

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1211/NEEM/2014

Date of Institution ... 26.09.2014

Date of Decision ... 07.01.2020

Sher Khan, Ex-Data Processing Supervisor, Office of the Advocate General, Khyber Pakhtunkhwa, Peshawar. R/O Lalazar Colony, University Campus, Peshawar.
... (Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department Peshawar and others. ... (Respondents)

MR. RIZWANULLAH,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER(Executive)

MEMBER(Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that previously, the appellant filed service appeal no. 1211/2014 decided on 16.02.2018 against the impugned order dated 30.04.2014, where-under major penalty of dismissal from service was awarded to the appellant. This Tribunal modified the penalty, however, the respondents challenged the said judgment in the august Supreme Court of Pakistan through Civil Appeal no. 1131-1415/2018. Through judgment dated 18.10.2019, the apex court remanded the appeal back to the Tribunal for decision a fresh. He further argued that enquiry was not conducted in the mode and manner prescribed in the

rules. For reasons best known to the enquiry officer. Neither statement of Advocate on Record (Mr. Shoukat Hussain) was recorded nor of other concerned working in the office of Advocate General, Khyber Pakhtunkhwa. Moreover, opportunity of cross examination was also not afforded to the appellant. He further stressed that Learned Additional Advocate General gave a wrong statement before the apex court in which it was claimed that statements of all concerned were recorded. Moreover, it was not the job of the appellant as per job description to file the CPLA in the august Supreme Court of Pakistan.

03. Learned DDA argued that proper enquiry was conducted against the appellant and thereafter penalty was awarded to him after observance of all codal formalities. The appellant was treated fairly and justly and no grudge or illwill could be attributed to the respondents against the appellant.

CONCLUSION

04. As a sequel to a complaint lodged by Mst. Sultana, disciplinary proceedings were initiated against the appellant through order dated 28.02.2014. After conducting enquiry major punishment of dismissal from service was awarded to him through impugned order dated 30.04.2014. The appellant assailed this order through service appeal no.1211/2014 decided on 16.02.2018. This Tribunal modified the penalty into stoppage of two annual increments for two years. The appellant challenged the judgment of this Tribunal in the august Supreme Court of Pakistan. The Supreme Court of Pakistan vide judgment dated 18.10.2019 remitted the appeal to this Tribunal for decision afresh.

05. We have carefully examined the enquiry report and noticed numerous deficiencies/shortcomings. Mst. Sultana leveled allegations that due to delaying tactics/ failure of the appellant that her case/CPLA could not be filed before the

august Supreme Court of Pakistan. It merits to mention here that only statements of the complainant and the appellant were recorded by the enquiry officer. The appellant as well as complainant in their written statements repeatedly mentioned the role of Advocate on Record (Mr. Shoukat Hussain) but astonishingly his statement was not recorded by the enquiry officer for reasons best known to him. To reach to a just conclusion, the enquiry officer was under obligation to have recorded the statements of all concerned including the Advocate General, Khyber Pakhtunkhwa. There is a set procedure for disposal of official business in government departments/offices. We understand that if an application was submitted by the complainant, it must have been entered in the diary/dispatch register maintained in the office of the Advocate General, Khyber Pakhtunkhwa. It was the sole barometer for fixing responsibility of delay on the appellant. However, no such record was either available /scrutinized by the enquiry officer to confirm that onus of using delaying tactics could be attributed to the appellant. In the absence of any incriminating evidence, it could be termed as mere oral assertion on the part of the complainant. In the absence of these statements enquiry report just contained one side of the story and any conclusion drawn on it was flawed and against the spirit of the laid down procedure. The enquiry officer prima facie, deliberately deviated from the procedure contained in Rule-11 of E&D Rules 2011 for unknown reasons and the final outcome in the shape of enquiry report was vague, evasive, perfunctory superficial and based on surmises and conjectures.

06. Apparently, it was not part of his job description and in the absence^{of} documentary evidence he could not be held accountable for the fault of others. It is also a common practice in our system that juniors are made scapegoat to save the skin of seniors. We tend to agree with the claim of the learned counsel for the appellant that statement given by the then Additional Advocate General in the apex

court regarding recording of statements of all concerned was against the available record and could be termed a misstatement. In nutshell in the absence of any documentary evidence, we hold that charge leveled against was not proved during the enquiry.

07. As a sequel to the above, the instant appeal is accepted, impugned order dated 30.04.2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member

ANNOUNCED
07.01.2020

ORDER

07.01.2020


Counsel for the appellant present. Mr. Muhammad Jan, DDA
alongwith Mr. Tufail, Senior Clerk for respondents present.
Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed
on file, the instant appeal is accepted, impugned order dated
30.04.2014 is set aside and the appellant is reinstated in to service.
However, the respondents are at liberty to conduct de-novo enquiry
strictly in accordance with law and rules. The issue of back benefits
shall be subject to the outcome of the de-novo enquiry. Parties are
left to bear their own cost. File be consigned to the record room.

Announced:
07.01.2020



(Muhammad Hamid Mughal)
Member


(Ahmad Hassan)
Member

1211/2014

16/12/2019

Appeal received from August Supreme Court of Pakistan vide order dated 18/10/2019 in (Civil Appeal No 1771/2019). Assigned to DB for final hearing/disposal on 07/01/2020.

Notices to the parties be issued accordingly.


Chairman

ORDER

07.01.2020

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Tufail, Senior Clerk for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is accepted, impugned order dated 30.04.2014 is set aside and the appellant is reinstated in to service. However, the respondents are at liberty to conduct de-novo enquiry strictly in accordance with law and rules. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
07.01.2020

(Muhammad Hamid Mughal)
Member

(Ahmad Hassan)
Member

Ph: 9220581

Fax:9220406

REGISTERED

Nos. C.A.1771/19 & CP.1131/18-SCJ

SUPREME COURT OF PAKISTAN.

Islamabad, dated 18.11.19, 2019.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
KPK., Service Tribunal,
Peshawar.



Subject: CIVIL APPEAL NO. 1771 OF 2019.
OUT OF
CIVIL PETITION NO. 1415 OF 2018.
AND
CIVIL PETITION NO. 1131 OF 2018.

1. Secretary, Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs & Human Rights Department, Peshawar and another. (Pet. in C.P. 1131/2018).
2. Sher Khan. (App. in C.A.1771/2019).

Versus

1. Sher Khan. (Res. in C.P.1131/2018).
2. Secretary, Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs & Human Rights Department, Peshawar and another. (Res. in C.A.1771/2019).

On appeal from the Judgment/Order of the K.P.K., Service Tribunal, Peshawar dated 16.2.2018 in S.A. Nos.1211/2014.

Dear Sir,

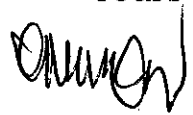
I am directed to forward herewith a certified copy of the Order of this Court dated **18.10.2019**, converting into appeal and allowing the above cited civil petition No. 1415/2018, and disposing of the above cited civil petition No.1131/2018, in the terms stated therein, for information and necessary action.

I am also to invite your attention to the directions of the Court contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:

Yours faithfully


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

00/17

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Yahya Afridi

Civil Petitions No.1131 & 1415 of 2018

*(on appeal against the judgment of Khyber Pakhtunkhwa Service Tribunal,
Peshawar dated 16.02.2018, passed in Appeal No.1211/2014)*

Secretary Government of KPK Law, *(in C.P.1131/2018)*
Parliamentary Affairs & Human Rights
Department, Peshawar & another

Sher Khan

(in C.P.1415/2018)

...Petitioners

Versus

Sher Khan

(in C.P.1131/2018)

The Secretary Govt. of KPK, Law, *(in C.P.1415/2018)*
Parliamentary Affairs and Human Rights
Department, Peshawar & another

...Respondents

Civil Petition No.1131 of 2018:

For the petitioners: Barrister Qasim Wadood, Addl.AG.KPK

For the respondents: Mr. Misbahullah Khan, ASC
Mr. M.S. Khattak, AOR

Civil Petition No.1415 of 2018:

For the petitioner: Mr. Misbahullah Khan, ASC
Mr. M.S. Khattak, AOR

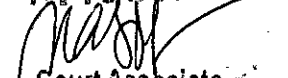
Respondents: N.R.

Date of hearing: 18.10.2019

ORDER

Civil Petition No.1415 of 2018: We have straightaway observed that the Tribunal has taken a contradictory position in the concluding paragraph (para 6) of the impugned judgment dated 16.02.2018. On the one hand it holds that all the codal formalities were complied with at the time of passing of the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

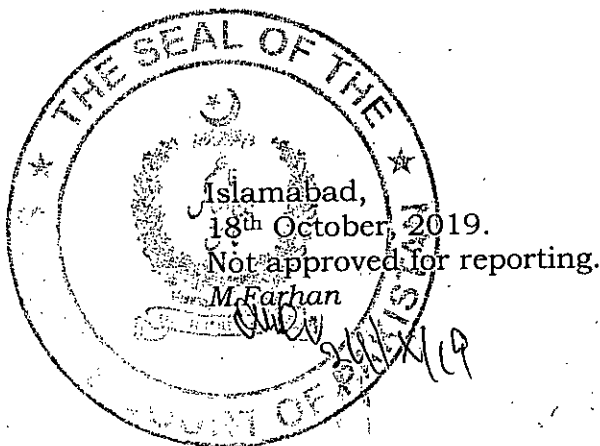
dismissal order dated 30.04.2014 and in the same breath states that the inquiry officer has not recorded the statements of relevant staff or those working in the chain of command within the organization. In this background, the petitioner could not have been visited with a penalty. Learned Additional Advocate General representing the petitioner submits that the statements of all the relevant staff has been recorded and the Tribunal has erred in holding that some more statements had to be recorded. Be that as it may, the contradiction within the impugned order renders it unsustainable.

2. We, therefore, set aside the impugned judgment and remand this case to the Tribunal for a fresh decision on merits after examining the inquiry reports, the evidence on the record and submission of the parties.

3. The appeal of the petitioner will be deemed to be pending before the Tribunal, with the direction to the Tribunal to decide the same within a period of two months from the date of receipt of this order. This petition is converted into an appeal and allowed accordingly.

Civil Petition No.1131 of 2018:

4. This petition is disposed of in terms of the above order.



Sd/- Syed Mansoor Ali Shah, J.
Sd/- Yahya Afridi, J.

Certified to be True Copy

M. Farhan
 Court Associate
 Supreme Court of Pakistan
 Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1211/2014

Date of Institution ... 26.09.2014
Date of Decision ... 16.02.2018

Sher Khan, Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/O Lalazar Colony, University Campus, Peshawar.

... (Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary
Affairs and Human Rights Department Peshawar & others.

... (Respondents)

Mr. Khush Dil Khan,
Advocate

--- For appellant.

Mr. Muhammad Jan
Deputy District Attorney

... For respondents.

MR. GUL ZEB KHAN

... MEMBER

MR. MUHAMMAD HAMID MUGHAL

... MEMBER

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.09.2014 has been lodged by Sher Khan, Ex-Data Processing Supervisor, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the office order dated 30.04.2014 vide which he was dismissed from service. The appellant preferred departmental appeal on 30.05.2015 which was not responded.

3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor on 28.5.2003 on the recommendations of Khyber Pakhtunkhwa Public Service Commission and was performing his duties efficiently and honestly. That one lady (named Mst. Sultana) complained against

him for misplacing her documents earlier given by her to the Advocate General Khyber Pakhtunkhwa for the purpose of filing CPLA in the Supreme Court of Pakistan. That on this issue, an enquiry was conducted in which neither any statement of any witness was recorded, nor any opportunity of cross examination was extended to the appellant. That even the statement of the then AOR (Mr. Shaukat Hussain) was also not recorded because he was the incharge officer for all CPLA cases in the office of Advocate General Khyber Pakhtunkhwa. That the allegation in the charge sheet/statement of allegation was totally wrong and ill conceived as the appellant has no concern at all with the CPLA cases of private individuals/litigants. That respondent No. 2 has malafidly and deliberately held him responsible for a criminal case of private party and initiated disciplinary proceedings against him which has no legal sanctity and not sustainable under the rules on subject. Further argued that the inquiry officer has conducted inquiry in slipshot manner as no cogent evidence was produced against the appellant. That the impugned order based on such erroneous and fallacious charges is of no legal effect and liable to be set aside. That the impugned order has been passed at the back of appellant as no opportunity of personal hearing was provided to him to defend his case which is violation of the fundamental rights and the principle of natural justice.

4. On the other side learned Deputy District Attorney argued that the charge leveled against the appellant was initiated on a complaint having Diary No. 939 dated 04.02.2014 of a lady. That the report was sought by respondent No. 2 from the Advocate On Record, who confirmed the contents of the complainant. That during the inquiry, statement of the complainant lady was examined in the presence of the appellant. Further argued that the case has its own facts and evidence and there is no malafide or ill-will on the part of the respondent No. 2 against the appellant. Further argued that in criminal cases the Respondent No. 2,

being Principal Law officer of the Province is fully competent to filling of appeal before the Apex Court. That specific allegation has been leveled against the appellant. That charge sheet, statement of allegation were served upon the appellant. Inquiry proceedings were conducted and show cause notice were also to be issued to the appellant which he also replied. The inquiry was conducted in fair and transparent manner. That the appellant was given ample opportunities to defend himself, therefore the appeal may be rejected.

5. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.

6. Learned counsel for the appellant remained unable to substantiate his plea that the impugned order was passed without fulfillment of codal formalities and adherence to legal requirements. But on the other hand the inquiry officer has not recorded the statements of relevant staff or at least those who are working in the chain of command within the organization. The AOR concerned also shared the responsibility to dispose of office work in time however the inquiry officer has not bothered to associate the AOR concerned with the inquiry proceedings, nor given any reason as to why his statement was not recorded. In the stated circumstances this Tribunal is of the view that the impugned punishment is excessive. Consequently for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due. The present appeal is disposed of accordingly. Parties are left to bears their own cost. File be consigned to the record room.

ANNOUNCE

16.02.2018



(Muhammad Hamid Mughal)
MEMBER



(Gul Zeb Khan)
MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1211 /2014

Sher Khan..... Appellant

Versus

The Secretary Govt. of KP & others..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-5
2.	Copy of office order whereby appellant was appointed as Data Processing Supervisor (BPS-14) in the office of Respondent No.2 on the recommendation of KP Public Service Commission Peshawar.	28.05.2003	A	0-6
3.	Copy of the office order whereby Mr. Waqar Ahmad was appointed as inquiry officer	28.02.2014	B	0-7
4.	Copy of charge sheet with statement of allegations	28.02.2014	C	8-11
5.	Copy of show cause notice with copy of findings of the inquiry officer	01.04.2014	D	12-16
6.	Copy of reply to show cause notice		E	17-21
7.	Copy of impugned order whereby appellant was dismissed from service with immediate effect	30.04.2014	F	0-22
8.	Copy of departmental appeal filed under registered post before the Respondent No.01	30.05.2014	G	23-28
9.	Wakalat Nama			

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 24 / 10/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1211 /2014

Sher Khan,
Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/o Lalazar Colony, University Campus, Peshawar.....Appellant

1220
26-9-2014

Versus

1. The Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar.
2. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 30.04.2014 PASSED BY RESPONDENT NO.2 THEREBY APPELLANT WAS DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT AGAINST WHICH HE FILED DEPARTMENTAL APPEAL ON 30.05.2014 UNDER REGISTERED POST BEFORE THE RESPONDENT NO.1 BUT THE SAME WAS NOT DISPOSED OFF WITHIN STATUTORY PERIOD OF NINETY DAYS.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant initially appointed as Data Processing Supervisor (BPS-14) in the office of Respondent No.2 on the recommendations of Khyber Pakhtunkhwa Public Service Commission, Peshawar by an office order dated 28.05.2003 (**Annex: A**) and since then he was performing his duties efficiently and honestly without any complaint and rendered more than 10 years service with unblemished service record.

26/9/14

2. That Respondent No.2 appointed Mr. Waqar Ahmed, Adl. Advocate General Khyber Pakhtunkhwa as inquiry officer by an office order dated 28.02.2014 (**Annex: B**) and charge sheet dated 28.02.2004 (**Annex: C**)

as submitted to
and filed.

2/10/14

alongwith statement allegations was also served upon the appellant contains of following charges:

- (i) *A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R. in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court of Pakistan. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.*
 - (ii) *On 04.02.2014, the said lady submitted an application to the Advocate General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07.02.2014, the learned Advocate General, called the report from the Advocate On Record (AOR). On 10.02.2014, the learned AOR submitted the report which is reproduced as: "Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr. Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filling CPLA the record of the case is also missing and not available in our office".*
3. That after conducting inquiry in the case the Respondent No.2 issued show cause notice vide dated 01.04.2014 (**Annex: D**) to appellant alongwith the copy of the findings of the inquiry officer to which appellant submitted the requisite detailed reply (**Annex: E**).
 4. That the Respondent No.2 issued an office order dated 30.04.2014 (**Annex: F**) thereby appellant was dismissed from service with immediate effect against which he filed departmental appeal on 30.05.2014

(Annex:G) under registered post before the Respondent No.1 but the same was not disposed within statutory period of ninety days.

Hence this appeal is submitted on the following amongst other grounds:

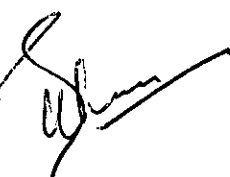
Grounds:

- A. That charges as leveled in the charge sheet as well statements of allegations against appellant are baseless, unfounded, erroneous and unproved which are totally denied by the appellant.
- B. That Respondent No.2 biased against the appellant and malafidely established two different cases on the basis of erroneous and frivolous allegations which are not sustainable under the law and rules on subject.
- C. That appellant has no concerned with a criminal case of private lady who allegedly entrusted the record of her case to then learned Advocate General (Mr. Khalid Khan) for filing CPLA in the august Supreme Court of Pakistan. Therefore, the Respondent No.2 has malafidely and deliberately held him responsible for a criminal case of private party and initiated disciplinary proceedings against appellant which has no legal sanctity and not sustainable under the rules on subject.
- D. That according to law and rules, the learned Advocate General can only entertain those case which were recommended by the concerned State functionaries but in the question case a private lady approached to then learned Advocate General (Mr. Khalid Khan) for filing CPLA in the Hon'ble Supreme Court of Pakistan. Therefore, Respondent No.2 has unlawfully dragged the appellant in this false case just to enhance his mental agony.
- E. That the inquiry officer has conducted inquiry in slipshod manner because the matter is pertaining to factual controversy which could not resolved without cogent evidence which did not done in this case thus the findings of the inquiry officer has no legal sanctity and not sustainable and similarly the impugned order based on such erroneous findings is of no legal effect and liable to be set aside.

- F. That the inquiry officer has not associated the then Advocate On Record (Mian Shaukat Hussain) in the inquiry proceedings whose association was necessary for the fair inquiry. Moreover, the inquiry officer failed to record the statement of poor lady in written and thus appellant deprived of his right of cross examination. Therefore, the findings of the inquiry officer are of no legal effect, biased and untenable being based on false proceedings.
- G. That the findings of inquiry officer are not fair therefore Respondent No.2 has unlawfully entertained the same and passed the impugned order thereby appellant was dismissed from service which is illegal and of no legal effect liable to be set aside.
- H. That the impugned order has been passed at the back of appellant no opportunity of personal hearing was provided to him to defend his case therefore, the impugned order is illegal and without lawful authority being violative of principle of natural justice.
- I. That all the proceedings and acts of the Respondent No.2 tainted with malafide intentions and passed the impugned orders in two false cases of similar nature on the same very date which are unjust and unfair and against the fundamental rights of appellant as guaranteed under Chapter I of Part II of the Constitution, 1973 which is not warranted under the law and liable to be set aside.
- J. That Respondent No.1 has malafidely and unnecessarily kept the departmental appeal of appellant without any action within statutory period of ninety days which is unlawful and unfair.

It is therefore humbly prayed that on acceptance of this service appeal the impugned order dated 30.04.2014 thereby appellant was dismissed from service with immediate effect may kindly be set aside and appellant may graciously be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through 
Appellant
Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

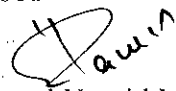
Dated: 24 / 09/ 2014

16.02.2018

Learned counsel for the appellant present. Mr. Muhammad Jan, DDA for the respondents present. Vide separate judgment of today of this Tribunal placed on file, this Tribunal is of the view that the impugned punishment is excessive. Consequently for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due. The present appeal is disposed of accordingly. Parties are left to bears their own cost. File be consigned to the record room.

ANNOUNCED

16.02.2018



(Muhammad Hamid Mughal)
Member




(Gul Zeb Khan)
Member

17.11.2017

Counsel for the appellant and Addl. AG alongwith Muhammad Khursheed Superintendents for the respondents present. Learned Addl. AG Seeks adjournment for the reason that they want to compare certain documents with the original in order to verify the genuineness of the documents relied upon by the appellant. To come up for arguments on 20.12.2017 before the D.B.



Member


Chairman

20.12.2017

Counsel for the appellant and Mr. Muhammad Riaz Pinda Khel, Asstt. ^{AG} alongwith Muhammad Arshad Khan, Admn. Officer for the respondents present. Learned AAG seeks further adjournment. Last opportunity granted with the direction to positively argue the case on the next date. In case the respondents fail to compare the documents then the arguments shall be heard on the basis of available record. To come up for arguments on 08.02.2018 before the D.B.



Member


Chairman

08.02.2018

Counsel for the appellant present. Mr. Muhammad Jan, ADDA for the respondents present. Arguments heard. To come up for order on 16.02.2018 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

08.03.2017

Appellant with counsel and Mr. Usman Ghani, Sr. GP for respondents present. Learned Sr. GP requested for adjournment. To come up for arguments on 16.05.2017 before D.B.



(ASHFAQUE TAJ)
MEMBER



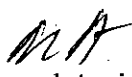
(MUHAMMAD AAMIR NAZIR)
MEMBER

16.05.2017

Counsel for the appellant and Mr. Khurshid Khan, Supdt alongwith Mr. Kabir Ullah Khattak, Assistant AG for the respondent present. Counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 17.07.2017 before D.B.




(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member

17.07.2017

Counsel for the appellant present. Mr. Muhammad Shoaib, Junior Clerk alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. The Learned Executive Member Mr. Gul Zeb Khan is away for interviews in the office of Khyber Pakhtunkhwa Public Service commission therefore, due to incomplete bench the case is adjourned for arguments to 17.11.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member

28.04.2016

Agent of counsel for the appellant and Mr. Muhammad Arshed, Admin Officer alongwith Mr. Muhammad Adeel Butt, Addl: AG for respondents present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for ~~rejoinder and~~ arguments to 23.9.16.



Member



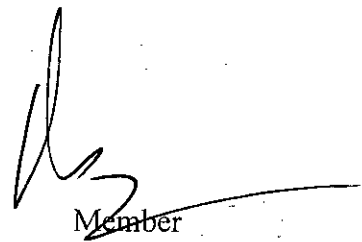
Member

23.09.2016

Appellant in person and Mr. Muhammad Arshad, A.O alongwith Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to general strike of the Bar. To come up for arguments on 18.11.2016.



Member



Member

18.11.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Learned counsel or the appellant requested for adjournment. Request accepted. To come up for arguments on 8.3.17 before D.B.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

5 07.05.2015.

Appellant in person, M/S Muhammad Ismail, SO and Muhammad Arshad, Administration Officer alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further time to submit written reply. To come up for written reply on 24.6.2015 before S.B.


MEMBER

6 24.06.2015

Appellant in person and Mr. Muhammad Arshed, AO alongwith Addl: A.G for respondents present. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 1.9.2015 before S.B.


Chairman

7 01.09.2015

Appellant in person, M/S Muhammad Ismail, SO (lit.) and Muhammad Arshad, A.O alongwith Assistant A.G for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3.12.2015.


Chairman

6 03.12.2015

Appellant in person, M/S Muhammad Ismail, SO (lit) and Arif Khan, Stenographer alongwith Mr: Muhammad Jan, GP for respondents present. Appellant requested for adjournment due to non-availability of his counsel. To come up for rejoinder and arguments on 28.4-2016


Member


Member

3 09.02.2015

Appellant deposited security
in Security

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 30.04.2014, vide which the major penalty of dismissal from service with immediate effect has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 30.05.2014 which was not responded within the statutory period of 90 days, hence the instant appeal on 26.09.2014. He further stated that no proper and regular inquiry has been conducted. No chance of personal hearing has been given to the appellant, therefore, the impugned order is illegal, without lawful authority being violative of principle of natural justice.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 24.03.20 before the learned Bench-III.


Member

4 24.03.2015

Appellant in person, M/S Muhammad Ismail, SO for respondent No. 1 and Muhammad Arshad, AO for respondent No. 2 along with Addl. A.G present. Requested for adjournment. Adjourned for submission of written reply/comments to 7.5.2015 before S.B.


Chairman

Reader Note:

11.12.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 20.01.2015 for the same.


Reader

Reader Note:

21.01.2015


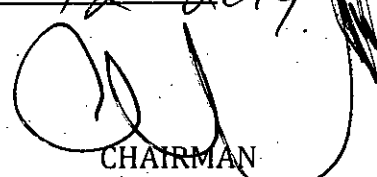
Since 20th January has been declared as public holiday by the provincial government, therefore, case is adjourned to 09.02.2015 for the same.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1211 /2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/10/2014	<p>The appeal of Mr. Sher Khan resubmitted today by Mr. Khush Dil Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	14-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>11-12-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sher Khan Ex-Data Processing Supervisor of the Advocate General Peshawar received today i.e. on 26.09.2014 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellatant.
- 2- Annexures of the appeal may be attested.
- 3- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1424 /S.T,

Dt. 26/9/2014.


**REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.**

Mr. Khushdil Khan Adv. Pesh.

*Resubmitted after
needed time*

2/10/2014

*Khush Dil Khan Advocate
Supreme Court of Pakistan
Ex. Deputy Speaker, Provincial
Assembly K.P
Office: 9-B, Haroon Mension
Khyber Bazar Peshawar Ph 2213445*

OFFICE OF THE ADVOCATE-GENERAL, N.W.F.P., PESHAWAR.

OFFICE ORDER

Annex-A
P.6

Consequent upon selection and recommendation of the NWFP., Public Service Commission, Mr. Sher Khan S/O Lal Mohammad, DPO/KPO, (B-11) Agency Education Officer, Khyber Agency, Jamrud, is hereby appointed as Data Processing Supervisor (B-14) against the existing vacancy on contract basis from the date of assumption of charge for a period of three (3) years in this office.

He would remain on probation for a period of one year.

The expenditure involved is debitable to the functional classification "6-00000-General Administration 6-01000-Organs of State 6-01106-Justice Law Department 6-01106-Advocate-General" and would be met out from within the sanctioned budget grant for the year 2002-03.

scf/-
ADVOCATE-GENERAL, N.W.F.P.,
PESHAWAR.

No. 3041-45 /A.G., dated Peshawar the 28, 5 /2003.

A copy is forwarded for information and necessary action to the :-

- 01- Secretary to Govt. of NWFP, Law Department for information w/r to his letter No.E&A(LD) 2-12/03/3362, dated 27-05-2003.
- 02- Accountant-General, N.W.F.P., Peshawar.
- 03- Director Recruitment, NWFP., Public Service Commission w/r to his letter No.9883, dated 14-05-2003.
- 04- Agency Education Officer, Khyber Agency, Jamrud. He is requested to relieve Mr. Sher Khan, DPO / KPO (B-11) of his duties as soon as possible enabling him to join his new assignment. His service record may also be supplied to this office.
- 05- Mr. Sher Khan, DPO/KPO, office of the Agency Education Officer, Khyber Agency, Jamrud.

[Signature]
ADVOCATE-GENERAL, N.W.F.P.,
PESHAWAR. *Agri*

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR.

ORDER

Annex: B
P-7

In exercise of the power conferred upon me under Rule 10 (1)(a) of the Khyber Pakhtunkhwa, Govt. Servants (Efficiency & Discipline) Rules, 2011, I, Abdul Latif Yousfzai, Advocate-General, Khyber Pakhtunkhwa, Peshawar, as a Competent Authority, do hereby appoint Mr. Wiqar Ahmad, Addl: Advocate-General, Khyber Pakhtunkhwa, Peshawar as Enquiry Officer, to scrutinize the conduct of Mr. Sher Khan, Data Processing Supervisor of this office, in the matter of inefficiency and misconduct.

The Enquiry Officer shall take further necessary action and submit his findings and report in the matter in accordance with the provisions of above Rules.

ADVOCATE-GENERAL,
Khyber Pakhtunkhwa,
Peshawar.

Endst: No. 4521-23 /A.G. dated Peshawar the 28 / 2 /2014.

A copy is forwarded for information and necessary action to:-

1. Mr. Wiqar Ahmad, Additional Advocate-General /Inquiry Officer, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Sher Khan, Data Processing Supervisor of this office.
3. Relevant file.

ATTESTED

ADVOCATE-GENERAL,
Khyber Pakhtunkhwa,
Peshawar.

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

CHARGE SHEET.

Annex C
P. 8

No. 4528 /A.G. dated Peshawar the 28 /02/2014.

I, Abdul Latif Yousafzai, Advocate-General, Khyber Pakhtunkhwa, Peshawar, as the Competent Authority, hereby charge you, Mr. Sher Khan, Data Processing Supervisor of this office, as follows:-

- (a) A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.
- (b) On 04-02-2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07-2-2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10-02-2014, the learned AOR submitted the report which is reproduced as: "Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr. Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filling CPLA the record of the case is also missing and not available in our office".

ATTESTED

(c) On 17-02-2014, your explanation was called and directed to explain your position within three (03) days. Your reply was received on 20-02-2014. After having gone through whole record of the matter, I am not satisfied with your reply to the explanation. Hence I have decided to hold proper inquiry into your misconduct in accordance with law and Rules.


(d) That your said act amount to negligence, carelessness and delinquent behaviour thus you have committed misconduct which falls under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. I have appointed Mr. Wiqar Ahmad, Additional Advocate-General, Khyber Pakhtunkhwa, Peshawar, as an inquiry officer; for proceeding further in the case.

3. Your written defence, if any, should reach the inquiry Officer within seven days from the receipt of this charge sheet and statement of allegations, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

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

5. A Statement of allegations is enclosed


Advocate-General,
Khyber Pakhtunkhwa,
Peshawar.


Mr. Sher Khan,
Data Processing Supervisor.
of this Office

Endst: No. _____ /A.G.

A copy is forwarded for information and necessary action to:-

- 1. Mr. Wiqar Ahmad, Additional Advocate-General /Inquiry Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. Relevant file.

ATTESTED


Advocate-General,
Khyber Pakhtunkhwa,
Peshawar.

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

STATEMENT OF ALLEGATIONS

I, Abdul Latif Yousafzai, Advocate-General, Khyber Pakhtunkhwa, Peshawar, as the competent authority, am of the opinion that Mr. Sher Khan, Data Processing Supervisor, of this office, has rendered himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Rule 3 (a) and (b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011,

- (a) A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.
- (b) On 04-02-2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07-2-2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10-02-2014, the learned AOR submitted the report which is reproduced as: "Poor lady, also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr. Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filling CPLA the record of the case is also missing and not available in our office".

ATTEST

(c) On 17-02-2014, your explanation was called and directed to explain your position within three (03) days. Your reply was received on 20-02-2014. After having gone through whole record of the matter, I am not satisfied with your reply to the explanation. Hence, I have decided to hold proper inquiry into your misconduct in accordance with law and Rules.

(d) That your said act amount to negligence, carelessness and delinquent behaviour thus you have committed misconduct which falls under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.



**Advocate-General,
Khyber Pakhtunkhwa,
Peshawar.**

ATTESTED

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

Annex. D

No. 6327 /AG

dated Peshawar, the 1/4 /2014 P. 12

SHOW CAUSE NOTICE

I, Abdul Latif Yousafzai, Advocate General, Khyber Pakhtunkhwa, Peshawar as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Sher Khan, Data Processing Supervisor of this office, as follows:

1. (i) That consequent upon the completion of inquiry conducted against you by the inquiry Officer for which you were given opportunity of hearing on 10-03-2013; and
- (ii) On going through the findings of the Inquiry Officer, the material on record and other connected papers including your defence before the inquiry Officer,-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.
- (b) On 04-02-2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07-2-2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10-02-2014, the learned AOR submitted the report which is reproduced as: "Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr. Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filling CPLA the record of the case is also missing and not available in our office".
- (c) On 17-02-2014, your explanation was called and directed to explain your position within three (03) days. Your reply was received on 20-02-2014. After having gone through whole record of the matter, I am not satisfied with your reply to the explanation. Hence I have decided to hold proper inquiry into your misconduct in accordance with law and Rules.

ATTESTED

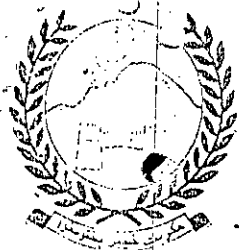
- (d) That your said act amount to negligence, carelessness and delinquent behaviour thus you have committed misconduct which falls under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the **major penalty of dismissal from service** under rule 4 of the said rules.
3. You are, thereof, 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 seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. A copy of the findings of the inquiry Officer is enclosed.



ADVOCATE GENERAL,
Khyber Pakhtunkhwa,
Peshawar.

Mr. Sher Khan,
D.P.S of this office.

ATTESTED



OFFICE OF ADDL:ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

Dated 29/03 2014.
Address: High Court Building, Peshawar.
Tel. No.091-9211013

Exchange No 9213833
Fax No. 091-9210270

P.14

Subject:- ENQUIRY UNDER KHYBER PAKHTUNKHWA GOVERNMENT SERVANT SERVICE (E&D) RULES, 2011 AGAINST MR.SHER KHAN, D.P.S.(IN POOR LADY CASE).

Respected Sir,

The undersigned was appointed as Enquiry Officer vide order dated 28.2.2014 of the learned Advocate-General in exercise of the powers conferred on him under Rule 10 (a) of Khyber Pakhtunkhwa Government Servant Service (E&D) Rules, 2011 for scrutinizing the conduct of Mr.Sher Khan, Data Processing Supervisor of this office in matter of alleged in-efficiency and mis-conduct described fully in the charge and statements of allegations. The said allegations are reproduced verbatim from the charge sheet

"(a) A poor lady, namely, Mst. Sultana was injured in a roadside accident. An FIR in the matter was also registered and the accused was convicted by the trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate-General who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr.CPLA before the August Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.

(b) On 04.02.2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07.2.2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10.02.2014, the learned AOR submitted the report which is reproduced as 'Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr.Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan for filing CPLA the record of the case is also missing and not available in our office."

ATTESTED

The complainant lady namely, Mst. Sultana d/o Muhammad r/o Pohan Colony, Mardan, as well as the accused official Sher Khan were summoned for 10.3.2014. On the said date statements of the the complainant lady was recorded who was also cross examined by the accused official, namely, Sher Khan and statement of Sher Khan was also recorded. I have gone through the record of Enquiry including explanation and reply of Sher Khan as well as statements referred above. My findings are as follows:-

P. 15

From the statement of the complainant namely Mst. Sultana it is clear that she has stated that her case file was handed over to the office of A.O.R. by the then learned Advocate-General Mr. Khalid Khan for filing criminal petition for leave to appeal before the August Supreme Court. She has alleged that the case file was handed over to the accused official Sher Khan by the then learned Advocate-on-Record and it was due to failure of Sher Khan that her case could not be filed before the August Supreme Court. In cross examination the lady has stated that Mian Shaukat Hussain the then learned Advocate-on-Record had gone through the file when she took the same to the office of Advocate-on-Record. In her cross examination she also stated that thereafter when she used to come to the office of Advocate-on-Record for inquiring about filing of the case in August Supreme Court she used to be dodged by the accused official Sher Khan. In his statement Sher Khan has taken the defense that the case had been handed over by Mr. Khalid Khan to Mian Shaukat Hussain, Advocate-on-Record when she was supposed to file the same before the Supreme Court and he had nothing to do with the same file. The second defense the accused official Sher Khan had taken is that sanction of Home or Law Department for filing of the subject appeal had not been granted nor the requisite power of attorney had ever been made available to him.

ATTESTED

So far as first defense of accused official is concerned the same is groundless and untenable as it was solemn duty of the accused official Sher Khan to have looked after all the cases lying in his custody and to have put the same before the learned Advocate-on-Record for drafting of the requisite petition and to have highlighted those cases which were getting to be time barred. So far as second defense of the accused/official is concerned answer to the same has been indirectly suggested by the accused/official himself in the para which followed the above mentioned two defenses.

marked as "A and B" in the statement of the accused/official Sher Khan. The said para is reproduced for ready reference:-

P. 16

"The Id. A.G. requested to the Id. AOR to file the subject case in his own capacity as the said lady does not leave him by requesting time to time. The Id. A.G. does not give any power of Attorney "State through Advocate-General, KPK, Peshawar for filing CrPLA and the subject case was in custody of Ex-AOR Mian Shukat Hussain for filing CrPLA without power of Attorney State through Advocate-General. Power of Attorney is must for filing of CrPLA o Govt. behalf i.e. State through Addvocate-General which was not given by the Ex-A.G. There is no gain or loss for Govt. in the subject case, therefore, the Ex-A.G. requested to Ex-AOR for filing CrPLA in his own capacity."

From the above referred para it becomes amply clear that in normal criminal cases the learned Advocate-General is fully competent to file or authorize filing of petition for leave to appeal before the August Supreme Court of Pakistan. Even in all other cases the learned A.G. being the Principal law officer of the Province is fully competent to authorize filing of appeal unless requirement of special permission of the Government is expressly laid down in any law like the Anti-Terrorism Act. So far as the defense of the accused/official that the learned Advocate-General had not executed the power of Attorney is concerned, this is also clear to everyone that the then learned Advocate-General was not supposed to have executed the power of Attorney and took the same to the office of AOR rather it was the job of the accused/official to have got the power of Attorney signed from the then learned Advocate-General well in time. This being the state of affairs the charges of negligence, carelessness, delinquent behaviour and in-efficiency stands proved against the accused/official. With the above mentioned observation the report of enquiry alongwith record of the enquiry is submitted before the learned Advocate-General, Khyber Pakhtunkhwa for further proceedings.

~~(WICAR AD (MAD))~~
317
ADDL: ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

To

The Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

Annex ¹ E
P. 17

Subject: REPLY TO SHOW CAUSE NOTICE

Respected Sir,

Reference Show Cause Notice No. 6327/AG Dated 01-04-2014 on the subject noted above.

Before replying the above mentioned show cause notice, it is very important to bring in your knowledge sir that the then AOR Mian Shaukat Hussain did not give any dictation/draft for typing to his PA/Stenographer in the case titled "Mst. Sultan Vs State" mentioned in the show cause notice on the score above, hence instant proceedings against me is not maintainable.

REPLY OF SHOW CAUSE NOTICE.

- 1- The poor lady namely Mst. Sultana belong the locality of Ex- Ld. Advocate General, Khalid Khan and approached to this office for filing Cr.PLA before the Supreme Court of Pakistan in Jan, 2013 (time barred) without any sanction of Home or Law Department; by using link ladder to the Ex- Advocate General.
- 2- The inquiry officer wrongly concluded that the file handed over to me as the case firstly go to Ld. Advocate on Record in normal routine and then examine by AOR for fitness or otherwise for Cr.PLA before the Supreme Court,
- 3- In case of fitness the Ld. AOR dratted the subject case (preparing proforma, criminal petition and Affidavits) and after that the Ld. AOR handed over

ATTESTED

the case for preparing final draft; preparing paper books etc to me, hence no such matter came that I perform my duty.

- 4- If the Ld. Ex-AOR drafted the subject case and I did not prepare the subject case then why the Ex-AOR should not complaint against me?
- 5- The Inquiry Officer also wrongly concluded that I do not bring in the notice of the Ld. AOR those files which are time barred included this case. So I informed the Ex-AOR regarding these cases time to time but he was not interested in his duty as he was given only one year extension for AOR ship by the Provincial Govt. up to March, 2014 and he was aggrieved from that as a result he was not interested in his duty.
- 6- Moreover, the Ld. Ex-AOR also have planned that he will file those cases which were time barred before his tenure i.e. up to March, 2014 while his AOR ship have terminated in August, 2013; moreover my detailed reply regarding these cases are given below:-

" That during the year 2013, my immediate boss Mian Shaukat Hussain, the then AOR proceeded to Saudi Arabia for performing Umra on 23-01-2013 for 30 days and there was no substitute AOR was appointed for filing CPLAs or CAs etc, due to which round about 30 cases sanctioned from law department and most of them have 10-15 days limitation. After his arrival from Saudi Arabia more cases came and he directed me to prepare within time cases only and leave the time barred cases, whenever a moment spare, the said time barred cases will be filed. On 30-03-2013 his contract was completed and he gave application for extension of time which was granted upto March, 2014, the pendency was increasing day by day and I was directed to file within time cases only. Moreover, he was weak and was unable to give time for his duty; about 2-3 hrs he spare for his job due to which only within time cases hardly can be filed. During the month of Ramazan (July 2013) he was seriously ill and he was on leave and there was no substituted AOR was appointed for filing time barred or within time cases. The Ex-AOR have not filed the said cases before the Supreme Court of Pakistan due to which I was punished. The then AOR was aged, sick person and was unable to give proper time to Govt. cases due to which these cases are left from filing in the Supreme Court of Pakistan.

The facts of circumstances explain above clearly established that the delay in filing the cases are due to the lack of interest Ex-AOR Mian Shaukat Hussain but being subordinate have been held responsible for the act of

ATTESTED

P. 19

Ex-AOR. Therefore, an inquiry should be initiated against the then AOR but unfortunately, even no notice/explanation was given to him and whole responsibility was shifted upon me"

- 7- The Ld. Advocate General sent the said lady to the Ld. Advocate on Record. Mian Shaukat Hussain for filing Cr. PLA with a piece of paper on which the Ld. AG wrote to help the lady.
- 8- The Ex- AOR visited to the office of AG regarding the subject case and took plea for not filing Cr.PLA with the deficiency as under:-
 - a) Sanction of Home Department in criminal case; for filing Cr.PLA is must which is not available.
 - b) Sanction of Law Department which is not available.
 - c) Relevant Record.
- 9- The Ld. AG requested to the Ld. AOR to file the subject case in his own capacity as the said lady doesn't leave him by requesting time to time.
- 10- The Ld. AG don't give any power of Attorney "State through Advocate General KPK, Peshawar" for filing Cr.PLA and the subject case was in custody of Ex- AOR Mian Shuakat Hussain for filing Cr.PLA without power of Attorney State through Advocate General. Power of Attorney is must for filing Cr.PLA on Govt. behalf i.e. State through Advocate General. There is no gain or loss for Govt. in the subject case, therefore the Ex-AG requested to Ex-AOR for filing Cr.PLA in his own capacity.
- 11- My duty is to compose power. of attorney, singing from Ex- Advocate General and Ld. Ex-AOR was the duty of the complainant. In all cases filing CPLAs, CAs etc the petitioner departments/complainant provided power of attorneys signed from the petitioners in normal procedure.
- 12- In my record those files were kept in which the Law Department or Home Department give sanction for filing CPLA or CA, Cr.PLA etc and Ld. AOR; issued Letter to the corresponding departments.

ATTESTED

P-20

- 13- It was the matter between the Ex- AOR Mian Shuakat Hussain and Ex- Advocate General, Mr. Khalid Khan; neither I have the record of the said case nor any documents of the subject case.
- 14- The Ex- AOR left more than 50 cases (time barred) unfilled which were mostly filed by the present AOR with my best struggle working with present AOR Mian Saadullah Jandoli.
- 15- I was thought that the subject case would have been filed by the Ex- AOR on the request of the Ex-Advocate General but on verifying from the Supreme Court the subject case was not filed in the Supreme Court by the Ex-AOR.
- 16- The said lady thought that I was on duty with the Ex-AOR and she guess that I have still the file of the said case and take the benefit of absent of Ex-AOR by blaming that I have the file of the said case.
- 17- I have no any personal enmity with the said lady and I would must be filed the subject case, if the Ex- AOR draft the Cr.PLA along with affidavits or if I have the record of the said case.
- 18- Moreover, the Ex- AOR told in office regarding the subject case that if they filed such like cases; everyone approach to the Ld. AG and request to filing such like cases as result huge work will be produced for the Govt.
- 19- The Inquiry officer also wrongly concluded that I have dogged the said complainant that her case have filed and pending, after my transfer to Writ Branch on 28-08-2013, I told to the complainant that contact Mian Shaukat Hussain Ex-AOR and ask from him about her case, she visited mostly to his office at Haroon Mension but he told to her that he is no more in AG Office ask from existing AOR, Mian Saadullah Jandoli, then she came and blaming me that I have the file of the complainant.
- 20- The said case was in custody of the Ex- AOR on his table or any other place but I don't know about the said case.

AOR
ATTESTED

P.21

21- During the inquiry proceeding I was told by the inquiry officer to find out the subject case of the said lady and hand over to the said lady, I requested the present AOR Section Staff to search out the subject in the rough files left from the Ex-AOR Mian Shaukat Hussain and they found the subject case in the rough files of the Ex-AOR, when I was on casual leave. So the case was recovered from the Ex-AOR rough files, and the present AOR staff doesn't know about the subject case that the file is in rough files of the Ex-AOR.


In the light of the above detailed facts the undersigned requested that if any sort of adverse opinion/view has been formed by your good self against the undersigned I am sorry for that and I assure your good self that I will be careful in future.

It is, therefore, requested that show cause issued to the undersigned may kindly be withdrawn/filed without further proceedings.

It is further requested that I may not be indulged in those cases in which Ex- AOR Mian Shaukat Hussain have shown in-efficiency and slackness up to his duty limit (Drafting/preparing Cr.PLA or CPLA or CA, Affidavits, checking cases limitation and submission of cases before Supreme Court) and I may give a chance to work in my new place of duty (Writ Branch) and I assure you sir, that no any complaint will come to your goodself in future.

ATTENDED

Yours Obediently


Sher Khan,
Data Processing Supervisor.

ORDER

Whereas on the complaint of Mst. Sultana D/O Muhammad an Inquiry Officer was appointed vide order No. 4521-23/AG dated 28-02-2014 to inquire into the allegations made in the charge sheet served upon Mr. Sher Khan, Data Processing Supervisor (BPS-14) of this office.

And whereas, the Inquiry Officer in his report has found the charges leveled against the accused official as proved.

And whereas, Show Cause Notice was issued to him vide letter No. 6327/AG dated 01-04-2014.

And whereas, opportunity of personal hearing was given to him on 28-04-2014.

Now, therefore, the competent authority, after having considered the charges, evidence on record the explanation of the accused official and defence offered by the accused official during personal hearing and exercising his power under Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, has been pleased to impose major penalty of "dismissal from service" on Mr. Sher Khan, Data Processing Supervisor (PBS-14) with immediate effect.

ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

Endst. No. 7771-73/A.G Dated Peshawar the 30 / 04 /2014

Copy for information and necessary action to:-

1. The Accountant-General, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent (Budget and Accounts) of this office.
3. Mr. Sher Khan, Data Processing Supervisor of this office.
4. Relevant file
5. Personal file.

ATTEST

ADVOCATE-GENERAL
Khyber Pakhtunkhwa,
Peshawar.

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Law, Human Right and Parliamentary Affairs Department
Peshawar.

Annexure 4
G
P-23

Through: Proper Channel

Subject:- DEPARTMENTAL APPEAL UNDER SECTION 22 OF KHYBER PAKHTUNKHWA, CIVIL SERVANT ACT, 1973 READ WITH RULE 3 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 AGAINST THE IMPUGNED ORDER DATED 30-04-2014 THEREBY I HAVE BEEN DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

I have the honour to submit this departmental appeal on the following facts and grounds for your kind consideration and sympathetic and favourable action:-

Facts

1- That I joined the office of Learned Advocate General Khyber Pakhtunkhwa on 28-05-2003 as Data Processing Supervisor (BPS-14) after my selection through Khyber Pakhtunkhwa Public Service Commission, Peshawar and since then I was performing my duties efficiently till the date of passing the impugned order having ten (10) years and 9 (nine) months service at my credit with splendid service record. It is pertinent to mention that in earlier period of my service I was attached with the office of Ld. Advocate General Khyber Pakhtunkhwa and in the year 2007 I was posted to the section of Advocate on Record. On 23-08-2013 by an office order I was posted to Writ Branch. My job description is very well visible from my designated post related to computer work which I have been doing since of my induction to the entire satisfaction of my boss. (Copies of Appointment orders as annexed "____", office order 17-05-2007 annexed "4" and office order dated 23-08-2013 annexed "B").

2- That the subject case titled "State Vs Mst. Sultana" belong the locality of Ex- Ld. Advocate General, Khalid Khan and approached to this office for filing Cr.PLA before the Supreme Court of Pakistan in Jan, 2013 (time barred) without any sanction of Home or Law Department; by using link ladder to the Ex-Advocate General.

ATTESTE

- 3- The Ld. Advocate General sent the said lady to the Ld. Advocate on Record. Mian Shaukat Hussain for filing Cr. PLA with a piece of paper on which the Ld. AG wrote to help the lady.
- 4- The Ex- AOR visited to the office of AG regarding the subject case and took plea for not filing Cr.PLA with the deficiency as under:-
 - a) Sanction of Home Department in criminal case; for filing Cr.PLA is must which is not available.
 - b) Sanction of Law Department which is not available.
 - c) Relevant Record.
- 5- The Ld. AG requested to the Ld. AOR to file the subject case in his own capacity as the said lady doesn't leave him by requesting time to time.
- 6- The Ld. AG don't give any power of Attorney "State through Advocate General KPK, Peshawar" for filing Cr.PLA and the subject case was in custody of Ex- AOR Mian Shuakat Hussain for filing Cr.PLA without power of Attorney State through Advocate General. Power of Attorney is must for filing Cr.PLA on Govt. behalf i.e. State through Advocate General. There is no gain or loss for Govt. in the subject case, therefore the Ex-AG requested to Ex-AOR for filing Cr.PLA in his own capacity.
- 7- My duty is to compose power of attorney, singing from Ex- Advocate General and Ld. Ex-AOR was the duty of the complainant. In all cases filing CPLAs, CAs etc the petitioner departments/complainant provided power of attorneys signed from the petitioners in normal procedure.
- 8- In my record those files were kept in which the Law Department or Home Department give sanction for filing CPLA or CA, Cr.PLA etc and Ld. AOR; issued Letter to the corresponding departments.
- 9- It was the matter between the Ex- AOR Mian Shuakat Hussain and Ex- Advocate General, Mr. Khalid Khan; neither I have the record of the said case nor any documents of the subject case.
- 10- I was thought that the subject case would have been filed by the Ex- AOR on the request of the Ex-Advocate General but on verifying from the Supreme Court the subject case was not filed in the Supreme Court by the Ex-AOR.

ATTESTED

- 11- The said lady thought that I was on duty with the Ex-AOR and she guess that I have still the file of the said case and take the benefit of absent of Ex-AOR by blaming that I have the file of the said case.
- 12- That the complainant did not provide any court fee and the Prosecution Department/Home Department also did not give any sanction or funds for filing Cr. PLA in form of Court fee, binding and Registry AD etc, then how I can prepare the case accordance with.
- 13- That an explanation was called from me on 17-02-2014 regarding the said case and in response I submitted a detailed reply which was not considered. (Copy of reply to explanation is annexed as Annexure C).
- 14- That all of sudden on 01-04-2014 Ld. Advocate General Khyber Pakhtunkhwa, Peshawar therein alleged that due to my conduct the case titled State Vs Mst. Sultana has not filed in the Hon'ble Supreme Court of Pakistan. In response I submitted my detailed reply. (Copy of show cause notice is annexed as "D" and reply as annexed "E").
- 15- That by an office order dated 01-01-2014 the Ld. Advocate General Khyber Pakhtunkhwa appointed an inquiry committee and issued me charge sheet with statement of allegations containing the following allegations/charges (mentioned in letter No.2528/Annex: G dated 28-02-2014).

GROUNDS

1- That the alleged lady case was of the period of Mr. Shaukat Hussian the then Advocate On Record who is the authority to examine the case and to frame questions, facts and grounds which are the requirements for filing the CrPLA etc in the Hon'ble Supreme Court of Pakistan in view of the Supreme Court of Pakistan Rules, 1980. Therefore, Ld. Advocate General has misconceived the cases in question and unlawfully held me responsible for the jobs of others which is not warranted under the law, rule and justice.

2- That it was the duty and responsibility of the then Advocate On Record to file the said case in the august Supreme Court of Pakistan without any delay which shows the laxity and lukewarm attitude of the Advocate On Record but for unknown reasons even a single explanation was not called from him and only held me responsible being a subordinate employee of the office and made me goat escaped

ATTESTED

which is unjustified, unfair and injustice not sustainable in the eye of law.

3- That Ld. Advocate General has not acted fairly and justly in the matter, he was under legal obligation to make inquiry in this case and then fix responsibility upon each one according to their role but malafidly he held responsible me for all such irregularities committed by the then Advocate On Record which is not warranted by law.

4- That in this case in the first stage Mr. Wiqar Ahmad Addl. Advocate General was appointed as inquiry officer who inquire in the subject case as result he did not give any suggestions/penalties and the Ld. Advocate General served charge sheet and statement of allegations upon me which is illegal having no legal sanctity, and of no legal effect and liable to be set aside.

5- That the impugned charge sheet with statement of allegations have not been framed in accordance with rule of subject and not sustainable, liable to be set aside.

6- That the inquiry officer has conducted the inquiry in slipshod manner neither any cogent evidence has been brought on record in support of alleged charges nor conducted the inquiry as per requirements of law and rule of subject, therefore, the findings of the inquiry committee have no legal sanctity in the impugned order based on such findings is of no legal effect and liable to be set aside.

That the inquiry officer has failed to make any recommendations regarding the awarding of penalty which is a mandatory requirements of the rules, therefore, the Ld. Advocate General is unlawfully awarded major penalty of dismissal to me which is not sustainable being malafidly.

8- That no proper and regular inquiry has been conducted by the inquiry officer though the matter in question is pertaining to factual controversies which could not be resolved without cogent evidence

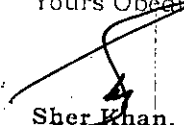
ATTESTED

which is not available in this case. It is pertinent to mention that the inquiry committee has not taken bother to record the statement or seek the views of the then Advocate On Record who was the responsible authority in the case and also my boss.


- 9- That the impugned order has been passed at my back and condemned me unheard neither I was provided an opportunity to record my statement nor recorded any statement of any other witness in my presence or provided me an opportunity of cross examination. Therefore, the impugned order is illegal, without lawful authority being violative of principle of nature justice.
- 10- That the complainant did not provide any court fee and the Prosecution Department/Home Department also did not give any sanction or funds for filing Cr. PLA in form of Court fee, binding and Registry AD etc, then how I can prepare the case accordance with.
- 11- That the impugned punishment of dismissal imposed upon me is excessive, unjust and unfair not commensurate with my alleged fault if any.

It is humbly prayed that on acceptance of this departmental appeal the impugned order dated 30-04-2014 thereby I was dismissed from service with immediate effect may kindly be set aside and I may graciously be reinstated into service with all back benefits.

Yours Obediently



Sher Khan,
Data Processing Supervisor.

ATTESTED 

Dated 30/5/14

Copy:-

The Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar for onward transmission to worthy Secretary, Law Department as Departmental Appellate Authority for necessary action.

Sher Khan,
Data Processing Supervisor

WAKALAT NAMA

IN THE COURT OF Hydrabad High Court Sindh Tribunal

Shah Khan Ex. date processing
Supervisor of the Advocate
General fees Appellant(s)/Petitioner(s)

VERSUS

Secretary of Govt.
Law, Parliamentary Affairs
& Human Rights Deptt Govt of Sindh Respondent(s)

I/We Shah Khan Appellant do hereby appoint
Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

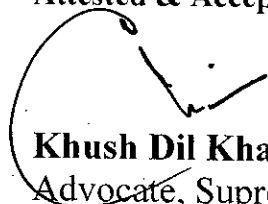
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.


AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Khush Dil Khan,
Advocate, Supreme Court of Pakistan


Signature of Executants

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. **1211/2014.**

Sher Khan Appellant

Versus

The Secretary Govt. of Khyber
Pakhtunkhwa Law, Parliamentary
Affairs and Human Rights Department
Peshawar & Others Respondents

Index

S.No	Particulars	Annexures	Pages No.
1.	Para-Wise Comments	--	1-4
2.	Affidavit	--	5
3.	Complaint of Sultana	A	6
4.	Report of AOR	B	7
5.	Complaint from Peshawar High Court Peshawar.	C	8-9
6.	Explanation	D	10
7.	Inquiry Report	E	11-13

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

Service Appeal No. 1211/2014.

Sher Khan Appellant

Versus

The Secretary Govt. of Khyber
Pakhtunkhwa Law, Parliamentary
Affairs and Human Rights Department
Peshawar & Others Respondents

Comments on behalf of Respondents No. 1 & 2

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

- I. That the Appellant has got no locus standi to file the instant Appeal.
- II. That the Appeal in hand is hopelessly time barred.
- III. That Appellant has not come to the Hon'ble Tribunal with clean hands. Thus he is not entitled for any relief.
- IV. That Appellant concealed material facts from Hon'ble Tribunal hence Appeal is liable to be dismissed in-limine.
- V. That Appellant estopped to file the instant Appeal by his own conduct.
- VI. That Appeal in hand is not maintainable in its present form.

ON FACTS:

1. Pertain to the record, need no reply.
2. Pertains to record, needs no reply, charge sheet is self explanatory.
3. Pertains to record, needs no reply.
4. Pertains to record, needs no reply.

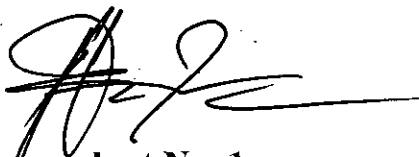
GROUND:

- A. Incorrect, charge leveled against the appellant is initiated on a complaint having Diary No. 939 Dated 04/02/2014 of lady Ms. Sultana (copy of complaint is attached at **Annex-A**). The report was sought by Respondent No. 2 from the A.O.R, who confirmed the contents of complaint (report of the A.O.R is attached at **Annex-B**). It would not be out of place to mention over here that lady also filed complaint/application to Hon'able Chief Justice Peshawar High Court, Peshawar (copy of complaint from Peshawar High Court Peshawar is attached at **Annex-c**). wherein same was sent to the respondent No:2 for necessary action. Explanation was called by Respondent NO. 2 on 17/02/2014 from appellant, reply was unsatisfactory. Hence Mr. Waqar Ahmad was appointed as Inquiry Officer vide office order No.4521-23/AG dated Peshawar the 28/2/2014 alongwith charge sheet, During the Inquiry Statement of the complainant lady was examined by Inquiry Officer in presence of appellant, he (appellant) was subjected the complainant/lady to cross examine, have after considering all facts, circumstances and material on record and finding of Inquiry Officer, the Respondent No. 2 issued impugned order against the appellant in accordance with law. (Copy of explanation, Inquiry Report are attached at Annex-D & E respectively)

- B.** Incorrect, misleading, both the cases have their own facts, evidence and action taken against the appellant on the complaints of quarter concerned, there is no malafide or ill-will on part of the Respondent No: 2 against the appellant. The proceeding and actions taken against the appellant is within the parameter of law and in public interest.
- C.** Incorrect, in Criminal cases Respondent No. 2, being Principal Law officer of the Province is fully competent to authorize to filing of Appeals before the Apex Court. Specific allegation has been leveled against the appellant. Complaint and record of office of Respondent No. 2 also clear about the involvement of appellant in delay of filing of appeal before the Supreme Court of Pakistan.
- D.** Incorrect, as in above para that Respondent No. 2 is fully authorized to file Appeals, in Criminal cases, instead of defending the charge. Appellant is questioning the authority of his superior which amounts to admission on the part of appellant.
- E.** Incorrect, detail replies are given in above paras.
- F.** Incorrect, as mentioned in Para "A" the lady/complainant was not only examined rather appellant subjected her to cross examination, cogent, reliable and confidence inspiring evidence has been brought on record against the appellant to prove the charges. Proceeding and

- G.** Incorrect, Inquiry was conducted in fair and transparent manner, the appellant was given ample opportunities to defend himself and according to law right of personal hearing was also given to appellant before passing the impugned order, which also depicted the impugned order.
- H.** Incorrect, false, detailed reply is given in above para "G".
- I.** Incorrect, all the proceedings were initiated upon the complaint, there is no malafide on the part of Respondent, rather the Respondent acted in accordance with law and in the best public interest.
- J.** Incorrect, detailed replies have been given in above paras.

In light of the above, it is therefore prayed that on acceptance of the instant reply, this appeal may please be dismissed with cost.



Respondent No. 1
The Secretary Govt. of Khyber
Pakhtunkhwa Law, Parliamentary
Affairs and Human Rights Department
Peshawar.



Respondent No. 2
The Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR**

Service Appeal No: 1211/2014

Sher Khan

... Petitioner.

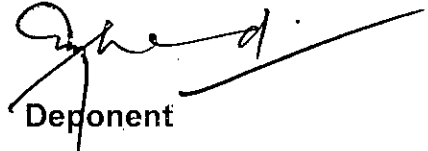
Versus

Government of Khyber Pakhtunkhwa, through Secretary to
Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and
Human Rights Department Peshawar and others

... Respondents

AFFIDAVIT

I, Muhammad Arshad Khan, Administrative Officer,
Office of the Advocate General, Khyber Pakhtunkhwa, Peshawar, do
hereby solemnly affirm and declare on oath that the contents of
Parawise Comments on behalf of Respondent No: 1 & 2 are true and
correct to the best of my knowledge and belief and nothing has been
concealed from this Hon' able Court.


Deponent

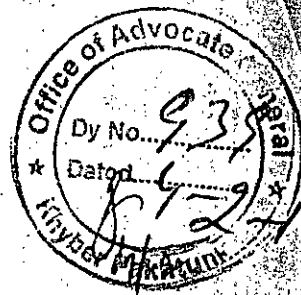
Nic: (1710102522311)



ادوکیٹ عزیز گل

6

دو فریقہ کی تصفیاتی سماعت
حکومتی ایجنسیوں کے خلاف



سید اختر حسین

سید اختر حسین

سید اختر حسین



محمد سلطانہ دفتر محمد

محمد چوک محلہ پوہان کالونی

مردان

0301-8826151

C/O
ایم ایچ

Mst
Self exp
return On

Suppl

FOR
part

1/02/20

3

(7)

The Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

Subject: Report on the case of Mst. Sultana Applicant Complainant

Sir,

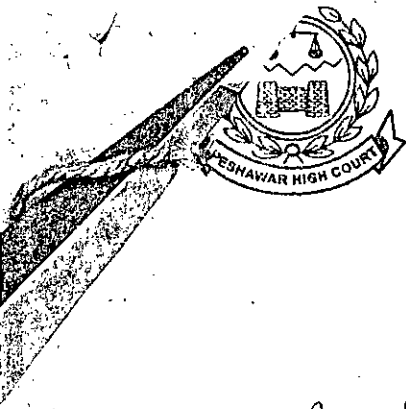
Reference your order dated 07-02-2014 on the subject noted above.

Ld: Adv

九

It is submitted that the issue in hand is prior to my appointment as there is no detail application of the complainant, I have tried my best to contact the complainant through cell number marked on the application but could not trace out due to wrong number anyhow the facts of this case as verbally heard from the staff is that the complainant Mst.Sultana was injured in some accident wherein an FiR was registered and the accused was convicted by the trial Court but later on the accused was acquitted from the charge by the High Court. The complainant being very poor lady approached to the then learned Advocate General Mr. Khalid Khan who recommended her case for filing Cr.CPLA before the august Supreme Court of Pakistan. It is also pertinent to mention here that the poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr.Sher khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan. For filing CPLA the record of the case is also missing and not available in our office. It is submitted for further necessary action please.

M Saadullah Jandoli
19/2/14
(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
for Govt. of KPK



The
PESHAWAR HIGH COURT
Peshawar

8

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

Exch: 9210149-58
Off: 9210135
Fax: 9210170

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

No. 2002 /HRD

Dated Peshawar, the 11-4-14

From:

The Director-II,
Human Rights Directorate,
Peshawar High Court,
Peshawar.

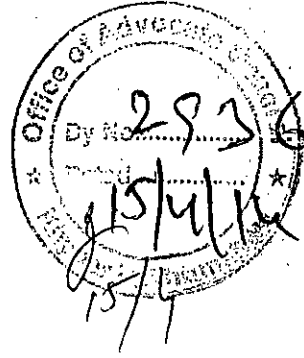
To

The Advocate General,
Peshawar High Court,
Peshawar.

Subject: COMPLAINT (#3977)

Sir,

I am directed to forward herewith a copy of a complaint, submitted by Mst. Sultana, for necessary action and disposal at your end, please.



Director-II,
Human Rights Directorate

Endst. No. _____ /HRD

Dated Peshawar, the _____

Copy forwarded for information to:

Sultana
Mst. D/O Muhammad, R/O Muqam Chowk, Mohalla Pohan Colony, District Mardan.
Mob: 0345-9340345.

Director-II,
Human Rights Directorate

حضرت صاحب والاقتان جناب چیف جسٹس صاحب المشاورہ عالیہ کوٹ لٹساور

(9)

درخواست بٹراد شہر خان ایڈووکیٹ AG آفس کے خلاف جوہر سنگھ کی ایس ڈی کے خلاف ایک

سلسلے میں کاوری

جناب عالی

سائلہ صاحب ذیل عرض رسالہ ہے۔

1. کہ سائلہ متعلق عرب بازارہ کو اٹھانہ سزا کوٹ فصل دہشتی مالا مالہ حال رہا اس وقت جوہر سنگھ کوٹ لٹساور کا لونی مردان کی

ریاستی ہے (شہر خاص کوٹ لٹساور)

2. کہ سائلہ روڈ کارٹ میں تیری طرح دہشتی ہوئی تھی۔ جس کے خلاف سائلہ نے ملزم کی پریس میں لکھنا شروع کیا جوہر سنگھ کی

کی طرف سے ایس ڈی کی تھی۔ لیکن AG آفس میں شہر خان ایڈووکیٹ نے سائلہ کی ایس ڈی کے خلاف ایک

3. کہ سائلہ کی پانزویں میں شہر خان ایڈووکیٹ AG آفس کے خلاف جوہر سنگھ کوٹ لٹساور کے خلاف ایک سائلہ کی لکھی ہے

سائلہ کی طرف سے ہے۔ اور جس کے خلاف پانزویں ایک

4. کہ بیوی شہر خان ایڈووکیٹ کے خلاف لکھنا اور قانونی کارروائی کرنا ہے۔

کیس کے اندر ہے۔ شہر خان ایڈووکیٹ AG آفس کے خلاف جوہر سنگھ کی ایس ڈی کے خلاف ایک

سائلہ کی لکھی ہے غرضی کرنے کے سلسلے میں قانونی کارروائی کر کے سائلہ ایس ڈی کے خلاف ایک سائلہ کی لکھی ہے

ال

مسماة سلطانہ دختر محمد مسکنہ حال متاع جوہر سنگھ کوٹ لٹساور کا لونی مردان

16101-0324166-2.

0345-9340345

0305-9660832

No. 3350 /AG

Dated Peshawar the 17 / 12 /2014

(10)

From: The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

To,

Mr. Sher khan,
Data Processing Supervisor of this office.

Subject:- EXPLANATION

A poor lady, namely, Mst: Sultana was injured in a roadside accident. An F.I.R in the matter was also registered and the accused was convicted by the Trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate General, who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr. CPLA before the august Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending. However, as per report of the Advocate-on-Record, the case has not been filed for filing Cr.CPLA. The record is also missing and not available in the office.

You are, therefore, directed to explain your position on the contents of the above allegations. Your reply must reach to the undersigned within three (03) days positively after receipt of this notice.

Ayaz
Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

*Received in
17/12/14*

S.No. / C
CP
10-P/2
Pe
Powe.
petition
sons of a
ties con.
mid Rey
ies in m
of conc
record
arges
donatic
a case
repara

OFFICE OF ADDL:ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

Dated 29/03 2014.

Address: High Court Building, Peshawar.
Tel. No.091-9211013

Exchange No 9213833
Fax No. 091-9210270

(11)

Subject:- ENQUIRY UNDER KHYBER PAKHTUNKHWA GOVERNMENT SERVANT SERVICE (E&D) RULES, 2011 AGAINST MR.SHER KHAN, D.P.S.(IN POOR LADY CASE).

Respected Sir,

The undersigned was appointed as Enquiry Officer vide order dated 28.2.2014 of the learned Advocate-General in exercise of the powers conferred on him under Rule 10 (a) of Khyber Pakhtunkhwa Government Servant Service (E&D) Rules, 2011 for scrutinizing the conduct of Mr.Sher Khan, Data Processing Supervisor of this office in matter of alleged in-efficiency and mis-conduct described fully in the charge and statements of allegations. The said allegations are reproduced verbatim from the charge sheet

"(a) A poor lady, namely, Mst. Sultana was injured in a roadside accident. An FIR in the matter was also registered and the accused was convicted by the trial Court. However, later on, the High Court acquitted the accused from the charge. The lady, who was very poor, approached the then Advocate-General who recommended her case to be filed in the august Supreme Court of Pakistan. She handed record of her case over to you for filing Cr.CPLA before the August Supreme Court. Whenever, the lady asked about her case, she was told by you that your case had been filed in the Supreme Court of Pakistan and is still pending.

(b) On 04.02.2014, the said lady submitted an application to the Advocate-General, Khyber Pakhtunkhwa, Peshawar to enquire the matter. On 07.2.2014, the learned Advocate-General, called the report from the Advocate-on-Record (AOR). On 10.02.2014, the learned AOR submitted the report which is reproduced as 'Poor lady also handed over the record of the case for filing CPLA and whenever the poor lady asked about her case she was told by Mr.Sher Khan that your case has been filed in the Supreme Court of Pakistan and still pending but actually her case has never been filed in the august Supreme Court of Pakistan for filing CPLA the record of the case is also missing and not available in our office."

The complainant lady namely Mst.Sultana d/o Muhammad r/o Pohan Colony, Mardan, as well as the accused official Sher Khan were summoned for 10.3.2014. On the said date statements of the the complainant lady was recorded who was also cross examined by the accused official, namely, Sher Khan and statement of Sher Khan was also recorded. I have gone through the record of Enquiry including explanation and reply of Sher Khan as well as statements referred above. My findings are as follows:-

From the statement of the complainant namely Mst.Sultana it is clear that she has stated that her case file was handed over to the office of A.O.R. by the then learned Advocate-General Mr.Khalid Khan for filing criminal petition for leave to appeal before the August Supreme Court. She has alleged that the case file was handed over to the accused official Sher Khan by the then learned Advocate-on-Record and it was due to failure of Sher Khan that her case could not be filed before the August Supreme Court. In cross examination the lady has stated that Mian Shaukat Hussain the then learned Advocate-on-Record had gone through the file when she took the same to the office of Advocate-on-Record. In her cross examination she also stated that thereafter when she used to come to the office of Advocate-on-Record for inquiring about filing of the case in August Supreme Court she used to be dodged by the accused official Sher Khan. In his statement Sher Khan has taken the defense that the case had been handed over by Mr.Khalid Khan to Mian Shaukat Hussain, Advocate-on-Record when she was supposed to file the same before the Supreme Court and he had nothing to do with the same file. The second defense the accused official Sher Khan had taken is that sanction of Home or Law Department for filing of the subject appeal had not been granted nor the requisite power of attorney had ever been made available to him.

So far as first defense of accused official is concerned the same is groundless and untenable as it was solemn duty of the accused official Sher Khan to have looked after all the cases lying in his custody and to have put the same before the learned Advocate-on-Record for drafting of the requisite petition and to have highlighted those cases which were getting to be time barred. So far as second defense of the accused/official is concerned answer to the same has been indirectly suggested by the accused/official himself in the para which followed the above mentioned two defenses

marked as "A and B" in the statement of the accused/official Sher Khan. The said para is reproduced for ready reference:-

"The Id: A.G. requested to the Id. AOR to file the subject case in his own capacity as the said lady does not leave him by requesting time to time. The Id. A.G. does not give any power of Attorney "State through Advocate-General, KPK, Peshawar for filing CrPLA and the subject case was in custody of Ex-AOR Mian Shukat Hussain for filing CrPLA without power of Attorney State through Advocate-General. Power of Attorney is must for filing of CrPLA o-Govt. behalf i.e. State through Addvocate-General which was not given by the Ex-A.G. There is no gain or loss for Govt. in the subject case, therefore, the Ex-A.G. requested to Ex-AOR for filing CrPLA in his own capacity."

From the above referred para it becomes amply clear that in normal criminal cases the learned Advocate-General is fully competent to file or authorize filing of petition for leave to appeal before the August Supreme Court of Pakistan. Even in all other cases the learned A.G. being the Principal law officer of the Province is fully competent to authorize filing of appeal unless requirement of special permission of the Government is expressly laid down in any law like the Anti-Terrorism Act. So far as the defense of the accused/official that the learned Advocate-General had not executed the power of Attorney is concerned, this is also clear to everyone that the then learned Advocate-General was not supposed to have executed the power of Attorney and took the same to the office of AOR rather it was the job of the accused/official to have got the power of Attorney signed from the then learned Advocate-General well in time. This being the state of affairs the charges of negligence, carelessness, delinquent behaviour and in-efficiency stands proved against the accused/official. With the above mentioned observation the report of enquiry alongwith record of the enquiry is submitted before the learned Advocate-General, Khyber Pakhtunkhwa for further proceedings.

LD: ADVOCATE-GENERAL, KPK.

~~(WICAR AHMAD)~~
ADDL: ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

*Review of the enquiry report,
Issue Show Cause Notice. Aug
31/03/2014*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1211/2014

Sher Khan.....Appellant

Versus

**The Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar and others.....Respondents**

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder to the reply/ para wise comments of respondents No. 1 & 2			1-3
2.				

Through

Appellant

**Khush Dil Khan
Advocate,**

Supreme Court of Pakistan

9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Off: Tel # 091-2213445

Dated: 26 / 03 / 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1211/2014**

Sher Khan,
Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar.
R/o Lalazar Colony, University Campus, Peshawar.....Appellant

Versus

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department Peshawar and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY/PARA WISE COMMENTS FILED BY
RESPONDENTS NO. 1 & 2.**

Respectfully Sheweth,

Preliminary objections raised by answering Respondents are erroneous and frivolous, so denied and the detail reply thereof is under:-

- I. That the impugned order dated 30-04-2014 whereby appellant was dismissed from service without conducting regular inquiry of which he was aggrieved and rightly filed this appeal under the relevant law on subject.
- II. That the appeal is well within time. The departmental appeal filed on 30-05-2014 under registered post which was not decided within statutory period of 90 days and after which he filed the present appeal.
- III. That the appellant has rightly exercised statutory right of appeal against the impugned order.
- IV. That the appeal drafted in vary vivid manner and mentioned all the relevant facts for the consideration of this Hon'ble Tribunal.

- V. That the appeal filed within time.
- VI. That the appeal is fully maintainable in all respects.

Rejoinder to Reply of Facts:-

- 1. Furnished no reply so no need of further elucidation.
- 2. That the reply as furnished by the respondents is evasive in nature so denied.
- 3. That the reply is repetition of para No. 3 of service appeal and nothing more so in other words the answering respondents have admitted the facts of the case.
- 4. That the reply is incorrect and against the facts of the case based on exaggeration so denied.
- 5. Furnished no reply so no need of further elucidation.
- 6. Furnished no reply so no need of further elucidation.
- 7. Furnished no reply so no need of further elucidation. However no codal formality has been fulfilled in this case and answering respondent No. 2 acted in arbitrary manner and passed the impugned order in harsh manner which is not sustainable and liable to be set aside

Rejoinder to Reply of Grounds: -

- A. That the reply of ground A is totally incorrect so denied.
- B. That the reply to ground B is evasive in nature and failed to furnish specific reply as required for rebuttal.
- C. That the reply to ground C is also baseless and denied.
- D. That the reply to ground D is also incorrect so denied.
- E. That the reply is incorrect so denied.

- F. That the reply is incorrect so denied. The findings of the Inquiry Officer Mr. Waqar Ahmad AAG were ignored without cogent reason.
- G. That the reply is incorrect and baseless so denied.
- H. That the reply is not specific so evasive in nature and denied.
- I. That the reply is incorrect so denied.
- J. Furnished no reply meaning thereby the answering respondents have admitted the contents thereof
- K. Incorrect being no specific reply given so denied.
- L. Incorrect so denied.
- M. Incorrect so denied.
- N. Incorrect so denied.
- O. Furnished no reply meaning thereby admitted the contents thereof.
- P. That the reply is incorrect so denied.

It is therefore, humbly prayed that the reply/para wise comments of respondents No. 1 & 2 may kindly be rejected and appeal as prayed for may graciously be accepted and appellant may also be reinstated into service with all back benefits.

Through


Appellant,

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 26 /03/2016

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 588/ST

Dated 19/03/2018


To

The Advocate General,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 1211/2014, MR. SHER KHAN.**

I am directed to forward herewith a certified copy of Judgment/Order dated 16/02/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO: _____ / 2017

AKHTAR MUNIR

VS

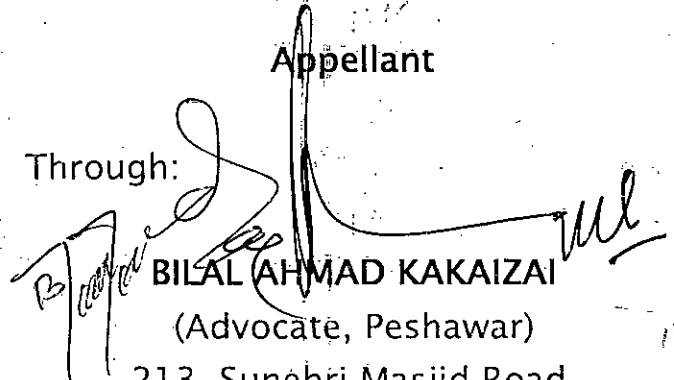
Govt. of Khyber Pakhtunkhwa etc

INDEX

<i>Description of Documents</i>	<i>Page No:</i>
<i>Memo of Service Appeal</i>	1 - 5
<i>Affidavit</i>	6
<i>Addresses Sheet</i>	7
<i>Application for Interim Relief along with Affidavit.</i>	8 - 9
<i>Annexure-A</i> Tentative Seniority List.	10 - 14
<i>Annexure-B</i> Objections / Appeal.	16 - 18
<i>Annexure-C</i> Impugned Final Seniority List.	19 - 22
<i>Wakalat nama</i>	nil

Appellant

Through:



BILAL AHMAD KAKAIZAI

(Advocate, Peshawar)

213, Sunehri Masjid Road,

Peshawar.

0300-9020098

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 212 /ST

Dated 21-01- 2020


To

The Advocate General,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 121/2014, MR. SHER KHAN.

I am directed to forward herewith a certified copy of Judgement dated 07.01.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Before the Honible Chairman, KPK Service Tribunal, Peshawar.

بعدالت

Service Appeal

(Appellant) 2019
بنام

Sher Khan

VS

Secretary Law Deptt etc

باعث تحریر آنکہ

موزخہ

مقدمہ

دعویٰ

جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کے لیے Razaullah Adv

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخ

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ

پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2020 January

1st

المرقوم

واہ الب

بمقام

Peshawar only

Attestd & accepted
2020 January

بمقام

منکہ صفاہ سلطانہ دختر محمد بیان دیتی ہوں کہ مجھے محمد علی نے
 اپنی گاڑی سے مردان میں مگر ماری۔ جس سے مجھے شدید چوٹیں آئیں
 میرے ٹانگ بھی ٹوٹ گئی۔ مذکورہ حادثے میں وہ مجھے بے بارہ بندکار
 چھوڑ کر فرار ہو گیا۔ کچھ نفاقی لوگ مجھے ہسپتال لے گئے۔ جہاں میں
 زیر علاج رہی۔ محمد علی اور اس کا ماٹک تاج محمد ہسپتال آئے پھانے
 اس کے سہری کچھ امداد کرنے اچھن سے سہری بے درزی کی مجھے
 ہسپتال کے بستر سے گرا اور مجھے مارا پینا بھی۔ ہسپتال سے فارغ
 ہونے پر میں نے محمد علی اور تاج محمد سے ملاقات کی کہ میرے علاج
 سلاجہ وغیرہ کروادیں۔ مگر اچھن نے مجھے دوبارہ مارا پینا اور دھکے
 دے کر نکال دیا۔ کچھ لوگوں کے مشورہ دینے پر میں جناب فالخان صاحب
 کو جو اس وقت ایڈووکیٹ جنرل فیڈریشن تھے کو اپنی شکایت کی دادرسی
 کے لیے درخواست کی۔ جو اچھن نے اس وقت کے اے۔ او۔ آر صاحب
 میان لٹوکت حسین کو کارروائی کے لیے دے دی۔ میرا کہیں سپریم کورٹ
 میں داخل کرنے کے لیے اچھن نے شیرخان جوان کے دفتر میں حکم کرنا ہے
 حوالے کر دیا۔ مگر اس نے میرا کہیں ابھی تک سپریم کورٹ میں داخل

ہیں کیا ہے۔



سلطانہ بی بی

دختر محمد

سکنہ پوٹان کالونی

مالاکنڈ روڈ مردان

CNIC#-16101-0324166-2

(عقار لکھنؤ)

ایڈووکیٹ جنرل فیڈریشن

انگوائسٹری آفیسر

جب آپ کو مجھے خالخان جو اس وقت کے اے جی تھے کیا تم
 سے خالخان کو اے کر دو تو میں مجھیں یعنی اپنی کار سٹیرخان کو پکار کر
 جب خالخان میں تے دفتر میں حوالے کی تو اس کو اس وقت
 میں ADR بیان شوکت حسین صاحب سے ملا فلفلہ رکھا۔ جب میں
 خالخان سٹیرخان کو حوالے کی تو اس کے دس دن بعد میں دوبارہ اپنی اپنی
 کے بارے میں معلومات حاصل کرتے کے بعد دفتر آئی از خود کیا کہ میں
 بار بار دفتر آئی رہی اور سٹیرخان مجھے ٹالواریا۔ جب میں دوبارہ
 اپنی خالخان کے بارے میں پوچھنے کے لیے آئی تو اس وقت دفتر میں میں
 موجود تھے از خود کیا کہ وہ موجود تھا لیکن تم نے (یعنی سٹیرخان نے) میں
 شوکت حسین کے ساتھ ملنے کا موقع نہ دیا

صاحب

(وقار احمد)
 ایڈیشن ایجوکیشن سٹیرخان
 انکوارٹری آفیسر، لاہور

سٹیرخان
 ڈی پی اے
 دفتر ایجوکیشن سٹیرخان
 سٹیرخان لاہور
 10/3/14

**STATEMENT OF SHER KHAN, DATA PROCESSING SUPERVISOR
REGARDING CRIMINAL CASE MST. NAMELY SULTANA:-**

The poor lady namely Mst. Sultana belong the locality of Ex- Ld. Advocate General, Khalid Khan and was injured in an road side accident. The said lady filed Criminal Appeal against the person who hit her in accident before the Peshawar High Court which was dismissed in 2012 and the said lady approached to Ld. Advocate General, Khalid Khan for filing Cr.PLA before the Supreme Court of Pakistan in Jan, 2013. The Ld. Advocate General sent the said lady to the Ld. Advocate on Record, Mian Shaukat Hussain for filing Cr. PLA with a piece of paper on which the Ld. AG wrote to help the lady. The Ex- AOR visited to the office of AG regarding the subject case and took plea to AG for filing Cr.PLA the following requirement is must which are under:-

- a) Sanction of Home Department in criminal case; for filing Cr.PLA is must which is not available.
- b) Sanction of Law Department which is not available.

The Ld. AG requested to the Ld. AOR to file the subject case in his own capacity as the said lady doesn't leave him by requesting time to time. The Ld. AG don't give any power of Attorney "State through Advocate General KPK, Peshawar" for filing Cr.PLA and the subject case was in custody of Ex- AOR Mian Shuakat Hussain for filing Cr.PLA without power of Attorney State through Advocate General. Power of Attorney is must for filing Cr.PLA on Govt. behalf i.e. State through Advocate General which was not given by the Ex-AG. There is no gain or loss for Govt. in the subject case, therefore the Ex-AG requested to Ex-AOR for filing Cr.PLA in his own capacity.


In my record those files were kept in which the Law Department or Home Department give sanction for filing CPLA or CA, Cr.PLA etc and Ld. AOR; issued Letter to the corresponding departments.

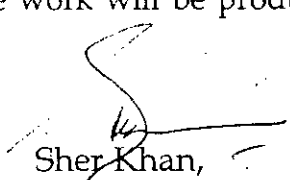
It was the matter between the Ex- AOR Mian Shuakat Hussain and Ex- Advocate General, Mr. Khalid Khan; neither I have the record of the said case nor any documents of the subject case.

I was thought that the subject case would have been filed by the Ex- AOR on the request of the Ex-Advocate General but on verifying from the Supreme Court the subject case was not filed in the Supreme Court by the Ex-AOR. The said lady thought that I was on duty with the Ex-AOR and she guess that I have still the file of the said case and take the benefit of absent of Ex- AOR by blaming that I have the file of the said case.

I have no any personal enmity with the said lady and I would must be filed the subject case, if the Ex- AOR draft the Cr.PLA along with affidavits or if I have the record of the said case.

The said case was in custody of the Ex- AOR on his table or any other place but I don't know about the said case. Moreover, the Ex- AOR told in office regarding the subject case that if they filed such like cases; everyone approach to the Ld. AG and request to filing such like cases as result huge work will be produced for the Govt. AOR.

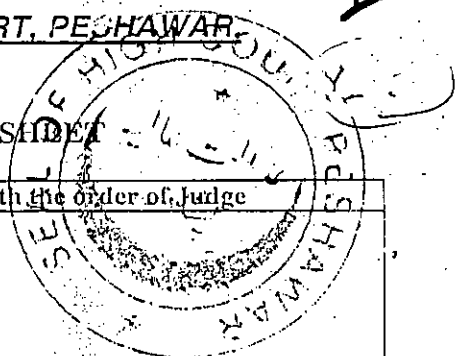

Wiqar Ahmad
Adml. Advocate General KPK/
Inquiry officer


Sher Khan,
Data Processing Supervisor

13

PESHAWAR HIGH COURT, PESHAWAR

FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of Judge
3.9.2012.	<p><u>Cr.A. 659 of 2011.</u></p> <p>Present: Ms.Farhana Marwat, advocate for appellant.</p> <p>Mr.Nasir Kamal Yousafzai, advocate for accused-respondent.</p> <p>Mr.Zahid Yousaf Qureshi, AAG for State.</p> <p><u>WAQAR AHMAD SETH, J.-</u> Impugned herein is the order dated 10.10.2011 of learned Senior Civil Judge/City Magistrate, Mardan whereby she acquitted the accused/respondent on an application preferred by the latter u/s 249-A Cr.P.C.</p> <p>2. The appellant while in injured condition at Mardan Medical Complex reported the matter to the police, in terms, that on the relevant day she was proceeding from bazar to her house and when reached to the crime spot, it was noticed that the driver of the vehicle bearing registration No.PF/919-Islamabad, which was alleged to have been negligently, carelessly and rashly driven by the driver not named, coming from Malakand road hit her on her head and legs due to which most of her body remained painful, hence the case was registered against unknown</p>

ATTESTED
EXAMINER
Peshawar High Court.
10 SEP 2014

accused.

3. Subsequently, the accused/respondent was charged for commission of the alleged crime and was released on bail by competent court of jurisdiction.

4. After completion of investigation, challan was submitted in court against the accused/respondent and after fulfillment of requirement of Section 241-A Cr.P.C. charge was framed against him and the prosecution was invited to produce its in support of charge. At the trial, the complainant/appellant appeared as PW-1 and recorded her statement and thereafter the accused/respondent preferred application u/s 249-A Cr.P.C., which was allowed through the impugned order, which has now been questioned through the instant appeal.

5. Learned counsel for appellant contended that the learned trial court in utter disregard of law acquitted the accused/respondent in hasty manner as only statement of complainant was recorded and the remaining evidence was yet to be recorded, hence the acquittal order is bad in law. She was of the view that no opportunity was given to eye witnesses to record their statements and the prosecution was yet to establish its case against the accused/respondent, thus, the impugned order requires to be reversed and the

TESTED
[Signature]

[Signature]

matter may be remanded to the trial court for recording the remaining evidence, the learned counsel maintained.

6. The learned AAG also adopted the arguments of learned counsel for appellant.

7. On the other hand, learned counsel for accused/respondent while rebutting the arguments from other side contended that the impugned order of learned trial court is based on sound and cogent reasons, which is neither perverse nor illegal, hence the same requires no interference by this court in its appellate jurisdiction.

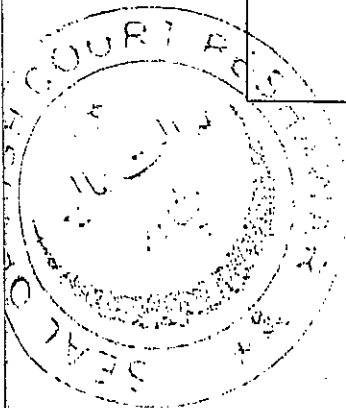
8. The learned trial court while dealing with the matter has held that the accused/respondent was neither nominated in the first report nor any statement of the appellant was recorded u/s 164 Cr.P.C. to charge the accused/respondent for commission of alleged crime. No independent witness was cited to have witnessed the crime. Moreover, the appellant appeared before the court and admitted in her cross examination that she has not charged the accused/respondent. The appellant in her statement stated to have been shifted to the hospital at about 01.00 pm. It was also stated that she was unconscious and her sister lodged the report to the local police.

This portion of statement of appellant clearly contradicts the contents of the FIR. The report was lodged by the complainant and the time of occurrence is shown as 14.30 hrs, thus, the prosecution case is doubtful, which was rightly not relied upon.

8. The learned trial court has dealt with the matter in a proper and reasonable manner. The available material was gone thoroughly with great care and caution but nowhere it was found that the learned trial court has committed illegality or irregularity in the impugned order, which is based on sound reasons. The provision of Section 249-A Cr.P.C. was fully attracted to the facts and circumstances of the case, which was rightly adhered to. Moreover, this is an appeal against acquittal where the evidence is appraised in different perspective and once the learned trial court has acquitted the accused/respondent from the charge levelled against him, then he assumes double presumption of innocence.

For what has been stated above, this appeal being devoid of legal merits is dismissed.

Sd/- Wagon Ahmad Sethi JUDGE



CERTIFIED TO BE TRUE COPY

Examination
Department of Public Prosecution
District Court, Meerut, U.P.

SEP 2014

24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE YAHYA AFRIDI

CIVIL PETITIONS NO.1120, 1131 & 1415 OF 2018

(On appeal against the judgment dated 16.02.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1212 of 2014.)

Secretary Govt. of KPK, Law Parliamentary (in CPs 1120 and
Affairs & Human Rights Department, 1131/18)
Peshawar & another
Sher Khan

(in CP1415 /18)
...Petitioner(s)

VERSUS

Sher Khan (in CPs 1120 and
1131/18)
Secretary Govt. of KPK, Law Parliamentary (in CP1415 /18)
Affairs & Human Rights Department,
Peshawar & another

...Respondent(s)

For the Petitioner(s): Mr. Qasim Wadood, Addl. AG, KPK.
(in C.Ps.1120 & 1131/2018)
Mr. Misbahullah Khan, ASC.
(in C.P.1415/2018)

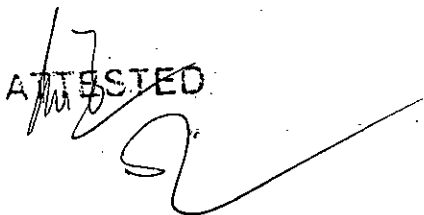
For the Respondent(s): Mr. Misbahullah Khan, ASC.
(in C.Ps.1120 and 1131/2018)

Date of Hearing: 10.01.2019

ORDER

UMAR ATA BANDIAL, J.— Civil Petition No.1120 of 2018: The respondent is a Data Processing Supervisor working in the office of the learned Advocate General, KPK since 2003. In the year 2007 he was assigned to AOR section in the said office. A number of government cases that were to be filed in the Supreme Court of Pakistan were alleged to have been neglected by the respondent rendering their filing to be time barred. An inquiry into the causes of a large number of time barred cases was conducted by the

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

25

learned Additional Advocate General. His report dated 26.09.2013 did not affix any responsibility upon the respondent. Subsequently, another inquiry was conducted resulting in a report dated 18.01.2014 by a committee headed by another Additional Advocate General. This report squarely acknowledges that the AOR in the Advocate General office had not been drafting cases in time. The previous report had noted that he had been ill most of the time and had been away for *Umrah* when he was well. The finding against the respondent is that he did not inform the Advocate General, KPK about the absence/unavailability or disinterest of the AOR.

2. A show cause notice dated 24.12.2013 confronted the respondent with delay in the filing of two cases. It is accepted by the learned Additional Advocate General appearing for the petitioners that both these cases were time barred when the files were delivered to the Advocate General's office. He adds that a number of other cases were also time barred and these have been noted in the inquiry report dated 18.01.2014. The respondent was dismissed from service vide order dated 30.04.2014. His appeal before the learned Tribunal has been partly accepted and his punishment has been reduced to '*censure*'. Learned Additional Advocate General seeks the restoration of the punishment imposed by the employer office.

3. We consider that the inquiry report dated 18.01.2014 is vague in identifying the wrong committed by the respondent. We cannot therefore ascertain whether a punishment commensurate to the misconduct committed has been awarded to the respondent or not. The other cases noted in the inquiry report dated

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

92
26

18.01.2014 are not detailed nor their particulars were provided either to the respondent or on the record.

4. In the circumstances, we do not consider either dismissal of the respondent or his virtual exoneration in the terms directed by the learned Tribunal is appropriate. Accordingly, the impugned judgment dated 16.02.2018 of the learned Tribunal and the dismissal order dated 30.04.2014 are set aside. This petition is converted into an appeal and allowed in the terms noted above.

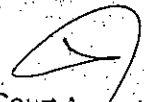
5. Office of the learned Advocate General shall conduct fresh inquiry into the allegations against the respondent after confronting him with the specific details of the cases in which he is alleged to have been negligent or in breach of duty.

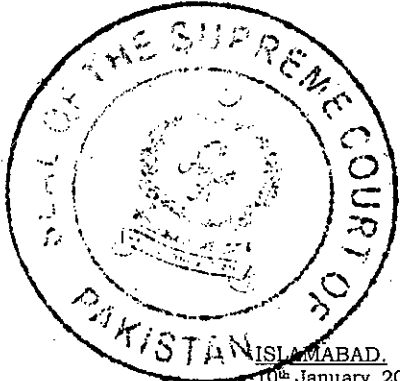
Civil Petitions No.1131 & 1415 OF 2018:

Adjourned.

Sd/-J
Sd/-J
Sd/-J

Certified to be True Copy


Court Associate
Supreme Court of Pakistan
Islamabad



ISLAMABAD.
10th January, 2019.
Naveed Ahmad/*

"Not approved for reporting"

1286/19

GR No: _____ Civil/Criminal

Date of Presentation: 10-1-19

No of Words: _____

No of Pages: 9

Requisition Fee Rs: 500

Copy Fee in: _____

Court Fee Stamps: 10/-

Date of Completion of Copy: 28/1/19

Date of delivery of Copy: 4/2/19

Compared by/Prepared by: _____

Received by: M S Khattak AOR

Annex - D³

21

BETTER COPY

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1212/2014

Date of Institution ... 26.09.2014
Date of Decision ... 16.02.2018

Sher Khan, Ex-Data Processing Supervisor,
Office of the Advocate General,
Khyber Pakhtunkhwa, Peshawar,
R/O Lalazar Colony, University Campus, Peshawar.

.... (Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and
Human Rights Department Peshawar & others.

.... (Respondents)

Mr. Khushdil Khan,
Advocate

--- For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

--- For respondents.

MR. GUL ZEB KHAN

... MEMBER

MR. MUHAMMAD HAMID MUGHAL

... MEMBER

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.09.2014 has been lodged by Sher Khan, ex-Data Processing Supervisor, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, wherein he has impugned the office order dated 30.04.2014 vide which he was dismissed from service. The appellant preferred departmental appeal on 30.05.2014 which was not responded.

3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor in the office of Respondent No. 2 on recommendations of the Public Service Commission vide order dated 28.05.2003 and has performed his duties honestly and efficiently with unblemished service

AMont

Record for more than 10 years. That the appellant, while working in the office of Advocate on Record (AOR), was charge sheeted on the allegation of delaying / time barring the filing of CPLA in the Supreme Court of Pakistan of about 36 court cases of various administrative departments. That a very prejudiced and defective enquiry was conducted wherein no opportunity of cross examination was provided to the appellant. That the appellant was allegedly held responsible for a task, which, under the job description of the organization, was not assigned to him. That the enquiry committee has not bothered to record statement of the then AOR who was the directly supervising officer of the appellant. That the appellant is basically functioning as a data processing supervisor which is a computer related job and not a legal hand. That technically speaking it is the sole responsibility of the AOR to draft or dictate the case first, and not the task of the appellant. As regards the four specific cases at Serial No. 4, 20, 31 and 34 of the list, the enquiry committee has not been able to put forth any evidence for it, rather those responsible have very clearly been mentioned in the last column of the list. That the impugned order being illegal and not entertain able under the law, may be set aside.

4. On the other side learned Deputy District Attorney argued that the impugned punishment was awarded after consulting all the facts and record vis-à-vis the gravity of the charges and in accordance with law. That the due process of providing opportunity of personal hearing has been duly provided. That the appeal may be rejected with cost.

5. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.

6. Mainly charge against the appellant is that he did not process the cases in time to be filed in the august Supreme Court of Pakistan and thus the same became badly barred by time.
7. In the present case charge sheet and statements of allegation were admittedly served upon the appellant. The appellant also attended the inquiry proceedings. Show cause notice was also issued and replied by the appellant. The inquiry officer in the inquiry report held that the charges against accused stood proved. However, it is also an admitted fact that the inquiry committee has not recorded the statement of the then AOR, under whom the appellant was directly working and whose statement would have been of a deciding nature in the instant enquiry. The statement of the then AOR was also essential due to the fact that under the prevailing circumstances it was their joint responsibility to dispose of their office work, because the nature of very drafting of the CPLA cases required technical and legal input of the AOR. In the light of stated circumstances this Tribunal is of the view of that the impugned punishment is excessive/harsh. Resultantly for the purpose of safe administration of justice the impugned punishment is converted to minor penalty of censure. The intervening period shall be treated as leave of the kind due. The present service appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCE
16.02.2018

Sd/-
(Muhammad Hamid Mughal)
MEMBER

Sd/-
(Gul Zeb Khan)
MEMBER