. Zaher-ul-Islam)  
Deputy Commissioner  
Peshawar

ATTESTED  
R

H

13

To

The Worthy Commissioner,  
Peshawar Division, Peshawar.

Subject:- DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 4-8-2014 PASSED BY THE DEPUTY COMMISSIONER PESHAWAR WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE.

PRAYER IN APPEAL

By accepting this appeal, the impugned order No.8574/DC(P)/EA dated 4-8-2014 passed by the Deputy Commissioner, Peshawar may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

RESPECTED SIR,

*Short facts giving rise to the present appeal are as under:-*

1. That the appellant was serving as Patwari (BPS-9) Patwar Halqa Passani Peshawar at the relevant time. He had 14 years unblemished service record to his credit.
2. That the appellant was performing his duty with great zeal, zest and devotion. But strangely, he was placed under suspension on the basis of following false, frivolous and baseless allegations vide office order dated 10-10-2013 ( Copy Annex-A).

You, Mr. Tilawat Shah Patwari Halqa Passani, have been found approaching this office for getting posting of your choice frequently through a caller from cell No.0300-9840287 who was using the name of Chief Minister's Secretariat. This act an attempt on your part amounts to misconduct, violation of discipline, in-subordination & using unfair/fraudulent means.

You are hereby suspended with immediate effect and directed to report to DK's office Peshawar.

Revenue Officer concerned is directed to handover the charge of the Patwar Halqa Passani to the contiguous Patwari in the same circle.

ATTESTED

*[Signature]*

condemned/penalized without being heard, contrary to the basic principle of natural justice known as "**Audi Alteram Partem**". Therefore, the impugned order is not sustainable in the eyes of law.

- B. That the Inquiry Committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which they found the appellant guilty of the so-called allegations. But they failed to do so. Moreover, there was no iota of evidence to connect the appellant with the commission of allegations of misconduct. Mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so-called allegations levelled against the appellant in the charge sheet. Hence, the impugned order passed by the Competent Authority on the basis of such inquiry is against the spirit of law.
- C. That the Competent Authority was under statutory obligation to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case but he failed to do so and awarded major penalty of dismissal from service to the appellant despite the fact that the allegations as contained in the charge sheet had not been proved in the so-called inquiry.
- D. That the Inquiry Committee had not examined the "**Star Witness**" who had received the disputed call in order to substantiate the guilt of the appellant. Therefore, the impugned order is against the spirit of administration of justice.
- E. That the disputed call was made by a person with malafide intention and ulterior motives in order to tarnish the reputation of the appellant and also to damage his service career. But the Competent Authority has overlooked this important aspect of the case while passing the impugned order. Therefore, the impugned order is bad in law.
- F. That the Inquiry Committee was bound to confirm the name of subscriber of "**Cell (phone) No. 0300-9840287**" so as to prove the charge of misconduct against the appellant. But they failed to do so. Therefore, the impugned order has no sanctity under the law.
- G. That the Competent Authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic Principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- H. That the appellant was neither involved in corruption, nor embezzlement or immoral turpitude. Therefore, such harsh and extreme penalty of dismissal from service of appellant was not

15

3. That thereafter, preliminary inquiry was conducted against the appellant. No witness was examined in the presence of appellant to prove the allegations against him. But the inquiry officer on the basis of bald and naked evidence, found the appellant guilty of the charge of misconduct.
4. That the appellant was served with a charge sheet wherein same allegations were reiterated as mentioned in the suspension order referred to above. The appellant submitted reply and denied the allegations by stating that he had neither made the disputed "call" to any officer of the department in respect of his choice posting nor he was the subscriber of "Cell (Phone) No. 0300-9840287". Therefore, the appellant termed the allegations as fallacious, malicious and baseless (Copies of charge sheet and reply are appended as Annex-B & C).
5. That the aforesaid reply was not found satisfactory and as such Inquiry Committee was constituted to probe into the allegations levelled against the appellant in the charge sheet.
6. That the Inquiry Committee has not conducted the inquiry in accordance with law as no witness was examined in the presence of appellant nor he was provided any opportunity of cross-examination. The star witness who attended the disputed call was also not examined during the inquiry in order to prove the allegations against the appellant (Copy of inquiry report is Annex-D).
7. That the appellant was served with a show cause notice. He furnished reply and denied the allegations and also termed the inquiry as farce and mockery in the eyes of law (Copies of show cause notice and reply are appended as Annex-E & F).
8. That the appellant was awarded major penalty of dismissal from service illegally by an order dated 4-8-2014 passed by the Deputy Commissioner Peshawar (Copy Annex-G).
9. That the appellant now assails the impugned order before the Hon'ble Appellant Authority inter-alia on the following grounds:-

#### GROUNDS OF APPEAL

- A. That no fair and impartial inquiry was constituted against the appellant in order to substantiate his guilt in respect of allegations leveled against him in the charge sheet. The Inquiry Committee neither examined any witness in the presence of appellant nor he was provided any chance of cross-examination. Similarly, the appellant was also not provided any opportunity to produce his defence in support of his version. Thus, the appellant has been



justified with the nature of his so-called misconduct to deprive his family from livelihood.

- I. That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.
- J. That the impugned order is suffering from legal infirmities and as such causing grave miscarriage of justice to the appellant.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order No.8574/DC(P)/EA dated 4-8-2014 passed by the Deputy Commissioner, Peshawar may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Yours obediently,

Dated: 11-8-2014

Tilawat Shah

Ex-Patwari

R/O

MashoKhel, Tehsil & District Peshawar.



IN THE COURT OF  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR

APPEAL NO: 50 /2014

DATE OF INSTITUTION: 15.08.2014

DATE OF DECISION: 29.08.2014

Tilawat Shah Ex Patwari Halqa Passani Peshawar ..... (Appellant)

**VERSUS**

Deputy Commissioner Peshawar..... (Respondent)

**ORDER**

This order will dispose off the instant departmental appeal filed by the above named appellant against the Deputy Commissioner Peshawar order bearing No. 8574/DC(P)/EA dated 04.08.2014, whereby he was awarded major penalty of dismissal from service under section-4(b)(iv) and section-14(5)(ii) of Govt: of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Brief facts of the case leading to the filing of appeal is that the appellant was suspended by the respondent vide order 15208-16/DC(P)/DK dated 10.10.2013 on the grounds that he has been found approaching the respondent office for getting posting of his choice through a caller from cell No. 0300-9840287, using name of Chief Minister's Secretariat. The Deputy Commissioner Peshawar appointed Mr. Fawad Khan, AAC-VII, Peshawar to hold a preliminary enquiry and submit report with recommendations.

The AAC-II Peshawar/Inquiry Officer in his report found the appellant guilty of the said charges and recommended him for awarding major penalty under the rules ibid. An Enquiry committee comprising Mr. Asad Haroon, Assistant Commissioner, Peshawar and Mr. Suhail Aziz Additional Assistant Commissioner as also constituted to submit findings/recommendations within 30 days, by serving charge sheet and statement of allegations. The Inquiry Committee submitted its report wherein the appellant was held guilty on the charge leveled against him and recommended him for awarding major penalty under section-4(b)(iv) and section-14(5)(ii) of Govt: of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Appellant present and heard. It is observed that most of the officials/government servants have developed a tendency to bring extraneous influence in service matters which is not only in contravention of Rules 22 of NWFP Civil Servants(Conduct)Rules, 1987 and posting/transfer policy of the Government but also constitutes 'Misconduct' in terms of NWFP Civil Servant(Efficiency and Discipline )Rules, 1973. Perusal of the record on file reveals that the charge against the appellant has been proved, therefore, I see no reasons to interfere in the impugned order of the Deputy Commissioner Peshawar dated 04.08.2014 which is thus upheld. The appeal in hand stands rejected being not maintainable. File to GRR.

**ATTESTED**

*[Signature]*  
COMMISSIONER  
PESHAWAR DIVISION PESHAWAR.

**ANNOUNCED**  
29.08.2014

**VAKALAT NAMA**

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar.

Tilawai Shah (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Revenue Dept. (Respondent)  
(Defendant)

I/We, Tilawai Shah (Appellant).

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

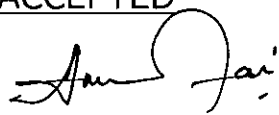
*Taimur Ali Khan Adv.*


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

  
(CLIENT)

ACCEPTED

  
**M. ASIF YOUSAFZAI**  
Advocate.

  
Taimur Ali Khan  
Adv.

**OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar  
Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1234/2014.

Mr. Tilawat Shah Ex-Patwari of District Peshawar.

VERSUS

Senior Member, Board of Revenue, Khyber Pakhtunkhwa and others.

COMMENTS ON BEHALF OF RESPONDENTS NO.1.

Preliminary objection.

1. The appeal is not competent in its present form.
2. That appellant has got no cause of action.
3. That appeal is bad due to mis-joinder/ non-joinder of necessary parties.
4. That appellant is estopped by his own conduct.
5. That appellant has not come to the Tribunal with clean hands.

ON FACTS.


1. Pertains to record of the office of Deputy Commissioner, Peshawar.
2. Correct to the extent that the appellant was served with proper charge sheet.
3. Correct to the extent that penalty was recommended by the enquiry committee upon which major penalty was awarded to the appellant.
4. Show cause notice was served upon the appellant on the basis of report of Enquiry Committee.
5. Incorrect. Penalty was awarded upon the appellant after affording proper opportunity of hearing.
6. Departmental appeal has rightly been rejected by respondent No.2.

GROUND.

- A. Incorrect. The impugned order is based on the recommendation of Enquiry Officer according to Law.
- B. Incorrect. The appellant has been given proper opportunity of hearing.

- C. As in 'B' above.
- D. Incorrect. The penalty was given under the provision of Rule 4 of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.
- E. Incorrect. The impugned order has been issued in accordance with law.
- F. Incorrect. Additional grounds cannot be agitated during arguments.

The appeal having no legal footings may be dismissed with costs.

  
Respondent No.1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1234/2014

Tilawat Shah Ex-Patwari.....Appellant

VERSUS

Senior Member, Board of Revenue, and others.....Respondents

AFFIDAVIT

I Mir Qasim Assistant Secretary (Lit;II), Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of the written reply are true and correct to the best of my knowledge and belief information provided to me, and noting has been deliberately concealed from this Hon'able Tribunal.



Assistant Secretary (lit;II)  
Board of Revenue

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

**Appeal No. 1234/2014**

Tilawat Shah, Ex-Patwari (BPS-09) Halqa Passani, Peshawar .....(Appellant)

**VERSUS**

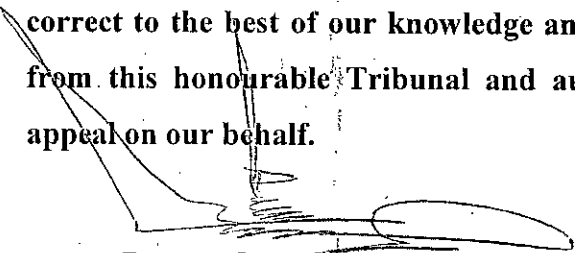
1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. The Commissioner Peshawar Division Peshawar
3. The Deputy Commissioner, Peshawar .....(Respondents)

---

**A F F I D A V I T**

---

We, Respondents No.1 to 3 do hereby solemnly affirm and declare on oath that the contents accompanying Para-wise comments submitted are true and correct to the best of our knowledge and belief and that nothing has been concealed from this honourable Tribunal and authorize Govt. Pleader to defend the instant appeal on our behalf.

  
**Deputy Commissioner  
Peshawar  
(Respondent No.3)**

  
**Commissioner  
Peshawar Division, Peshawar  
(Respondent No.2)**

**Senior Member Board of Revenue,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)**

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

**Appeal No.1234/2014**

Tilawat Shah, Ex-Patwari (BPS-09) Halqa Passani, Peshawar .....(Appellant)  
VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. The Commissioner Peshawar Division Peshawar
3. The Deputy Commissioner, Peshawar .....(Respondents)

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.2 TO 3**

Respectfully Sheweth,

**Preliminary Objections.**

1. That the appellant in the instant case has no locus standi or cause of action to institute present appeal.
2. That the appellant has not come to this honourable Tribunal with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the instant appeal is barred by law.

**OBJECTION ON FACTS.**

1. Correct to the extent that the appellant was an employee of Revenue Department.
2. Correct to the extent that Charge Sheet and statement of allegations were served upon the appellant after preliminary enquiry for approaching the Respondent No.3, through a caller from Cell No.0300-9840287, who was using the name of Chief Minister's Secretariat for getting posting of the choice. The enquiry committee after detail enquiry recommended major punishment under E&D Rules 2011 (copy of charge sheet is Annex-A and enquiry report B & C).
3. Incorrect. Both the enquiry officer/enquiry committee recommended major punishment/penalty.
4. Correct to the extent that the show cause notice was served upon the appellant who submitted the reply (Copy Annexed D & E).
5. Incorrect. Chance of personal hearing was given to the appellant but the competent authority could not be satisfied and imposed major penalty of dismissal from service.
6. The appeal of the appellant was rejected by Respondent No.2 on the ground that charges against the appellant were proved, being violative of Government Rules and Policy.



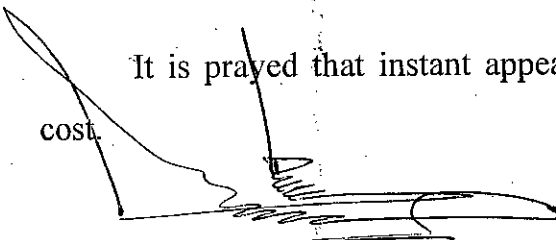


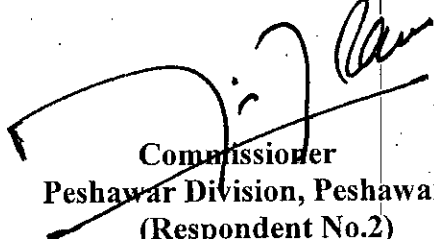
## GROUNDS

- A. Incorrect. Both the orders dated 29/08/2014 and 04/08/2014 are according to the Law/Rules and not violated any Law/Rules.
- B. Incorrect. The appellant was given chance of personal hearing under E&D Rules 2011.
- C. Incorrect. As per Para-A above. All codal formalities were fulfilled.
- D. Incorrect. No illegality committed by Respondents. The penalty was imposed under E&D Rules 2011.
- E. Incorrect. The enquiry officer/committee after having thorough enquiry proved the charges against the appellant.
- F. The appellant has got no cause of action to file the instant appeal. However Respondents seek permission to advance further grounds during Arguments.

It is prayed that instant appeal of the appellant may please be dismissed with

COST.

  
Deputy Commissioner  
Peshawar  
(Respondent No.3)

  
Commissioner  
Peshawar Division, Peshawar  
(Respondent No.2)

Senior Member Board of Revenue,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)

OFFICE OF THE ADDITIONAL ASSISTANT COMMISSIONER-  
VII, PESHAWAR.

No. 2214 IAAC-VII/DC

24 Dated -03-2014

INQUIRY REPORT AGAINST MR. TILAWAT SHAH, PATWARI HALQA PASSANI,  
PESHAWAR.

The undersigned was directed to conduct inquiry against Tilawat Shah, ex patwari halqa Passani who employed fraudulent political pressure for getting choice posting which amounts to misconduct and thus the instant inquiry was ordered. The undersigned has been further directed to submit findings and recommendations in this regard.

It has been reported against the accused official that he has been found approaching the office of deputy commissioner for getting posting of his choice fraudulently through a caller from Cell No. C300-9840287 who was using the name of the Chief Minister's Secretariat which fact amount to misconduct, violation of discipline, in-subordination & using unfair/fraudulent means.

In order to proceed in the matter and give opportunity of defense to the accused official, he was summoned, heard in person. He also produced his written statement and affidavit.

It has been contended he has never approached the office of the Deputy Commissioner, Peshawar for getting choice posting and he does not even know the owner of the above cell number. It has been further maintained that it was possible that his bad wishers might have made the call out of his nefarious designs.

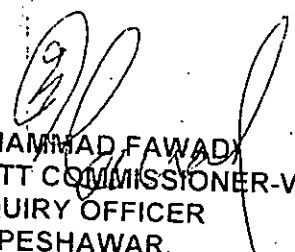
Rule 34 of Govt. Servants (Conduct Rules) 1987 under the head Use of political or other influence envisages that No Government servant shall bring or attempt to bring political or other outside influence directly or indirectly, to bear on Government or any Government servant in support of any claim arising in connection with his employment as such. Furthermore, the ancillary instructions issued from time to time on the subject vide Circular letter No.SORII(S&GAD)5(2)79, dated 5.11.1985, Circular letter No.SORII(S&GAD)5(27)79, dated 24.11.1990 and Circular letter No.SORII(S&GAD)5(2)79, dated 5.11.1985 also strictly prohibits the use of political or extraneous force in service matters. The above circulars also contains the directions of the Chief Minister for taking disciplinary action against the defaulters under the Govt. Servants (Efficiency & Discipline) Rules, 2011.

The very fact that the office of the Deputy Commissioner has been approached for giving choice posting to the accused official and that too through impersonation provide sufficient grounds to determine that the official is guilty of misconduct, in-subordination and indifference to the rules and instructions.

In the circumstances it is recommended that he may be awarded major punishment under Govt Servant (Efficiency & Discipline) Rules, 2011.

Inquiry report is submitted as desired please

EA

  
(MUHAMMAD FAWAD)  
ADDL. ASSTT COMMISSIONER-VIII/  
INQUIRY OFFICER  
PESHAWAR.

OFFICE OF THE ASSISTANT COMMISSIONER PESHAWAR.

No.

Dated 13/05/2014

To

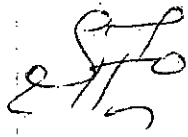
The Deputy Commissioner,  
Peshawar.

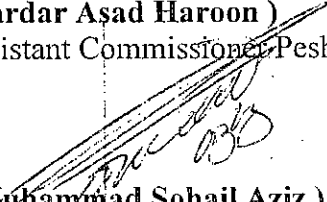
Subject :- DISCIPLINARY PROCEEDINGS AGAINST MR. TILAWAT  
SHAH PATWARI HALQA PASSANI, PESHAWAR.

Sir,

Reference your letter No.4652/DC(P)/EA, dated 30-4-2014, on the subject  
noted above.

The requisite report of the Inquiry Committee is enclosed herewith for  
further necessary action at your end.

  
( Sardar Asad Haroon )  
Assistant Commissioner Peshawar.

  
( Muhammad Sohail Aziz )  
Addl. Assistant Commissioner-iv

Supdt / EA

Pl. put up

Sd/- DC

18/5/14.

**INQUIRY REPORT AGAINST MR. TILAWAT SHAH, PATWARI**

**HALQA PASSANI, PESHAWAR.**

The undersigned were directed as members of Inquiry Committee to conduct inquiry against Mr. Tilawat Shah, Patwari Halqa Passani, who exerted Political pressure for getting choice posting which amounts to misconduct and thus he was suspended and an inquiry was conducted by Mr. Mohammad Fawad, who submitted his report to this effect.

It has been reported that the accused Patwari found approaching the Office of Deputy Commissioner for getting posting of his choice fraudulently through a caller from Cell No.0300-9840287; who was using the name of Chief Minister's Secretariat which fact amounts to misconduct unfair/fraudulent means, in subordination and violation of official discipline.

In order to proceed in this matter and give opportunity of defense to the accused official, he was summoned, heard in person, and who also submitted his written statement before Inquiry Committee.

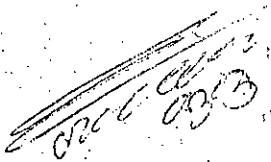
In his written reply, he said that he has never approached the office of the Deputy Commissioner, Peshawar for getting choice posting and that he is a dutiful official.

Rules 34 of Government Servants (conduct Rules) 1987 under the head use of Political or other influence envisages that no Government Servant shall bring or attempt to bring Political or other outside influence directly or indirectly to bear on, Government or any other Government Servant in support of any claim arising in connection with his employment as such. The above circular also contain the direction of the Chief Minister for taking disciplinary action against the defaulters under the Govt. Servants (Efficiency & Disciplinary (Rules 2011).

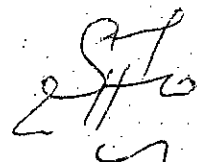
After thorough discussion of the committee members regarding this issue, the committee reached to the conclusion that official is guilty of misconduct, insubordination and indifference to the rules and instructions.

In the circumstances it is recommended that the accused Patwari may be awarded major punishment under the Govt. Servant (Efficiency & Disciplinary ) Rules 2011 as has already been recommended by the Inquiry Officer Mr. Muhammad Fawad in his initial inquiry.

Inquiry report is submitted as desired please.



( Muhammad Sohail Aziz )  
Additional Assistant Commissioner-IV



( Sardar Asad Haroon )  
Assistant Commissioner Peshawar.

## SHOW CAUSE NOTICE

I, S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby serve you, ~~Tilawatshah~~, Patwari Halqa ~~Passani~~ (under suspension), as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the Inquiry Committee for which you were given opportunity of hearing vide office communication which was availed by you and
- (ii) On going through the findings and recommendations of the Inquiry Committee, the material on record and other connected papers.

I am satisfied that you have committed the following acts /omissions specified/falls under the purview of Section 3 of the said Ordinance:

- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.
- (e) That an inquiry committee comprising of M/s Sardar Asad Haroon AC Peshawar and Sohail Aziz AAC-IV Peshawar was constituted to thoroughly investigate the matter.
- (f) The Inquiry Committee in its report also recommended for imposing a major penalty under E & D Rules 2011.


2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you Major Penalty of Dismissal from service under section-4 of the said Rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within fifteen days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put in and in that case an ex parte action shall be taken against you.

5. The copy of the findings of the Inquiry Committee is enclosed.

U.O.No. 6200/DC (P)/EA.  
Dated 02/08/2014.

  
Deputy Commissioner  
Peshawar  
(Competent Authority)

3

The Honorable,  
Deputy Commissioner, Peshawar.

Through: District Kanongo,  
Peshawar.

Subject: SHOW CAUSE NOTICE:

R/Sir,

With due respect it is submitted that: -

Before the order of the Honorable Deputy Commissioner, Peshawar dated  
10-10-2013, I was performing my duties as Patwari Halqa Muza Passani, Peshawar as  
per rules & in accordance with the law.

Sir, I have never even try to make a call to the Honorable Deputy  
Commissioner, Peshawar for my transfer or for other matter, nor I know the owner of  
Cell # 0300-9840287 and it may be possible that out of my bad-wishers any one for the  
purpose of achieving their nefarious desires have had made a call, but truly speaking I  
am a dutiful servant of this esteemed department and I have just concern with my duties  
and services, wherever my posting may be.

Sir, the said letter may be the result of miss-conception and miss-  
understanding and the present inquiry initiated on its basis is not justifiable, the notice  
issued to me merits withdrawal.

(In proof of my statement I also herewith annexed a copy of an affidavit duly  
signed and sealed form oath commissioner).

In light of above facts, I humbly requested that the inquiry initiated against  
me may be stopped/filed and the show cause notice issued may kindly be withdrawn.



Yours obediently

A handwritten signature in black ink, appearing to read "Tilawat Shah".

9/16/14  
Tilawat Shah  
Patwari Tehsil, Peshawar.

EA  
Place on file  
50 DC  
(10/16/14)



## CHARGE SHEET

I, S. Zaheer-ul-Islam, Deputy Commissioner, Peshawar as competent authority, hereby charge you, **Mr. Tilawat Shah, Patwari Halqa Passani, Peshawar (Under suspension)**, as follows:-

That you were posted as **Patwar Halqa Passani Peshawar** committed the following irregularities:

- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.


2. By reasons of the above, you appear to be guilty of misconduct under rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and 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 Committee.

4. Your written defense, if any, should reach the Inquiry Committee, 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 follow against you.

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

6. A Statement of allegations is enclosed.

  
Deputy Commissioner  
Peshawar

(COMPETENT AUTHORITY)

## DISCIPLINARY ACTION

I, S. Zaheer-ul-Islam, Deputy Commissioner Peshawar, as competent authority, am of the opinion that **Mr. Tilawat Shah, Patwari Halqa Passani, Peshawar (Under suspension)** has rendered liable to be proceeded against, as he committed the following acts/omissions with in the meaning of rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011.

### STATEMENT OF ALLEGATIONS


- (a) That you were approaching this office through a caller from Cell No.0300-9840287 who was using the name of Chief Minister's Secretariat for getting posting of the choice for you fraudulently.
- (b) You were suspended vide this office order No.15208-16/DC(P)/DK dated 10/10/2013 and a preliminary inquiry was ordered against you and Mr.Fawad Khan AAC-VII Peshawar was appointed as Inquiry Officer.
- (c) That the Inquiry Officer AAC-VII Peshawar in his report recommended that you were involved in approaching the office for giving choice posting through impersonation and therefore found guilty of misconduct and insubordination and indifferences to the rules and instructions issued by the Govt. time to time strictly prohibiting use of political influence.
- (d) That Inquiry Officer concerned has recommended for imposing major penalty under E&D Rules 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

- i. Sardar Asad Haroon AAC (P)
- ii. Mr. Suhail Aziz AAC

3. The inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its 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 a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/inquiry committee.

  
Deputy Commissioner  
Peshawar  
(COMPETENT AUTHORITY)

Rd/1.  
6/5/11

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

Service Appeal No. 1234/2014

Tilawat shah

VS

Revenue Department

.....

**JOINT REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

- (1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

1. Para-1 of the appeal is admitted correct by the respondent's No.2 & 3. Moreover, the appellant completed all his due training and respondent No.1 not denied the Para-1 of the appeal which means respondent No.1 admitted Para-1 of the appeal as correct.
2. Para-2 of the appeal is admitted Correct by the respondent's no.1 and respondent no.2 not replied accordingly to the Para-2 of the appeal. Moreover, Para-2 of the appeal is correct.
3. Respondent no.1 admitted last portion of the Para-3 of the appeal as correct and Reply of the Respondent No.2 and 3 is incorrect hence denied. Moreover, Para-3 of the appeal is correct.
4. Para-4 of the appeal is admitted correct by the respondent's No.2 and 3 and Respondent No.1 not

replied according to the Para-4 of the appeal, while Para-4 of the appeal is correct.

5. Para-5 of the Reply of all respondents was incorrect hence denied while Para-5 of the appeal is correct.
6. Para-6 of the Reply of all respondents was incorrect hence denied while Para-6 of the appeal is correct.


**GROUND:**

- A. Para-A of the Reply of all respondents was incorrect hence denied. While Para-A of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. Moreover, the order dated 29-8-2104 and 4.8.2014 were against the law, rules, norms of justice.
- B. Para-B of the Reply of all respondents was incorrect hence denied. While Para-B of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. Moreover, the chance of hearing is right of appellant before passing the Impugned order. There is no chance given to appellant for personal hearing, which is violation of principle "AUDI ALTEREM PERTREM
- C. Para-C of the Reply of all respondents was incorrect hence denied. While Para-C of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- D. Para-D of the Reply of all respondents was incorrect hence denied. While Para-D of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- E. Para-E of the Reply of all respondents was incorrect hence denied. While Para-E of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- F. Para-F of the Reply of all respondents was incorrect hence denied. While Para-F of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. Moreover, Para-F is Legal.

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

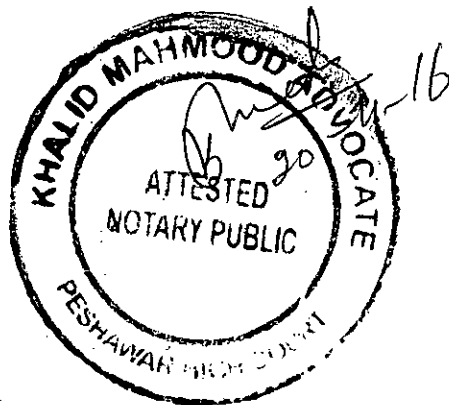
**APPELLANT**

**Through:**

  
**(M. ASIF YOUSAFZAI)**  
**ADVOCATE, PESHAWAR.**

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.



  
**DEPONENT**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1440 /ST

Dated 1 /9 / 2016


To

The Deputy Commissioner,  
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 26.8.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.