

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 488/2018

Date of Institution ... 06.04.2018

Date of Decision ... 10.01.2019

Murad Khan Process Server (BPS-05) District & Sessions Judge, Peshawar.
... (Appellant)

VERSUS

District Judge, Peshawar and another. ... (Respondents)

MR. ANSARULLAH,
Advocate. ... For appellant

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Appeal No. 489/2018, preferred by appellant Murad Khan, is also proposed to be disposed of through this single judgment. In both the cases the appellant was awarded punishment of withholding of two annual increments at different intervals of time.

2. The facts involved in Appeal No. 488/2018 are that the appellant while performing his duties as Process Server within the administrative ambit of Senior Civil Judge Peshawar, absented himself for ~~about~~ 130 days and was proceeded against departmentally. He was awarded major penalty on 13.01.2010, whereby, his services were terminated. The appellant preferred a departmental appeal on 16.02.2010 which was allowed on 30.06.2010 and the order of termination of service was set aside. At the same time, the Departmental Authorities were allowed

to proceed against him in accordance with law. As a result of denovo proceedings, the impugned order dated 14.3.2011 was passed by the Competent Authority, whereby, two annual increments of appellant were withheld for two years. The appellant consequently submitted a departmental appeal on 17.03.2016 which was dismissed on 08.03.2017, inter-alia, on the ground of being barred by time. The appeal in hand was consequently filed on 06.04.2018.

3. The facts, as gatherable from record in Appeal No. 489/2018, suggest that on account of absence of appellant from duty for 13 days without information/prior approval of leave the appellant was proceeded against departmentally and was awarded punishment of withholding annual increments for two years on 19.07.2013. He preferred a departmental appeal against the impugned order on 12.03.2016 which was dismissed being time barred and also without merit, on 08.03.2017. Thereupon, the Service Appeal in hand was preferred on 06.04.2018.

4. It is a fact that the departmental appeals of appellant were dismissed being barred by time in view of the sequence of events reproduced herein-before. It is also available on record that the appellant, on 31.3.2018, applied for issuance of attested copies of orders passed by the Departmental Appellate Authority on 08.03.2017 in both the cases and, thereafter, submitted the Appeals in hand on 06.04.2018. The said application was brought after more than one year of passing of the impugned Appellate order. It is obvious from the facts noted above that the appellant was in the habit of sleeping over his rights in terms of seeking redressal at the appropriate fora. Learned counsel for the appellant, when confronted with the position, contended that the case of appellant may be considered on compassionate grounds. On the other hand, it is clear from the record that the appellant was dealt with leniently in the cases pertaining to first incidence of absence of 130 days.

5. For the reasons noted above, both the appeals are dismissed in limine being hopelessly barred by time. File be consigned to the record room.


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
10.01.2019

11.07.2018

Neither appellant nor his counsel present. Preliminary arguments could not be heard due to killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for preliminary hearing on 12.07.2018 before S.B.


Chairman

12.07.2018

Neither appellant nor his clerk of the counsel present. Preliminary arguments could not be heard due to killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for preliminary hearing on 03.08.2018 before S.B.


Chairman

03.08.2018



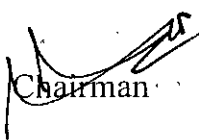

Neither appellant nor his counsel present. On the previous two dates neither appellant nor his counsel was present and this conduct on his part is suggest that he is not interest to pursue his case, hence this Tribunal is left with no option but to dismiss the appeal in default. Parties are left to bear their own cots. File be consigned to the record room.

Announced:
03.08.2018


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 488/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/04/2018	<p>The appeal of Mr. Murand Khan presented today by Mr. Muhammad Zafar Tahirkheli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 6/4/18</p>
2-	09/04/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/04/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	23.04.2018	<p>Counsel for the appellant present and requested for adjournment. Granted. To come up for preliminary hearing on 11.05.2018 before the S.B.</p> <p style="text-align: right;"> Chairman</p>
	11.05.2018	<p>The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on <u>11.07.2018</u> before S.B.</p> <p style="text-align: right;"> Reader</p>

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

Service App. No: 488/2018

Murad Khan

Versus

District Judge etc

=====

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4	Impugned order	"C"	04-03-201	13-15
5	Departmental Appeal	"D"	30-06-2010	16-18
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Dated:06-04-2018

(MUHAMMAD ZAFAR TAHIRKHELI)
Advocate

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

Service App. No: 488/2018

Murad Khan, Process Server (BPS-05),
District & Session Judge, Peshawar

Versus

1. District Judge, Peshawar
2. Senior Civil Judge, Peshawar

.....Appellant
**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 511
Dated 6-4-2018

.....Respondents

=====

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 08-03-2017, WHEREBY THE DEPARTMENTAL APPEAL / REPRESENTATION OF THE APPELLANT DATED 17-03-2016 FOR SETTING ASIDE THE IMPUGNED ORDER OF THE LEARNED SENIOR CIVIL JUDGE, PESHAWAR DATED 04-03-2011, FOR STOPPAGE OF TWO INCREMENTS AGAINST THE APPELLANT WAS REFUSED

=====

PRAYER IN APPEAL:

- (a) By accepting the present appeal and setting aside the impugned order passed by Hon'ble District Judge, Peshawar dated 08-03-2017 (received on 02-04-2018) **Annexure "A"** whereby the departmental appeal of the appellant dated 17-03-2016 **Annexure "B"** was refused and impugned order of the learned Civil Judge-XVI, Peshawar dated 04-03-2011 **Annexure "C"** up to the extent of stoppage of two increments was upheld.
- (b) Further directing the respondents to restore the annual increments of the appellant till date, which are being withheld arbitrarily with effect from the year 2011.
- (c) Any other remedy deemed appropriate may also be granted in addition to the relief claimed above.

Filed to-day
6/4/18
Registrar

Respectfully Sheweth,

Facts:

1. That the appellant was appointed as Process Server (BPS-01); in the year 2006. The post was upgraded to BPS-05 in the year 2016.

The appellant since his appointment has been serving the department honestly and diligently to the utmost satisfaction of his superiors. Neither complaint of any sort was filed against him, nor was he served with any adverse remarks during entire period of his service.

2. That the appellant's services were terminated on 13-01-2010 for alleged misconduct by absenting himself from official duty.

The appellant preferred his departmental appeal, which was accepted vide order dated 30-06-2010 of learned District Judge Peshawar, with the direction to the relevant authorities to proceed against the appellant in accordance with the law, while initiating proper inquiry proceedings against him. (copies annexed "D")

3. The departmental file was received by the learned Senior Civil Judge, Peshawar and vide order dated 05-07-2010, Mr. Asad Ullah Khan, learned Civil Judge, Peshawar was appointed as authorized officer.

The learned Civil Judge-XVI, Peshawar Mr. Asad Ullah Khan, served charge sheet and statement of allegation upon the accused. **(copies annexed "E" "E1" & "E2")**

4. That Civil Judge-XX, Peshawar Mr. Imran Khan Sikandari was appointed as an authorized officer, vide order dated 09-07-2010.

That the learned inquiry officer recorded the statements of witnesses including the accused and submitted his inquiry report dated 31-01-2011 to the learned authorized officer. **(Copies annexed "F" & "F1")**.

5. The authorized officer fully agreed with the observations of inquiry officer and proposed minor penalty or as the competent authority deems fit, may be imposed upon the present appellant. **(copy annexed "G")**

The learned Senior Civil Judge, Peshawar vide order dated 15-02-2011 sent the recommendations back to the authorized officer for passing an appropriate order in that regard under rule 5 sub rule 4 of the NWFP, Civil Servants (E&D) Rules, 1973. **(copy annexed "H")**

6. That the learned authorized officer then passed the impugned order dated 04-03-2011, while imposing a minor penalty of withholding increments for two years. **(Annex "C")**

7. That the appellant preferred a departmental appeal before the learned District Judge, Peshawar on 17-03-2016, with an application for condonation of delay. **(Copies annexed "B" & "B1")**.

The departmental appeal was dismissed on 08-03-2017, by the learned District Judge, Peshawar **(annex "A")**.

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

GROUNDS

- (a) The impugned orders are arbitrary and discriminatory on the part of the respondents. The impugned orders have been passed in complete disregard to the rules regulating the matter and material facts on record.
- (b) That the impugned order dated 14-03-2011 of the learned authorized officer is void ab-initio for the reason that specific period for stoppage of two increments and then restoration of the same has not been mentioned.
- (c) That has already observed by the inquiry officer the appellant's absence was not intentional and he was unable to report his duty due to the wave of militancy in his native town and subsequent military operation during the relevant time.

The appellant was hit by bullet on his right wrist and was also undergoing medical treatment at hospital for his serious illness.

- (d) That the authorized officer has imposed minor penalty upon the appellant but has ignored to specify the exact period regarding his punishment.

Consequently, the appellant's increments are being withheld w.e.f 2011 and have not been restored after completion of the period for which such penalty was imposed. The impugned orders are thus arbitrary, discriminatory and void ab-initio subject to be set aside by this Hon'ble tribunal.

- (e) There is nothing against the appellant which could have deprived him of his legitimate right. The appellant's departmental appeal was in accordance with the law and merited acceptance.
- (f) The impugned omission on the part of the Respondent department is in clear violation of the judgment of superior courts and is against the established principles of equity and justice, calling for interference by the Hon'ble Service Tribunal.
- (g) The petitioners seek leave of the Hon'ble Court to rely on additional grounds at the time of arguments.

In view of the above;

- (a) By accepting the present appeal the impugned orders of Hon'ble District Judge, Peshawar dated 08-03-2017 (received on 02-04-2018), and of the learned Civil Judge-XVI, Peshawar dated 04-03-2011 may kindly be set aside, while exonerating the appellant of all the charges against him.
- (b) Further directing the respondents to restore the annual increments of the appellant till date, which are being withheld arbitrarily with effect from the year 2011.
- (c) Any other relief deemed appropriate may also be granted in addition to the relief claimed above.

Peshawar, Dated
06-04-2018

Through

Appellant

(MUHAMMAD ZAFAR TAHIRKHELI)
Advocate

(Ansar Ullah Khan)
Advocate



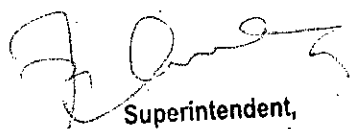

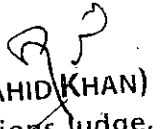
The appellant, do hereby stat on Oath that the contents of the above appeal are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

FORM "A"
FORM OF ORDER SHEET

Court of.....

Case No..... of.....

Serial No. of Order or Proceeding	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel, where necessary
1	2	3
Order.....1	12/13/2016	<p>Civil Appeal/Civil Revision / Rent Appeal / Family Court Appeal with Stay Application / Insurance Petition / Criminal Appeal / Criminal Revision/ Transfer Application / Application for Consolidation of cases / Criminal Complaint u/s 3 of Illegal Dispossession Act / Application u/s 22-A Cr.PC/ Application u/s 491 Cr.PC / Civil Suit / Object Petition / Land Acquisition Reference / Restoration Application / Application for Setting Aside Ex-parte Order / Application for Submission of Challan / Application for Return of Vehicle / Misc Application / Complaint under Consumer Court submitted by Mr. <u>Mudal Khan Sult</u> Advocate. To be put up before learned District & Session Judge, Peshawar for further orders.</p> <p style="text-align: right;">  Superintendent, Sessions Court, Peshawar. </p> <p>Appellant present. Heard. Be registered accordingly. Comments of the learned Senior Civil Judge, Peshawar be obtained for 22.3.2016.</p> <p style="text-align: right;">  (Shahid Khan) District & Sessions Judge, Peshawar </p> <p>Appellant in person present. Comments of the learned Senior Civil Judge, Peshawar received, placed on file. Original record be requisitioned for</p> <p style="text-align: right;">  (SHAHID KHAN) District & Sessions Judge, Peshawar </p>
Order.....	22/03/2016	<p>14.03.2016</p> <p style="text-align: center;">ATTESTED</p> <p style="text-align: center;">02 APR 2018</p> <p style="text-align: center;">(Examiner) Session Court Peshawar</p> <p style="text-align: center;">24/03/2016</p>

Order.. 24/03/2016

Appellant present. Original record not received,
therefore, be requisitioned for 29.3.16.

(SHAHID KHAN)

District & Sessions Judge, Peshawar

Order..... 29/03/2016

Appellant in person present. Original record
received. To come up on 31/03/2016

(SHAHID KHAN)

District & Sessions Judge, Peshawar

Ord.....
31.3.2016

Appellant in person present. Desired to be heard in
person and sought time, allowed, to come up for personal
hearing of the appellant on 22.4.2016

(Shahid Khan)
D & S J Peshawar.

Ord.....
22.4.2016

Appellant in person present. Could not heard due to
paucity of time, adjourned for 17.5.2016

(Shahid Khan)
D & SJ Peshawar.

Ord.....
17.5.2016

Presence as before. Could not proceed due to pre-
occupation in Regi Lalma enquiry. Put up for further
proceedings on 06.6.2016.

(Shahid Khan)
D & SJ Peshawar.

ATTESTED

02 APR 2018

(Examiner)
Session Court Peshawar


Ord.....
06.6.2016

Appellant in person present, as a result of the
transfer of the Presiding Officer, proceedings could not
be carried. Put up before learned Successor in office on
8.9.2016.

(Shahid Khan)
D & SJ Peshawar.


Ord.....
08/09/2016

Appellant in person present. Could not heard due to pre-occupation of the undersigned, in the two meetings regarding Installation of CCTV Cameras and Construction work at Judicial Complex, Peshawar, scheduled for today at worthy Peshawar High Court, Peshawar. Hence, adjourned to 30/09/2016


(Muhammad Rauf Khan)
D&SJ, Peshawar

Ord.....
30/09/2016

Appellant in person present and sought time for production of some relevant documents, allowed. To come up on 19/10/2016



(Muhammad Rauf Khan)
D&SJ, Peshawar

N.R
19/10/2016

The Presiding Officer is on leave. To come up on 16/11/2016


Ord.....
16/11/2016

Appellant in person present. Due to rush of work proceeding could not carry. To come up on 14/12/2016


(Muhammad Rauf Khan)
D&SJ, Peshawar

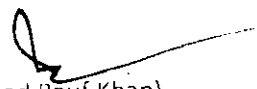
Ord.....
14/12/2016

Appellant in person present. Could not proceed due to preoccupation in court work. To come up on 05/01/2017


(Muhammad Rauf Khan)
D&SJ, Peshawar

Ord.....
05/01/2017

Appellant in person present. Due to transfer of the undersigned, proceedings could not carry. Put up before learned Successor-in-office on 02/03/2017


(Muhammad Rauf Khan)
D&SJ, Peshawar

ATTESTED

02 APR 2018

(Examiner)
Session Court Peshawar

Order... 08/03/2017

The instant Departmental Appeal has been filed against the order dated 04/03/2011, passed by learned Civil Judge-XVI, Peshawar, whereby two annual increments of the appellant/official were ordered to be withheld.

Briefly, the appellant/official remained absent from duty without any information/prior approval of leave for as long as 130 days; as a result of which he was removed from service vide order dated 13/01/2010 of learned Senior Civil Judge, Peshawar. The appellant/official filed an appeal against the said order which was accepted and he was reinstated in service however departmental proceedings against him were re-initiated and finally vide order dated 04/03/2011, two annual increments were ordered to be withheld, hence, this appeal.

Record reveals that the impugned order was passed on 04/03/2013 while the instant appeal has been filed on 17/03/2016 which is way beyond limitation period of thirty days for filing of appeal. Although, an application for condonation of delay is also filed with the instant appeal but the ground mentioned in said application has no footing, as the appellant/official had regularly attended the inquiry proceedings then how could he not know about the fate of said proceedings? Furthermore, perusal of impugned order also reveals that issuing of a copy of said order to the appellant/official has been directed by the authority, thus, appellant/official could not take plea of not knowing about the impugned order.

In view of the above, the appeal in hand being time barred as well as being meritless is hereby dismissed. File be consigned to Record Room after completion.

Anwar Ali Khan
(ANWAR ALI KHAN) 08/03/2017
District & Sessions Judge,
Peshawar

CERTIFIED TO BE TRUE COPY

02 APR 2018

(Examiner)
Copying Agency Session Court
Peshawar

No:	5758
Dated of Application	31-3-18
Name of Application	Rs 416/-
Word	3000 P 9
Fee	Urgent/Fee
Signature of Copyist & Date	<i>[Signature]</i> 2-4-18
Dated of Preparation	2-4-18
Date of Delivery	2-4-18

ANNEXURE B

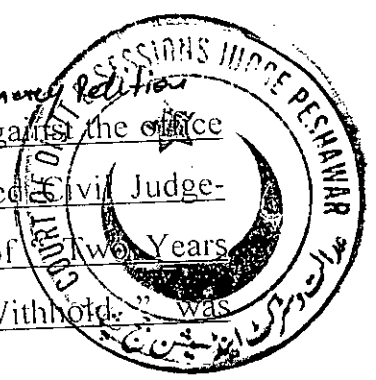
8/3/17 New 12/3/16

DA No 2
2016

To, The Hon'able
District Judge, Peshawar.
New Judicial Complex, Peshawar.

Subject;

Departmental Appeal/ Representation against the office
order dated: 04.03.2011, of The Learned Civil Judge-
XVI Peshawar, whereby the penalty of Two Years
Increments of the appellant were Withheld. was
imposed upon the appellant.



Respected Sir,

The appellant/petitioner respectfully submits as under:-

04
Superintendent
Sessions Judge Peshawar
17-3-16

ON FACTS:

1. That the appellant/petitioner was appointed as (Process Server) under the supervision of the Hon'able Senior Civil Judge, Peshawar and still working in the said department/judiciary.
2. That the allegation against the appellant was that the appellant remain absent from his duty for about 130 days, in this respect report was submitted to the learned Senior Civil Judge Peshawar on 11-11-2009, where after the appellant was not only suspended from service but his salary was also attached while Mr. Asmatullah Khan Wazie- JMIC was appointed as Authorized Officer who on his report dated 13-01-2010 advise for a Major Penalty and as such the Learned Senior Civil Judge Peshawar vide order dated: 13-01-2010 removed the appellant from service. against the said order the appellant prefer an appeal which was allowed vide order dated: 30-06-2010 and the case was remanded back. after framing of charge sheet & statement of allegations. the case was sent to the learned CJ-XX (Mr. Imran Khan Sikandari) for inquiry.

(Copy of order of Senior Civil Judge Peshawar dated: 13-01-2010 & order of appellate forum dated : 30-06-2010 along with "Charge Sheet & Statement of Allegations" are Annexed)

ATTESTED

02 APR 2018
(Examiner)
Session Court Peshawar

3. That the appellant/petitioner submitted his reply before the inquiry officer, wherein after statements of Muhammad Tariq. (Civil Nazie), Yousaf Khan & Sardar Hussain (Naib Nazir to Senior Civil Judge, Peshawar) was recorded as PW-1, PW-2 & PW-3 respectivley while statement of appellant/petitioner was also recorded, after recording the statements the learned Inquiry Officer submitted his report to the Learned Senior Civil Judge for further actions.

(Copy of reply of appellant/petitioner & Statements are annexed)

4. That the authority (Learned Civil Judge-XVI, Peshawar) impose a minor penalty wherein "increments of Two Years was withhold" vide impugned order dated: 04-03-2011, hence being aggrieved from the order of the learned Senior Civil Judge, Peshawar, the Appellant/Petitioner now approaches to Your Lordship through the instant department/representation on the following inter-alias ground.

(Copy of impugned order dated: 04-03-2011 is annexed)



Superintendent
Sessions Judge Peshawar
17-3-16

GROUNDS:

- A. That the impugned orders of the authority is against law, facts and spirit of the rules laid down for the purpose of civil servants, hence not maintainable.
- B. That as per record produce by the appellant to prove his stance it has been categorically mention that the appellant belong to Batkhela Malakand Division and during the relevant days the appellant gone over there and suddenly the Pak Army launched an operation against the militants which continued for a long time due to which the appellant not only stuck there but also fell seriously ill further all the communications door was completely Closed/Jammed, and that the only reason of his absence from duty while the appellant also produce his medical documents as well before the learned inquiry officer but despite this imposing the penalty of withholding two years increments of the appellants shows that the appellant has been highly discriminated.

ATTESTED

02 APR 2018

(Examiner)

Sessions Court Peshawar

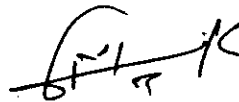
- C. That the appellant serve the department honestly & wholeheartedly but these facts were also not considered by the said authority while passing the impugned order, which needed considerations.

- D. That the impugned order dated 04-03-2011 did not disclose any cogent, valid and logical reason for the stopping increments of the appellant, hence the said order is not maintainable. 7
- E. That the appellant belong to medial class family and as such withholding the increments of the appellant would amount to huge financial loses, rather the impugned order is based on malafide intentions and without the application of mind in regards to the real facts, hence on this score too these orders are not sustainable in the eye of law.
- F. That the order dated: 04-03-2011 was passed in the absence of the appellant, rather after the inquiry the learned Senior Civil Judge never served the appellant regarding imposing the penalty of withholding of two years increments of the appellant, while when the appellant was in dire need of money when approach the concern officials they informed the appellant that in your service record the impugned order is placed hence appellant is not entitled for the two years increments, hence the golden principle of natural justice has been violated while issuing the impugned orders as the same has been passed at the back of the appellant in his absence, and as such on this count alone the impugned orders are liable to be canceled/set aside.

Superintendent
Sessions Judge Peshawar
17/03/2016

It is, therefore, most humbly prayed that on acceptance of this representation/departmental appeal, the office order Dated: 04.03.2011, of the Learned Civil-XVI Judge Peshawar may kindly be withdrawn/canceled, and as such the appellant may be allowed the two Years increments which was withhold through order dated: 04-03-2011.

Yours obediently.



Murad Khan (Process Server)
Presently Working as staff
member in the New Judicial
Complex Peshawar

Dated; 17/03/2016.

ATTESTED

08 APR 2018

(Examiner)
Session Court Peshawar

11

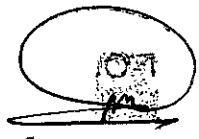
ANNEXURE

B₁

BEFORE THE HON'BLE DISTRICT JUDGE PESHAWAR.

Misc: Petition No. _____ 2016.

In Ref. Appeal No. _____/2016.


Superintendent
Sessions Judge Peshawar
17-3-76

Murad Khan (Process Server).....Appellant.

APPLICATION CONDONATION OF DELAY IF ANY.

Respectfully Sheweth:

1. That the departmental appeal is being filed before your lordship, wherein number of grounds have been taken for setting aside the order dated:04-03-2011, which may be considered as integral part of the present Misc: Petition for condonation of delay.
2. That in view of the said grounds sufficient material is available on record to warrant the setting aside order passed by the authority (Learned Civil Judge-XVI, peshawar), and to allow the main appeal of the petitioner.
3. That the impugned order was passed in the absence of the petitioner hence the petitioner has got no Knowledge of about the order dated:04-03-2011, rather the petitioner got Knowledge about the impugned order when he approach the concern officials for issuance of his increments on 1st March, 2016 but the appellant was informed that his increments has been stopped vide order dated: 04-03-2011, and after searching of the required requisites, the appellant filed an application for attested copies and on 1ST March 2016, and as such the delay in filing the instant appeal is occurred.
4. Those valuable rights of the petitioner/appellant are involved in the instant case and if the delay has not been condoned, the petitioner would be suffer great loss and might be denied of his in alienable right of enjoying equality before law and equal protection of law guaranteed by the constitution of Pakistan.
5. That the petitioner/appellant is having a good case in her favor of the petitioner/appellant there is every likely hood of the success of the case of the petitioner/appellant .
6. That by now it is a settled principle of law that the cases must be decided on merits and not merely on technicalities.

ATTESTED

9-2 APR 2018

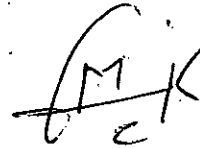
(Examiner)
Session Court Peshawar

- 7. That the order of the respondents is patently illegal and against the mandate of law, thus no limitation is run against an illegal order.
- 8. That on permission of this Hon, able court the Petitioner/Appellant reserves the right to urge other grounds at the time of arguments

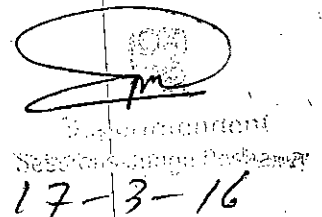
It is therefore most humbly prayed that on acceptance of this petition the delay in filing the departmental appeal may kindly be condoned.

Petitioner/Appellant

Dated: 17/03/2016.



Murad Khan (Process Server)
Presently Working as staff member in the New Judicial Complex Peshawar



Department of Sessions
Peshawar
17-3-16

ATTESTED

02 APR 2016

(Examiner)
Session Court Peshawar

OFFICE OF ASSAD ULLAH KHAN,
CIVIL JUDGE-XVI/AUTHORIZED OFFICER,
PESHAWAR

ORDER
4.3.2011

Inquiry file received back from the court of learned Senior Civil Judge, Peshawar in today. As per order of learned Senior Civil Judge, Peshawar dated 15.2.2011, this office has been directed to do the needful as per law and procedure.

Originally Civil Nazir complained to the Senior Civil Judge, Peshawar on 11.11.2009 about the absence of accused official for long term without any permission. The accused official was suspended with immediate effect vide order of Senior Civil Judge, Peshawar dated 11.11.2009 and Mr. Asmat Ullah Khan Wazir, JMIC, Peshawar was appointed Authorized Officer and probe the matter and submit report within one week who submitted report on 10.12.2009 awarded major penalty to the accused official. The file was sent back to the Authorized Officer to do the needful according to law and submit report within (3) days and the Authorized Officer again awarded due penalty. The file was sent back to the Authorized Officer with directions to conduct the proceedings as per law & procedure and for the third time, the Authorized Officer proposed major penalty. As per order dated 13.1.09, the Competent Authority agreed with the recommendations of the Authorized Officer and ordered the removal of the accused official from the services.

11 *[Signature]*
4/3/11
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The accused official preferred departmental appeal bearing No.1 of 2010. The appellate forum set aside the order of the Competent Authority dated 13.1.10 with certain directions.

The learned Senior Civil Judge, Peshawar vide order dated 5.7.10 appointed the undersigned as Authorized Officer. Accordingly, charge sheet and statement of allegations framed and the photocopy provided to the accused official and Mr. Imran Khan Sikandari, Civil Judge-XX, Peshawar appointed as Inquiry Officer to probe the matter and submit report within (1) week who submitted his report on 31.1.11. This office sent the file to the Authority/Senior Civil Judge, Peshawar vide order dated 8.2.11 while proposing minor penalty or as the Computer Authority deems fit however, the file was sent back by the Authority/Senior Civil Judge, Peshawar vide order dated 15.2.11 with certain directions mentioned therein.

The Inquiry Officer hold that no doubt the accused official was seriously at fault but the plea he raised in his defense was also worth consideration. The Inquiry Office found the accused official for less guilt in the circumstances. This office agreed with the recommendations of the Inquiry Officer and proposed minor penalty vide order dated 8.2.11 however, as per rule 5 sub rule 4 of NWFP Government Servants (Efficiency & Discipline) //

TRC JPV
4/3/11
GMS

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Rules, 1973, specific order could not pass while proposing minor penalty so, the same is hereby rectified and I imposed again minor penalty withholding the increments of the accused official Mr. Murad Khan, Process Server for two (2) years under rule 4 a (2) of NWFP Government Servants (Efficiency & Discipline) Rules, 1973. Clerk of Court is directed to do the needful.

File be consigned to the record room after its completion.

Assad Ulla Khan
 CJ-XVI/Authorized
 Officer, Peshawar

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ANNEXURE

D

IN THE COURT OF MR. ZIA-UD-DIN KHATTAK, DISTRICT JUDGE
PESHAWAR.

Departmental Appeal # 1 of 2010.

Date of institution.....16.02.2010

Date of decision.....30.6.2010

Murad Khan **V**ersus Senior Civil Judge.

Sen
D

JUDGMENT.

Murad Khan appellant while posted as 'Process Server' indulged in misconduct by absenting himself from official duty. The learned Senior Civil Judge, Peshawar, exercising powers of the 'authority' under Government Servants (Efficiency and Discipline) Rules, 1973, (hereinafter referred to as 'the Rules') in pursuance of the recommendations made by JMIC-IV, Peshawar, as 'authorized officer', vide order dated 13.1.2010, terminated the services of the appellant. Aggrieved by the said order he filed this appeal.

123
3/7/10
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2. Mr. Jamal Khan Afridi Advocate, learned counsel for the appellant has raised several grounds for challenging the order of termination from service of the appellant. He submitted in the first instance that the inquiry officer, according to Rule 5 of the

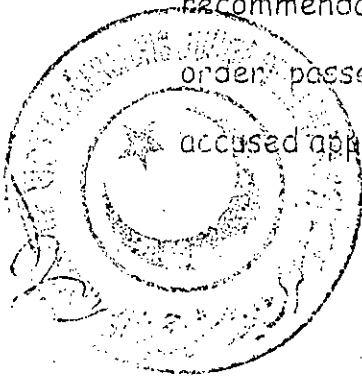


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Rules had to be appointed, whereas in this case, the authorized officer omitted to do so and he also acted as inquiry officer and, thus, greatly prejudiced the appellant in his defence. He has secondly contended that no charge has been drawn up by the authorized officer in terms of Rule 6, nor any served upon the appellant, hence proceeding conducted are illegal and not tenable. It was thirdly contended that the appellant was not provided with any chance of personal hearing, therefore, he has been condemned unheard.

3. The submissions made for/ on behalf of the appellant have got tremendous force. In a case where inquiry is directed, the procedure is more formal. According to Rule 6, the authorized officer has to frame a charge and require the accused to put in written defence, and to state whether he desires to be heard in person. An inquiry officer is to be appointed who shall inquire into the charge and may examine such oral or documentary evidence in support of the charge, or in defence of the accused as may consider necessary and the accused shall be entitled to cross examine the witnesses against him. In this case, no charge has been framed nor inquiry officer appointed. The authorized officer himself examined certain witnesses but accused appellant was not afforded an opportunity to cross examine them. This being essential in order to satisfy the requirements of the Rules, the failure to do so invalidates the recommendations of the authorized officer and the ultimate order passed on their basis by the authority against the accused appellant.



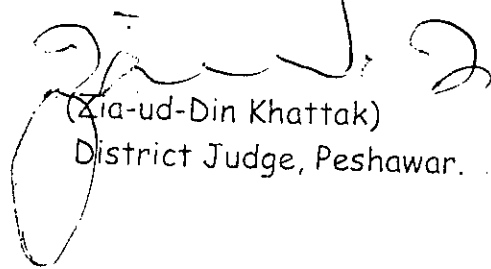
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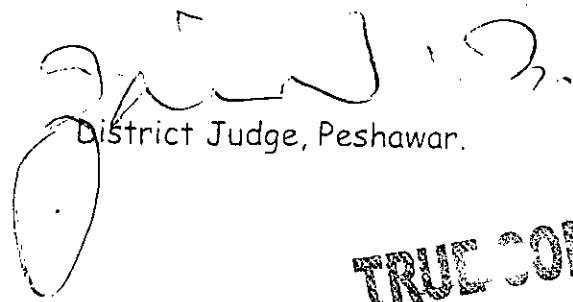
4. In the result, I allow this appeal, set aside the order dated 13.1.2010 of termination of service passed against the appellant, leaving, however, it open to the relevant authorities to proceed against the accused from the stage from which the error could be corrected namely; appointment of Inquiry Officer, framing of formal charge followed by inquiry proceedings, supply of copy of the findings of the inquiry officer to enable the accused to submit his explanation in regard to the material brought against him during the inquiry proceedings and the opinion formed in respect thereof by the inquiry officer as well as the action proposed to be recommended by the authorized officer and so on.

Announced.
30.06.2010


(Zia-ud-Din Khattak)
District Judge, Peshawar.

Certified that this judgment consists of three pages, each page has been read, corrected and signed by me where it was necessary.

Dated. 30.06.2010


District Judge, Peshawar.

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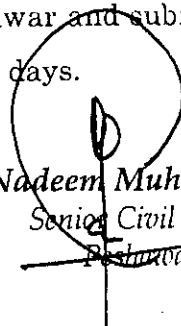
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IN THE COURT OF NADEEM MUHAMMAD,
SENIOR CIVIL JUDGE, PESHAWAR.

ORDER:
05.07.2010.

Departmental appeal file received from the court of Hon'ble District & Sessions Judge, Peshawar with directions to re-initiate inquiry against the process server namely; Murad Khan. It be registered.

Therefore, Mr. Assad Ullah Khan, learned Civil Judge, Peshawar is hereby appointed as Authorised Officer to proceed as per direction of the Hon'ble District & Sessions Judge, Peshawar and submit report to this court within 15 days.


Nadeem Muhammad,
Senior Civil Judge,
Peshawar.

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ANNEXURE E,
CHARGE SHEET

I, Assad Ullah Khan, Civil Judge-XVI, Peshawar as Authorized Officer appointed vide office order dated 5.7.10, Senior Civil Judge/Authority, Peshawar under the Khyber Pukhtoonkhwa Govt. Servants Efficiency and Discipline Rules, 1973 do hereby served you Mr. Murad, Process Server (BPS-3) serving as Process Server in the Lower Courts, falling within the administrative ambit of the learned Senior Civil Judge, Peshawar as follows;

That you have remained absent willfully from your duty as Process Server about 130 days.

That your absence was without any legal permission from the competent authority which amounts mis-conduct and violation of rules and regulations under the Khyber Pukhtoon Khuwa Govt. Servant (Efficiency and Discipline) Rules, 1973.

That in the opinion of the authority, the above said acts prima facie, constitute gross misconduct within the meaning of Khyber Pukhtoonkhwa efficiency and disciplinary rule 1973.

You are therefore, required to;

1. State whether you desire to be heard in person, and
2. Put in your written defense within (1) day of communication of this charge before the inquiry office/Civil Judge, otherwise it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

ASSAD ULLAH KHAN
CJ-XVI/Authorized
Officer, Peshawar

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ANNEXURE E₂

STATEMENT OF ALLEGATION

Mr. Murad, Process Server is hereby served with the statement of allegation as follows;

Whereas, you have remained absent willfully from your duty as Process Server about 130 days.

Whereas, your absence was without any legal permission from the competent authority which amounts mis-conduct and violation of rules and regulations under the Khyber Pukhtoon Khuwa Govt.

Servant (Efficiency and Discipline) Rules, 1973.

Assad Ullah Khan
CJ-XVI/Authorized
Officer, Peshawar

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OFFICE OF ASSAD ULLAH KHAN,
CIVIL JUDGE-XVI/AUTHORIZED OFFICER, PESHAWAR

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7.7.10

Inquiry file received from the office of the learned Senior Civil Judge, Peshawar. Be registered. Accused/official Mr. Murad, Process Server be notice for 9.7.10

[Signature]
Assad Ullah Khan,
CJ-XVI/Authorized
Officer, Peshawar

0---2
9.7.10

Accused/official present. Charge sheet and statement of allegation framed. Photocopy of the same provided to the accused/official. Mr. Imran Khan Sikandari, Civil Judge-XX, Peshawar is appointed as Inquiry Officer to probe the matter and submit report within (1) week. File be sent before the Inquiry Officer immediately. *[Signature]*

[Signature]
Assad Ullah Khan,
CJ-XVI/Authorized
Officer, Peshawar

Ord....3
12/7/2010

Inquiry file of delinquent official namely Murad Khan received from the court of Mr. Assadullah Khan, Civil Judge/Authorized Officer regarding probe into the matter as Inquiry Officer. It be registered. Murad Khan be put on notice for 15/7/2010.

[Signature]
(IMRAN KHAN SIKANDARI)
Civil Judge-XX/Inquiry Officer
Peshawar

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4.

Ord.
15/7/2010

Murad Khan (delinquent official) absent and the Process issued to him also not returned. Fresh process against the said official be issued for 28/7/2010.

(IMRAN KHAN SIKANDARI)
Civil Judge-XX/Inquiry Officer
Peshawar

Ord.
28/7/2010

Murad Khan (delinquent official) present. He is directed to submit his written reply to the charge Charge & Statement of Allegation on 07/9/2010.

Inquiry Officer, Peshawar

Ord.
07/9/2010

Murad Khan (delinquent official) present. He sought some time for submission of written reply to the charge Charge & Statement of Allegation. Granted. To come up for reply on 15/9/2010.

Inquiry Officer, Peshawar

Ord.
15/9/2010

Murad Khan (delinquent official) present. He once again failed to submit the reply on the ground that he wants to engage a proper counsel. Request is genuine, as such, the inquiry is adjourned to 22/9/2010.

Inquiry Officer, Peshawar

Ord.
22/9/2010

Murad Khan (delinquent official) present and stated that due to monetary problems, he still has not engaged counsel and sought some further time. Granted. To come up for submission of written reply on 2/11/2010.

Inquiry Officer, Peshawar

22/9/10

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Ord.
02/12/2010

Delinquent Official present. Written reply filed. To come up for further proceedings on 23/12/2010.

(IMRAN KHAN SIKANDARI)
Civil Judge-XX/Inquiry Officer,
Peshawar

Ord.
23/12/2010

Presence as before. The Civil Nazir and Naib Nazirs be put on notice for 05/01/2011.

Inquiry Officer/Civil Judge-XX,
Peshawar

Ord.
05/01/2011

Presence as before. Official witnesses not in attendance. They again be put on notice for 25/01/2011.

Inquiry Officer/Civil Judge-XX,
Peshawar

Ord.
25/01/2011

Presence as before. Official witnesses namely Muhammad Tariq, Civil Nazir, Yousaf Khan, Naib Nazir and Sardar Hussain Naib Nazir present. their statement were recorded as P.w.1 to P.w.3. To come up for order on 31/01/2011.

Inquiry Officer/Civil Judge-XX,
Peshawar

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Ord.
31/01/2011

Murad Khan, delinquent official present in person.

This probe into the matter is conducted by me being Inquiry Officer upon the order of Mr. Asadullah Khan Khattak, Authorized Officer.

The facts giving birth to instant inquiry in brief are that the said delinquent official remained absent from his duty for about 130 days, which matter as per combine report Ex.P.w.1/1 of Civil Nazir & Naib Nazirs was made to the learned Senior Civil Judge, Peshawar on 11/11/2009 whereafter, not only he was suspended from service but his salary was also attached and Mr. Asmatullah Khan Wazir, JMIC was appointed as Authorized Officer who in his report dated 13/01/2010 advised **Major Penalty** and accordingly, the learned Senior Civil Judge removed him from service on 13/01/2010; against the said order, an appeal was filed before the Hon'ble District Judge, Peshawar, which was allowed on 30/6/2010. The relevant Para of the order is reproduced hereunder:-

"In the result, I allow this appeal, set aside the order dated 13/01/2010 of termination of service passed against the appellant, leaving, however, it open to the relevant authorities to proceed against the accused from the stage from which the error could be corrected namely, appointment of Inquiry Officer, framing of formal charge following by inquiry proceedings, supply of copies of the findings of the inquiry officer to the enable the accused to submit his explanation in regard to the material brought against him during the inquiry proceedings and the opinion formed in respect thereof by the inquiry officer as well as the action proposed to be recommended by the authorized officer and so on."

After the remand order, Mr. Asadullah Khan, Civil Judge was appointed as Authorized Officer who in light of the directions of Hon'ble District Judge, Peshawar framed Charge Sheet & Statement of Allegations, the copies of which were also furnished to accused/official and

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Ord.
31/01/2011

thereafter, the case file was sent to this court for further probe into the matter as Inquiry Officer.

The accused/official was put on notice who appeared and submitted his reply to the above-said Charge Sheet & Statement of Allegations wherein he admitted his absence from duty, however, added that he belongs to Batkhela, Malakand Division and during the relevant days, he had gone over there and the Pak Army suddenly launched operation against the militants which continued for a very long time due to which he not only stucked over there but there was also complete jam of communicatn system thus, unable to inform the office in time about his non attendance and that he also fell seriously ill during the in between period. *(The medical reports etc are already placed on file).*

As the inquiry was initiated solely on the combine report of Nazir & Naib Nazirs, therefore, they were summoned. Muhammad Tariq (Civil Nazir), Yousaf Khan & Sardar Hussain (Naib Nazirs) appeared as P.w.1 to P.w.3 who reiterated the allegations earlier mentioned by them in their joint report Ex.P.w.1/1.

My inquest report is also follows:-

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The points for determination before me were:-

- 1) Whether the accused/delinquent official have actually remained absent from his official duty during the period as reported?
- 2) Whether he has any justifiable reason for the same?

With regard to the first point, suffice it to say that the delinquent official admitted that he actually has remained absent from his duty during the period as reported. So far the second point is concerned, I have examined the delinquent official, the complainants and have also gone

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31-1-2011

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Ord.
31/01/2011

through the relevant record produced by the accused/delinquent official in his defence. The stance of said official is that he belongs to village Batkhela, Malakand Division and during the relevant days, he had gone over there, however, as the Pakistan Army suddenly launched operation against the militants due to which he stuck/trapped over there and as the operation continued on for a long period, he remained unable to leave the area and rejoin his official duty. Similarly, as the communication system was also blocked, he failed to inform the office about the situation though no proof to this effect was provided by the delinquent official but at the same time it is also deniable keeping in view the electronic & print media reports that the situation in reality was some much similar to what he is reporting about. His second plea of defence that he was also seriously ill during the period got some force on the face of record as the same is supported by medical reports already placed on file during the initial probe.

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It is worth noticing that without any application for leave when the delinquent official remained absent for such a long time, when the concerned authority has remained a silent spectator and not taken any action. This fact shows that the authority was cognizant about the situation over there. No doubt that the delinquent official is seriously at fault but the pleas he raised in his defence are also worth consideration and I found him less guilty in the circumstances.

The report is submitted to the Authorized Officer for further necessary action.


(IMRAN KHAN SIKANDARI)
Civil Judge-XX/Inquiry Officer
Peshawar
31-1-2011

لہذا اس کے ساتھ ساتھ ان تمام سائلوں کی بھی وضاحت کی جا رہی ہے۔

بیان / جواب فراوانی بیان (۲۰۱۰)

علاقہ فراوانی بیان ۲۰۱۰ء کے بیان پر توجہ دینا ضروری ہے کہ اس میں جو سائل درج ہیں ان کے ساتھ ساتھ ان کے جواب بھی درج ہیں۔

یہ تمام سائلوں کی وضاحتیں فراوانی بیان ۲۰۱۰ء کے بیان میں موجود ہیں۔ ان کے ساتھ ساتھ ان کے جواب بھی درج ہیں۔

یہ تمام سائلوں کے جواب فراوانی بیان ۲۰۱۰ء کے بیان میں موجود ہیں۔ ان کے ساتھ ساتھ ان کے جواب بھی درج ہیں۔

یہ تمام سائلوں کے جواب فراوانی بیان ۲۰۱۰ء کے بیان میں موجود ہیں۔ ان کے ساتھ ساتھ ان کے جواب بھی درج ہیں۔

یہ تمام سائلوں کے جواب فراوانی بیان ۲۰۱۰ء کے بیان میں موجود ہیں۔ ان کے ساتھ ساتھ ان کے جواب بھی درج ہیں۔

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سیدتی فراوانی بیان (بیان)

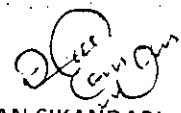
02/12/2010

P.w.1: STATEMENT OF MUHAMMAD TARIQ, CIVIL NAZIR, SENIOR CIVIL JUDGE, PESHAWAR.

Stated that as per my report dated 11/11/2009 earlier submitted before the Senior Civil Judge, Peshawar, the delinquent official Murad Khan (Then Process Server) was absent from his duty on different dates of the months fully mentioned in my report Ex.P.w.1/1. Moreover, the six months efficiency report of said official has also been submitted, which is placed on file as Ex.P.w.1/2.

Xx... Nil (Opportunity Given)

RO & AC
25/01/2011



IMRAN KHAN SIKANDARI
Civil Judge-XX, Peshawar

P.w.2: STATEMENT OF YOUSAF KHAN, NAIB NAZIR, SENIOR CIVIL JUDGE, PESHAWAR.

Stated that as per the report dated 11/11/2009 earlier submitted by the Civil Nazir Muhammad Tariq before the Senior Civil Judge, Peshawar, and duly signed by me also, the delinquent official Murad Khan (Then Process Server) was absent from his duty on different dates of the months fully mentioned in my report already Ex.P.w.1/1. Moreover, the six months efficiency report of said official has also been submitted, which is placed on file as already Ex.P.w.1/2.

Xx... Nil (Opportunity Given)

RO & AC
25/01/2011



IMRAN KHAN SIKANDARI
Civil Judge-XX, Peshawar

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ND:
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P.w.2: STATEMENT OF SARDAR HUSSAIN, NAIB NAZIR, SENIOR CIVIL JUDGE, PESHAWAR.

Stated that as per the report dated 11/11/2009 earlier submitted by the Civil Nazir Muhammad Tariq before the Senior Civil Judge, Peshawar, and duly signed by me also, the delinquent official Murad Khan (Then Process Server) was absent from his duty on different dates of the months fully mentioned in my report already Ex.P.w.1/1. Moreover, the six months efficiency report of said official has also been submitted, which is placed on file as already Ex.P.w.1/2.

Xx... Nil (Opportunity Given)

RO & AC
25/01/2011



IMRAN KHAN SIKANDARI
Civil Judge-XX, Peshawar


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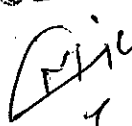
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STATEMENT OF MURAD KHAN, THEN PROCESS SERVER DISTRICT
COURTS, PESHAWAR

Stated that I belong to village Batkhela, Malakand Division. I was performing my duties as Process Server in the District Courts, Peshawar. It was the year 2009 when I had gone to my native village Batkhela and suddenly Pak Army launched operation over there against the militants due to which I stuck there. As there was complete curfew in our village and the Army Officer issued strict orders to the locality people not to come out from their houses and besides that the telecommunication system was also completely damaged, therefore, during this period, I tried my level best to inform my colleagues and other high-ups about the situation but remained unsuccessful. Similarly, my some other absence was also not without reason but I was severely ill, the relevant prescriptions of Specialist doctors & Laboratory tests are Ex.P1 to P 23. In light of the above, I humbly prayed this Hon'ble Court to kindly take a lenient view.

RO & AC
31/01/2011


(IMRAN KHAN SIKANDARI)
Civil Judge-XX/Inquiry Officer,
Peshawar

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OFFICE OF ASSAD ULLAH KHAN,
CIVIL JUDGE-XVI/AUTHORIZED OFFICER,
PESHAWAR

SUIT NO. _____

Order
8.2.11

Inquiry file received from the office of Mr. Imran Khan Sikandari, Civil Judge-XX/Inquiry Officer, Peshawar.

The learned Inquiry Officer hold that no doubt the accused official was seriously at fault but the plea he raised in his defense was also worth consideration. The Inquiry Officer found the accused official for less guilt in the circumstances. I fully agree with the observation of the Inquiry Officer and propose minor penalty or as the competent authority deems fit.

The inquiry file alongwith its annexures be sent to the learned Senior Civil Judge, Peshawar for further necessary action, please.

Assad Ullah Khan
Assad Ullah Khan,
CJ-XVI/Inquiry
Officer, Peshawar

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IN THE COURT OF MRS. SADIA ARSHAD,
SENIOR CIVIL JUDGE, PESHAWAR.

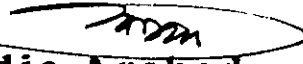
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15.02.2011.

The inquiry file received back from the court of Mr. Assad Ullah Khan, Civil Judge XVI, Peshawar alongwith report, wherein, he has proposed minor penalty for the accused official.

The Authorised Officer has proposed minor penalty for the accused official, while according to Rule 05 Sub Rule(04) of the N.W.F.P. Government Servant (Efficiency & Discipline) Rules, 1973, where minor penalty is proposed to be imposed by authorised officer, he shall pass orders accordingly, ibid rule is reproduced as under:

On receipt of the report of inquiry officer or inquiry committee or where no such officer or committee is appointed on receipt of the explanation of the proved. If it is to propose minor penalty, he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority alongwith the charge and statement of allegations served on the accused, the explanation of the accused, the finding of the Inquiry officer or inquiry committee, if appointed, and his own recommendations regarding the penalty to be imposed. The authority shall pass such orders as it may deem proper.

In the light of above, inquiry file is sent back to the authorised officer with directions to do the needful as per law and procedure.


Sadia Arshad,
Senior Civil Judge,
Peshawar.

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VAKALATNAMA

In the Court of Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. _____ of 2018

Murad Khan

Petitioner
Plaintiff
Applicant
Appellant
Complainant

Decree-Holder

VERSUS

District Judge, Peshawar etc

Respondent
Defendant
Opponent
Accused

Judgment-Debtor

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

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

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

Client

M. Zafar Tahir

Attested & Accepted (Advocates)

Ansar Ullah Khan

Dated 06/04/2018

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