

22nd June, 2022

Clerk of learned counsel for the appellant present.

Against the impugned order of termination of service dated 03.06.2021, the appellant filed departmental appeal to the Commissioner Peshawar Division on 15.07.2021 and again on 02.08.2021 he filed another application to the Commissioner Peshawar Division. The Commissioner Peshawar Division dismiss the appeal of the appellant on 27.09.2021 which order was allegedly communicated to the appellant on 25.04.2022. Let this appeal is admitted to full hearing subject to all just and legal objections including limitation by the other side. The appellant is directed to deposit security and process fee and security within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 10.08.2022 before S.B.





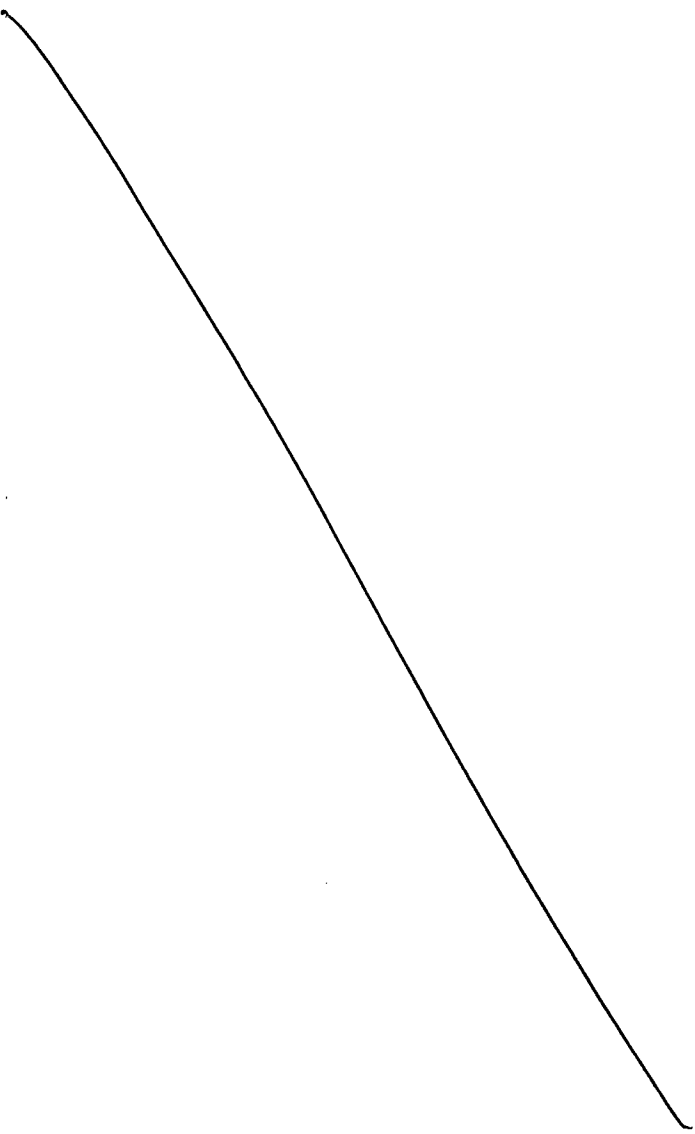
(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 885/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/06/2022	<p>The appeal of Mr. Junaid Khan resubmitted today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR <i>ur</i></p>
2-	<i>14.6.22</i>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>22, 6, 22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Junaid Khan Naib Qasid D.C Office Nowshera received today i.e. on 23.05.2022 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

Copy of order dated 27.09.2021 is incomplete which may be completed.

No. 1252 /S.T,


Dt. 6-6 /2022



REGISTRAR

SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Arif Jan Adv. Pesh.

RE Submitted


7/6/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 885 /2022

Junaid Khan Ex-Naib Qasid Appellant

VERSUS

Commissioner Peshawar and another..... Respondents

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Junaid Khan

APPELLANT

Through

M. Arif Jan

Muhammad Arif Jan

Advocate Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Junaid Khan Ex-Naib Qasid (BPS-3) Deputy Commissioner Office,
Nowshera..... Appellant

VERSUS

1. Commissioner Peshawar Division, Peshawar.
2. Deputy Commissioner, Nowshera..... Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED APPELLATE ORDER
DATED 27-09-2021 (Communicated To The Appellant
On 25-04-2022) WHEREBY THE DEPARTMENTAL
APPEAL DATED 15-07-2021 FILED AGAINST THE
IMPUGNED ORDER DATED 03-06-2021 PASSED BY
RESPONDENT NO-2 HAS BEEN REJECTED ON NO
GOOD GROUNDS .

Respectfully Sheweth:

1. That the appellant was initially appointed Naib Qasid BPS-3 in the office of respondent No-2 vide office letter/order dated 27-01-2015.
2. That then the appellant was posted in the office of respondent No-3 where the appellant performed his duties with full zeal and zest and to the entire satisfaction of his superiors.
3. That due to outstanding and gallantry performance, the appellant earned good name and reputation amongst other colleagues which is evident from his unblemished service record.
4. That the appellant is strong believer in the supremacy of Law and always honor the law, rules and regulations but the respondents with their mala-fide intentions, the appellant has

(2)

allegedly been shown absent from duties for 20 days without approval of the competent authority and resultantly the so called inquiry was ordered.

5. That the worthy inquiry officer badly failed to follow the law, rules and regulations governing the subject matter to collect the real fact and circumstance of the case and conducted one sided inquiry just to deprive the appellant from his service.
6. That respondent No-2 vide impugned order dated 03-06-2021, terminated the services of the appellant on the ground of 20 days absence from duty but it is worth mentioned here that no period of absence have been shown in the impugned order as well as in the so called inquiry proceedings.(Copy of termination order is attached as ANNEX-A).
7. That the impugned order dated 03-06-2021 was communicated to the appellant on 15-07-2021 and on the same day, the appellant preferred departmental appeal before respondent No-1. (Copy of departmental appeal is attached as ANNEX-B).
8. That the appellant approached time and again before respondent No-1 inquiring the fate of departmental appeal but of no avail and finally filed an application upon which copy of decision dated 27-09-2021 of the appellate authority was handed over on 25-04-2022 to the appellant. (Copies of application and decision dated 27-09-2021 are attached as ANNEX-C & D respectively).
9. That being aggrieved and having no other remedy except to file the instant appeal on the following amongst other grounds:

GROUND:

A. Because, the actions and inactions of the respondents by way of terminating the low paid Class-IV employee from the service vide order dated 03-06-2021 and order/judgment dated 27-09-2021 passed by respondents 2 & 1 respectively (the later communicated To The Appellant On 25-04-2022) (**Herein after impugned**) are patently illegal, unlawful, without lawful authority, of no legal effect and ineffective upon the rights of appellant being false and maintained wrongly, hence the impugned orders may kindly be set-aside and the respondents may graciously be directed to act in accordance with Law and to reinstate the appellant into his service with all back benefits without any further delay, reason and justification.

(3)

- B. Because, no proper inquiry in proper manner has been conducted against the appellant moreover no charge sheet, statement of allegation and final show-cause etc served upon the appellant thus this act of the respondents is against the settled principles of the August Supreme Court of Pakistan.
- C. Because, the appellant has served the department for last about six (6) and half years, with unblemished record and there is/ was no any complaint or inquiry filed or pending till date except the impugned orders.
- D. Because, the respondents themselves violated their own guidelines/policies and directive of high ups on the subject matter, hence intentionally adopted the policy of "**Might is right**" thus this act of the respondents is against the existing laws and policies, hence this act of the respondents amounts to abuse of powers/authority which is against the norms of justice.
- E. Because, the impugned termination order and so called inquiry are based upon mere the absence from duty for 20 days without any intimation to superiors but the entire record is silent regarding the period of absence which itself shows the dishonesty of the respondents against the appellant.
- F. Because, the appellant is poor person, jobless and the only bread winner of his whole family which has already been suffered with irreparable losses which will not be count in shape of coins due to the acts of respondents.
- G. Because any other ground which has not been mentioned may also be permitted to rise at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of the instant Appeal,

- 1. This Hon'ble Tribunal may graciously be please to declare the impugned orders dated 03-06-2021 and order dated 27-09-2021 passed by respondents No-2 & 1 respectively are illegal, unlawful and to be set aside.**

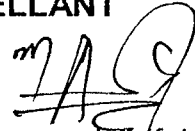
(4)

2. Direct the respondents to reinstate the appellant into his service with all back benefits.
3. Any other relief which this Hon'ble Tribunal deems fit under the facts and circumstances of the case may also be allowed in favor of appellant.

RUNAID
Khan

APPELLANT

Through




Muhammad Arif Jan

Advocate Peshawar

Certificate

It is certified as per information conveyed to me by my client; no such like appeal has earlier been filed before this Hon'ble Tribunal.



ADVOCATE

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Junaid Khan Ex-Naib Qasid Appellant

VERSUS

Commissioner Peshawar and another..... Respondents

AFFIDAVIT

I, Junaid Khan Ex-Naib Qasid (BPS-3) Deputy Commissioner Office, Nowshera do hereby solemnly affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing has been concealed.


DEPONENT

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2022

Junaid Khan Ex-Naib Qasid Appellant

VERSUS

Commissioner Peshawar and another..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT

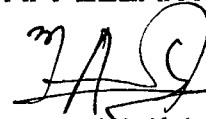
Junaid Khan Ex-Naib Qasid (BPS-3) Deputy Commissioner Office,
Nowshera

RESPONDENTS

1. Commissioner Peshawar Division, Peshawar.
2. Deputy Commissioner, Nowshera

Through

APPELLANT



Muhammad Arif Jan

Advocate Peshawar

Annex 'A' (7)

of the
DEPUTY COMMISSIONER
NOWSHERA.

(Office Phone#0923-9220098-99, Fax#0923-9220159,
Email: dconsrpk@yahoo.com)

Dated 03/06/2021

OFFICE ORDER

No. 4126-32/13/EA/DC/NSR/2021. WHEREAS, Mr. Junaid Khan, Naib Qasid, working in the office of Assistant Commissioner, Nowshera, is habitual absentee and remains absent from office duty without application or prior approval of the competent authority and is not interested in official duty as per written reply of Assistant Commissioner, Nowshera vide his office letter No. 723/08/HC/AC/NSR dated 05/04/2021.

AND Whereas, the Assistant Commissioner Pabbi was nominated as Inquiry Officer to conduct a formal inquiry, who conducted formal inquiry and recommended that the services of Mr. Junaid Khan, Naib Qasid may be terminated

NOW, keeping in view the above noted facts, it reveals that he is not fit to remain in government service further more.

NOW THEREFORE, I, Mir Reza Ozgen, Deputy Commissioner, Nowshera being competent authority do hereby order to terminate the Services of Mr. Junaid Khan Naib Qasid (BPS-03) under section 4(1)(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 with immediate effect.

[Signature]
Deputy Commissioner
Nowshera

Even No. & date.

Copy forwarded for information to the:-

1. The Commissioner Peshawar Division Peshawar.
2. The Secretary Board of Revenue, Revenue & Estate Department Khyber Pakhtunkhwa Peshawar.
3. The Assistant Commissioner, Nowshera.
4. The Assistant Commissioner, Pabbi.
5. The District Accounts Officer, Nowshera.
6. The Accounts Officer, Deputy Commissioner Office, Nowshera.
7. Mr. Junaid Khan, Naib Qasid (BPS-03) through Assistant Commissioner, Nowshera

Attested

[Signature]
Deputy Commissioner
Nowshera

[Signature]
Deputy Commissioner
Nowshera

[Signature]

To

The Hon'ble Commissioner
Peshawar Division Peshawar

Answer 'B'
(8)

Subject: - APPEAL AGAINST TERMINATION ORDER

Respect / sir,

With most humble submission and utmost reverence I submit the following lines for sympathetic consideration and setting aside my termination order:-

1. That I am poor official and belong to village tar khel Tehsil and District Nowshera
2. That I was appointed as Naib Qasid (BPS-03) in the office of the Deputy Commissioner Nowshera 27.01.2015.
3. That during the course of my diligently service spanning on 6 years 4 months I performed my official duties efficiently and under the entire satisfaction and appreciation of my superiors.
4. That owing to some conspiracy and miss-conception an inquiry was conducted against me based on malafid ill well and biased action was taken by my superiors.
5. That I have been attending my official duties regular but due to some misunderstanding an inquiry was ordered to be conducted against me mentioning there in that I am habitually absentee and remaining on leave for 20 days without obtaining prior approval from competent authority as well as non-informing the office about my absence from official duties. Moreover, according to inquiry charges / allegation my cell phone remained off which is untrue because the cell / sim number lost somewhere and by connecting the same cell appeared to be non-attending the calls. Statement of charge / allegations / inquiry report conducted by AAC@ Nowshera and termination order of deputy Commissioner Nowshera duly attested are also enclosed for information.

You are cordially requested that the above noted termination from service order may please be set aside by accepting my instant appeal and I may be restored / re-instated in service on compassionate grounds keeping in view the poverty of applicant / appellatant please.

Dated 15.07.2021

Secy:	
AC PID:	
AC PID:	
Sup'a:	
Branch:	60/4
Diary No.	15/7/21
Date:	

Your's obediently

JUNAID KHAN

Junaid Khan Naib Qasid
Deputy Commissioner
Office Nowshera.

Nowshera

Nowshera

Handwritten signature and initials

(9)

خدمت جا بکسٹرن صاحب است۔

موردہ گزشتہ ۲۰۲۱ء کے سائیکل ڈیٹا کی کسٹرن نوٹیفکیشن *Terminate* کے
حکم خلاف اپیل آپ سے فوراً سائنڈ زمرہ چوڑی ہے۔

گزارش ہے کہ سائیکل ڈیٹا کی فریٹھروٹ حاصل کرنے
موجب کیا۔ مگر کوئی شواہد حاصل نہیں ہو سکا۔

لہذا اصرار ہے کہ سائیکل ڈیٹا کی فریٹھروٹ حاصل کر مشور

فرم
2 اگست 2021

(Signature)

(Signature) Punjal
Khan

Ex. Nais Qaid
DC, Office NBR.

REGISTERED



Annex C & D

(10)

IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

DATE OF INSTITUTION 15.07.2021.
DATE OF DISPOSAL 27.09.2021.
APPEAL NO.03/2021.

JUNAID KHAN (NAIB QASID) O/O DEPUTY COMMISSIONER NOWSHERA.

(Appellant)

VS

DEPUTY COMMISSIONER NOWSHERA.

(Respondent)

ORDER

This order will dispose off the departmental appeal filed by the above named appellant against the order of the Deputy Commissioner Nowshera bearing No.4126-32/13/EA/DC/NSR/2021 dated 03.06.2021, whereby major penalty of removal from service was imposed upon the appellant under section 4 (1)(b)(iii) of Govt. of Khyber Pakhtunkhwa, Efficiency & Disciplinary Rules, 2011.

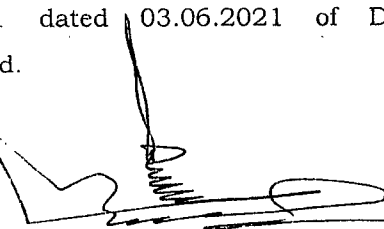
Brief facts of the case leading to institution of the instant appeal are that the appellant was suspended by DC Nowshera for remaining absent from duty for 20 days without obtaining prior approval from competent authority and switching off mobile phone deliberately during absence. Moreover, the appellant was found as habitual absentee and not informing office about reasons of absence. The Additional Assistant Commissioner (Revenue) Nowshera was appointed as enquiry officer to probe the allegations leveled against the appellant. The AAC (Revenue) reported that the appellant did not attend the office despite several reminders and failed to obey the order of superiors. Later on Assistant Commissioner Pabbi Nowshera was appointed as inquiry officer to conduct formal inquiry. After considering explanation, recommendation of the enquiry officer and personal hearing of the appellant, the Deputy Commissioner Nowshera awarded major penalty of dismissal from service to the appellant under section 4 (1)(b)(iii) of Govt. of Khyber Pakhtunkhwa, Efficiency & Disciplinary Rules, 2011.


Appellant present and heard in person. Comments furnished by the Deputy Commissioner Nowshera also examined. The appellant in his statement stated that he became guarantor of one of his friends in a business deal, unfortunately his friend escaped and the appellant had to deal with the all financial issues / losses, therefore, he switched off his mobile phone and could not attend the office.

From perusal of the case file / proceedings of the case, it is evident that the appellant remained absent for 20 days without approval or intimation to the competent authority. He should have informed the office regarding his absence. Moreover, he still has unfinished business / financial issues with many persons which is a hurdle in performing his official duties.

Keeping in view the above, the appeal is dismissed. The impugned order bearing No.4126-32/13/EA/DC/NSR/2021 dated 03.06.2021 of Deputy Commissioner Nowshera is upheld and maintained.

Announced
27.09.2021


COMMISSIONER
PESHAWAR DIVISION PESHAWAR


25/4/22
Assistant (BPS-16)
o/o Commissioner
Peshawar Division

WAKALATNAMA

BEFORE THE HONBLE Khyber Pakhtunkhwa Service Tribunal
Peshawar

Junaid Khan Ex-Naib Qasid

Plaintiff(s)
Petitioner(s)
Complainant(s)

VERSUS

Commissioner Peshawar Other

Defendant(s)
Respondent(s)
Accused(s)

By this, power-of-attorney I/we the said Appellant in the above case, do hereby constitute and appoint **MUHAMMAD ARIF JAN** Advocate as my attorney for me/us in my/our name and on my/our behalf to appear, plead, give statement, verify, administer oath and do all lawful act and things in connection with the said case on my/our behalf or with the execution of any decree or order passed in the case in my/our favour/ against which I/we shall be entitled or permitted to do myself/ourselves, and, in particular, shall be entitled to withdraw or compromise the case or refer it to arbitration or to agree to abide by the special oath of any person and to withdraw and receive documents and money from the Court or the opposite party and to sign proper receipts and discharges for the same and to engage and appoint any other pleader or pay him as his fee irrespective of my/our success or failure in case, provided that, if the case is heard at anyplace other than the usual place of sitting of the Court the pleader shall not bound to attend except on my agreeing to pay him a special fee to be settled between us.

Signature of Client

Junaid Khan

Accepted.

Muhammad Arif Jan

Muhammad Arif Jan

Advocate High Court

Peshawar

Office No.210, Mumtaz Plaza

G.T Road, Hashtnagri Stop,

Peshawar City.

CNIC No.17201-2275748-7

Bc No.10-6663

Cell: 0333-2212213

ATTESTED

Muhammad Arif Jan